
(1937) 09 BOM CK 0001

In the Bombay High Court

Case No : I.C. No. 18 of 1937

In Re: Aryan Life Assurance Society Limited

Date of Decision : 28-09-1937

Acts Referred:

Companies Act, 1956 — Section 166

Life Assurance Companies Act, 1912 — Section 2(7), 22

Citation : AIR 1938 Bom 182 : (1938) 40 BOMLR 52

Hon'ble Judges : Engineer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Engineer

1. This is a petition for winding up of the Aryan Life Assurance Society, a limited company incorporated under the provisions of the Indian Companies Act, 1913.

2. The liability of the members is limited by guarantee. Clause 5 of the memorandum of association is as follows :-

Every member of the Society undertakes to contribute to the assets of the Society, in the event of the same being wound up during the time that he is a member, or within one year thereafter for payment of the debts and liabilities of the Society contracted before the time at which he ceased to be a member, and the costs, charges and expenses of winding-up the same and for the adjustment of the rights of the contributories amongst themselves, as may be required, not exceeding Rs. 25.

3. The petition is by eleven petitioners, and it was presented on March 31, 1937. Section 22 of the Indian Life Assurance Companies Act (VI of 1912) provides that-

The Court may order the winding-up of a life assurance company, in accordance with the Indian Companies Act, 1882 (Which must now be read as the Indian Companies Act of 1913) and the provisions of that Act shall apply accordingly, subject, however, to the modification that the company may be ordered to be

wound up-

(a) on the petition of ten or more policy-holders :

Provided that such a petition shall not be presented except by the leave of the Court, and leave shall not be granted until a prima facie case has been established to the satisfaction of the Court, and until security for costs for such amount as the Court may think reasonable has been given ;....

4. Mr. Justice Kania to whom the petition was presented directed a notice to be given to the company before he gave leave u/s 22 of the Life Insurance Society Act. The notice was served on April 6, 1937, and ultimately leave was given on June 28, 1937, on the petitioner giving security in the sum of Rs. 500 for costs. The petition is headed : " In the matter of the Indian Companies Act VII of 1913". At the hearing of the petition counsel for the petitioners asked for leave to amend the title by heading it "in the matter of Life Assurance Society Act", and I allowed the amendment as it was merely formal.

5. A preliminary objection has been raised on behalf of the company and certain policy-holders who oppose the petition. The objection is that the petition is not maintainable as out of eleven petitioners two, viz. petitioners Nos. 6 and 9, had assigned their policy before the date of the petition, and the policy of petitioner No. 7 is alleged to have lapsed on March 15, 1937, and further the policy of petitioner No. 10 is also alleged to have lapsed before the date of the petition. It was conceded by all parties that the objection was a fit one to be tried as a preliminary issue, as, in the event of my holding that the petition is not maintainable, further costs of hearing the petition on the merits would be saved.

6. Section 2(7) of the Indian Life-Assurance Companies Act, 1912, defines a policy-holder as the person who for the time being is the legal holder of a policy for securing the contract with the life assurance company.

7. Petitioner No. 6 assigned his policy on February 12, 1936, by endorsement on the policy in the following form :-

I Jugatram Shankerprasad Vaidya in consideration of natural love and affection do hereby assign the benefit of all moneys to become payable under the within policy of Assurance to my wife Ambuben and declare that her receipt shall be a sufficient discharge to the company for the same, provided however that in the event of my said wife predeceasing me, the benefit of the policy and the right to receive moneys thereunder shall revert to me as if this assignment had not been made.

The assignment was duly registered in the books of the company. The assignment of petitioner No. 9 was on November 15, 1934, by endorsement on the policy in the following form :-

I, the undersigned assured out of my love and regard for my wife Bai Yeshwanti hereby assign all my right, title and interest in this policy to my said wife. If

however she predeceases me, all the said right, title and interest shall revert to me as if this assignment had not been made.

This policy was also duly registered in the books of the company.

8. It is contended that by virtue of these two assignments two out of the eleven petitioners were not policy-holders at the date of the petition, and that, therefore, the petition is not maintainable. On behalf of the petitioners it is contended that a policy-holder means a person who enters into a contract with the insurance company to insure his life, and further that a policy-holder remains a policy-holder even after he assigns his policy. But, in my opinion, in view of the clear definition of " policy-holder" under the Life Assurance Societies Act, it is not possible to accept this contention. The words in the section " for the time being " clearly mean, in my opinion, that a person must at the date of the petition be the legal holder of a policy. In my opinion after a policy is assigned the legal holder of the policy is the assignee and not original policy-holder.

9. The petitioners next seek to rely on the reversionary clause in the assignment. But it is not alleged that either assignee is dead. The legal holders of these policies are still the assignees.

10. It is further contended that a policy may be not on the life of the holder himself but on the life of a husband, or parent, or even a child. This no doubt may be so, but still a policy-holder is the person to whom the company contracts to pay the sum assured. Nobody contends that a person whose life is assured is a policy-holder or is entitled to maintain the petition as such.

11. It is next contended that Article 5 of the articles of association provides that every person shall be a member of the society whose life is insured therein for at least rupees one thousand in accordance with these presents and whose policy or assurance is in force. It is contended that by virtue of this article a policy-holder who is a member continues to be a member even after he has assigned the policy to somebody else. Assuming that this is so, it does not follow that he is still a policy-holder. The legal holder for the time being of a policy may be different from the person who became a member by originally taking out the policy and who might continue to be a member notwithstanding his having assigned the policy. Reliance was also placed on behalf of the petitioners on Section 38 of the Indian Life Assurance Companies Act, 1912, which provides for service of notice in the following terms :

Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy : ,..

12. In my opinion this section does not help the petitioners in their contention. A person claiming to be interested in a policy is not necessarily an assignee of the policy, and the notice required by the first part of the section must be sent to the

assignee who, in my opinion, is the legal holder for the time being of the policy.

13. It is significant to note that in the form given in Palmer's Company Precedents for a petition for winding-up a life assurance society by policy-holders, one of the paragraphs is as follows :

Each of your petitioners has duly and punctually paid the premiums on his said policy and such policy is in full force.

14. For these reasons I hold that petitioners Nos. 6 and 9 were not the legal holders of policies at the time when the petition was presented. This reduces the number of petitioners to nine and the petition as a petition by policy-holders would be bad. As, however, the question as regards the policies of petitioners Nos. 7 and 10 has been fully argued before me, I now propose to deal with that question. As regards petitioner No. 7, it is contended that his policy lapsed on March 15, 1937. On that date a premium became due but it was not paid. Under the terms of the policy the petitioner was entitled to a period of grace of thirty days, but the premium was not paid even within that time. Petitioner No. 7 says that in May, 1937, he sent the necessary premium but the directors refused to accept it. Now under the terms of the policy, if a premium is not paid within the days of grace, the policy lapses as from the due date of the unpaid premium. The non-forfeiture clause also does not apply to the policy as it was not three years old. It is contended that on March 31, 1937, the policy had not lapsed because petitioner No. 7 had thirty days from March 15, within which to make the payment. This, however, in my opinion does not help the petitioners. It is true that the policy did not lapse until April 15, 1937, but under the express terms of the policy, when the policy did lapse, it lapsed from the due date of the unpaid premium, that is, March 15, 1937. As regards the contention that the directors refused to accept the premium, it cannot be denied that the matter was entirely within their discretion. Moreover, it is pointed out that the form, which was sent by petitioner No. 7 when he applied for revivor, was not attested as required by the rules. I, therefore, hold that petitioner No. 7 is also not a policy-holder entitled to maintain the petition.

15. There now remains the question of petitioner No. 10. The facts about him are that he took a loan from the company on June 1, 1933, and a further loan on September 1, 1934. The documents executed by him have been put in as exhibit 2. These documents provide that if interest shall run into arrears for a period of six months then the policy shall be held, without the necessity of any notice being given, to be ipso facto surrendered to the Society. By the said documents the petitioner also assigned to the Society the said policy and the sum or sums due under the same either on such surrender or otherwise. It is contended on behalf of the petitioners that the policy could not lapse until a resolution to that effect was passed. That contention, in my opinion, cannot be maintained. The clear terms of the writings executed by petitioner No. 7 negative this contention, and I hold that petitioner No. 10 is also not entitled to maintain the petition. The result is that the petition as a petition by policy-holders can only be said to be by

seven policy-holders and cannot be maintained.

16. But it is next contended that the petition can be maintained as a petition by a contributory. Section 287 of the Indian Companies Act, 1913, provides that nothing in the Act shall affect the provisions of the Indian Life Assurance Companies Act, 1912. Section 22 of the Indian Life Assurance Companies Act provides that the Court may order the winding-up of a life assurance company, in accordance with the Indian Companies Act, 1882, and the provisions of that Act shall apply accordingly, subject, however, to" the modification, etc. The effect of this section and Section 22 of the Indian Life Assurance Companies Act is, in my opinion, to incorporate into the Life Assurance Companies Act the relevant provisions about winding-up contained in the Indian Companies Act including the provisions contained" in Section 166. That section enables a winding-up of a company by petitions to be presented by a contributory or contributories provided that a contributory shall not be entitled to present the petition for winding up a company unless (1) either the number of members is reduced, in the case of a private company below two, or, in the case of any other company below seven ; or (2) the shares in respect of which he is a contributory or some of them either were originally allotted to him, or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding-up, or have devolved on him through the death of a former holder. Section 2, Sub-section (16), of the Indian" Companies Act defines a "share" as the share in the share capital of the-company, and includes stock except when a distinction between stock and shares is expressed or implied. It is, therefore, contended by those who oppose this petition that the petition is not maintainable, because admittedly Sub-clause (7) does not apply, and it is contended that Sub-clause (2) cannot be applied by analogy. It is argued that the provision of this sub-section does not and cannot apply in the case of a company limited by guarantee which has no share capital. For the petitioners it is argued that Section 166, Sub-section (a)(ii) does not actually contemplate shares in the company, but I do not think it is possible to accept that argument. The right to wind up a company is a statutory right and unless the petitioner can bring his case within the terms of the section he is not entitled to maintain the petition. It is next argued that when the Indian Life Assurance Companies Act, 1912, was enacted the Indian Companies Act which was in force was the Act of 1882. The Act of 1882 was repealed and re-enacted by the Act of 1913, and it is argued that the Act of 1913 nullifies Section 22 of the Life Assurance Companies Act of 1912. I do not see how this argument can be sustained. The General Clauses Act provides that where any Act of the Governor-General in Council repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

17. Lastly, it is contended on behalf of the petitioners that the petition can be maintained as a petition by a creditor. But, in the first place, in my opinion, the

petition is not one by a creditor, or creditors. The petition refers to the petitioners as being policy-holders and members, but there is not a word in the petition about their being creditors. The grievance in the petition is that the company failed and refused to make certain advances which according to the petitioners the company were bound to do. But as regards the surrender-value of the policy the petition states that the petitioners are ready to have the surrender-value of the policy, but they have thought fit not to apply for the same as the company is not in a position to pay the same. It is further stated that no surrender-value of the policy can be given till the company is wound up.

18. If, however, I am wrong in holding that the petition is not by a creditor or creditors, and as the point has been argued before me, I will consider whether the petitioners can be said to be creditors within the Indian Life Assurance Companies Act, The position in England was as follows :- Under the Companies Act of 1862 a prospective or contingent creditor could not present a petition for winding-up a company. Section 21 of the Life Assurance Society Act of 1870 enabled a current policy-holder to petition. By the Companies Act of 1908 the right to present a petition for winding-up was generally given to a prospective or contingent creditor. Under the Life Assurance Act of 1870 one or more policy-holders could petition. A policy-holder is of course a contingent or prospective creditor. However, by the Life Assurance Act of 1909 this right was cut down by a provision being enacted that ten or more policy-holders being owners of policies of ? 10,000 may petition. Thus in England the right given to a single policy-holder by the Life Assurance Companies Act of 1870 was cut down by the Assurance Companies Act of 1909 by a provision that there must be at least ten policy-holders holding policies of ? 10,000 who can present a petition. The case of British Equitable Bond and Mortgage Corporation, Limited, In re [1910] 1 Ch. 574 was a case under the Companies Act of 1907, and not under Life Assurance Companies Act of 1870. It was only by the Assurance Companies Act of 1909 (which came into operation on July 1, 1910) that companies carrying on bond investment business came within its operation. It was held in that case that an owner of an investment bond was a contingent or prospective creditor. It was further stated in the judgment that it would appear that such a bond-holder would by virtue of Sections 1 and 34 of the Assurance Companies Act, 1909, be deemed to be a policy-holder for the purpose of Section 15 of that Act which was held to be not an enabling but a restrictive section.

19. In my opinion the right given to policy-holders to present a petition is given to them because they are prospective or contingent creditors, and although in the case of a company which does not fall under the category of life assurance companies the petition can be presented by a single prospective or contingent creditor, in the case of a petition presented by policy-holders of a life assurance company the petition must be by at least ten policy-holders. In my opinion to hold otherwise would be to completely nullify the provisions of Section 22 of the Indian Life Assurance Companies Act, because a policy-holder is a contingent or prospective creditor, and if such a single policy-holder can present a petition,

there is no sense in the legislature enacting that a petition must be made by ten or more policy-holders. This view is supported by the following observations in Palmer's Company Precedents :

A single policy-holder as such cannot petition even when his policy is matured for he still seems to be a policy-holder. But if he obtains a judgment he might petition.

20. I, therefore, hold that the petition is not maintainable, and that it must be dismissed. The petitioners must pay one set of costs to the company and one set to the policy-holders who opposed the petition. Counsel certified. The company to be at liberty to take the costs out of the amount deposited by the petitioners.