

(1941) 07 CAL CK 0022
In the Calcutta High Court

In Re: Bengal Silk Mills Co. Ltd.

Date of Decision : 18-07-1941

Acts Referred:

Contract Act, 1872 — Section 202

Citation : AIR 1942 Cal 461

Hon'ble Judges : Lort-Williams, J; Lord Williams, J

Bench : Division Bench

Judgement

Lort-Williams, J.—This is a petition by Mahomed Solaiman Ariff alias Section Monawar Nawab Ariff, who prays for rectification of the register of members of the respondent company. He states that Mt. Fatma. Begum (since deceased) of No. 8, Amratolla Lane, who is the registered holder of six shares in the capital of the company, was the petitioner's grandmother. He says that he is the present holder of the shares for valuable consideration, as he holds a duly executed instrument of transfer in his favour. He presented this instrument to the company, together with the share script on 4th March 1941 for registration but on 5th March 1941 he was told that the directors had refused to register the transfer, without giving any reason therefor. It appears that on 22nd March 1897 these six shares were issued in favour of Mi Fatma Begum. On 5th December 1928 she transferred the shares in blank to one Mr. A.S.A. Suhrawardy for Rs. 2100 and on 10th December 1940 he transferred the shares in blank to the petitioner for Rs. 2400. Yusuf Cassim Ariff is one of the directors of the company, and in his affidavit dated 7th June 1941 he stated that the directors having examined the instrument of transfer and the original script, were not satisfied that the signature was that of Mt. Fatma Begum, nor that the shares were transferred by her to the applicant. Further, he stated that the instrument of transfer was incomplete, and alleged that it was filled up after the death of the alleged transferee and sometime after November 1940, whereas the transferee died about 1935. The directors and the petitioner are closely related. Yusuf is his uncle. No evidence has been tendered on behalf of the company in support of the objections contained in Yusuf's affidavit.

2. The signature of Fatma Begum was witnessed by one S.C. Ariff, and there is

nothing to show that the signature is not genuine, or that the sum of Rs. 2100 was not paid by Suhrawardy to the original transferee. It is admitted that the instrument of transfer was filled up after the death of Fatma Begum, namely, at the date of the transfer from Suhrawardy to the petitioner, on 10th December 1940. It is true that the instrument is incomplete because the latter date has not been inserted and must be inserted before the shares can be registered. The relevant Articles of Association of the company are as follows:

Transfer and Transmission of Shares.

37. The instrument of transfer of any share shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such share, until the name of the transferee is entered in the register in respect thereof.

Number 38 provides the form in which the instrument of transfer must be drawn up, and the transfer in the present case is in the form provided.

39. The managing agents may decline to register any transfer of shares, upon which the company has a lien and in the case of shares not fully paid up, may refuse to register a transfer to a transferee of whom they do not approve.

There is no suggestion in the present case that anybody disapproves of the petitioner.

40. Every instrument of transfer shall be left at the office for registration accompanied by the certificate of the shares to be transferred and such other evidence as the company may require to prove the title of the transferor his right to transfer the shares.

3. No question has been raised about the transferor's title or right to transfer. The only question therefore remaining to be decided is what is the effect of a transfer in blank made after the death of the original transferor, that is to say, the original and registered holder of the shares? In *Sircar & Sen's Indian Companies Act, 1913*, the learned authors at page 109 have stated as follows:

In the case of a transfer executed in blank if the transferor dies before the >ultimate transferee's name has been subsequently filled in, that would not in any way affect the right of such transferee to get his name registered. The reason is that so far as the transferor is concerned he loses his right in the shares as soon as he executed transfer in blank. The transfer is good as against him even though the transferee has not filled up the form.

4. In support of this statement they cite the case in *In re Dodds; Ex Parte Brown v. Coastes* (1891) 64 L.T. 476. But, in my opinion, this case is no authority for the proposition. The case tons on the question of insolvency and not of the death of the original transferor. Nevertheless, in my opinion, the statement is correct. There is very little, if any, direct authority upon this question but transfers in blank have been described by various authorities. Thus in *Balmer's Com L* 13th

Edn., at page 132 it is stated that "upon a sale or mortgage of shares, the transferor very commonly signs and hands over what is called a blank transfer (i.e., a transfer signed by the transferor, but with a blank for the name of the transferee), the intention being that the purchaser or mortgagee shall be at liberty later on to fill up the blank and perfect his security by getting himself registered. If however the regulations require the transfer to be by deed, the transferee cannot effectively fill up the blank and deliver the deed unless authorized so to do by power of attorney under seal. Whereas, if the transfer may be under hand merely, the authority to fill up the blank may be oral and may be implied from the nature of the transaction.

5. In *In re Tahiti Cotton Company; Ex parte Sargent* (1873) 17 Eq. 273 it was held, that the transfers although not good as deeds, were valid instruments in writing within the meaning of the Articles of Association, and conferred a good title to the shares at law as well as in equity and the transferee was entitled to have his name on the register. It was contended that the transfers, though not valid as deeds, were evidence of a contract to transfer the shares, by virtue of which the transferees became equitably entitled to them. Sir George Jessel, M.E., at p. 279 described the transaction in the following words:

The case is an unfortunate one, undoubtedly, for Mr. Joseph Fry; but the facts really are very plain indeed. Mr. Fry borrows what I will call for shortness" sake ? 450 of a Mr. Cannon, a share broker. He deposits with him as security the transfers of certain shares not quite filled up, that is, there was no date to them, and there was no name of the transferee; they were what are commonly called blank transfers. The deposits were made on two different occasions as a security. He hands to him also certificates of shares. I have no doubt that without express words Mr. Cannon was authorised, and was intended to be authorized by Mr. Fry, if necessary, to fill up the blank, and get the shares registered.

6. And on page 280, he said:

Now, in the first place, there can be no question that these transfers were not valid as deeds; but then no deed is required by the Articles of Association of the company. As I have already said, I hold there was authority to fill up the blanks over the signature of Mr. Fry, and therefore they were validly signed, and I think ought to have been registered.

7. In *Colonial Bank v. Cady* (1890) 15 A.C. 267, Lord Watson at p. 277 said as follows:

As I understand their evidence, the principles of American Law do not differ in any way, or at least in any material respect, from those by which an English Court would be guided in similar circumstances when the indorsed transfer has been duly executed by the registered owner of the shares the name of the transferee being left blank, delivery of the certificate in that condition by him, or by his authority, transmits his title to the shares both legal and equitable. The person to whom it is delivered can effectually transfer his interest by handing his

certificate to another and the document may thus pass from hand to hand until it comes into the possession of a holder who thinks fit to insert his own name as transferee and to present the document to the company for the purpose of having his name entered in the register of shareholders and obtaining a new certificate in his own favour.

The appellants' witnesses say that delivery of the certificate with the transfer executed in blank "passes, the property" of the shares; but that statement must be accepted subject to the explanations by which it is qualified. The right of the holder appears from these explanations to be in the nature of a *jus ad rem* and not of a *jus in re*. Delivery does not invest him with the ownership of the shares in the sense that no further act is required in order to perfect his right. Notwithstanding his having parted with the certificate and transfer the original transferor, who is entered as owner in the certificate and register continues to be the only share-holder recognised by the company as entitled to vote and draw dividends in respect of the shares, until the transferee or holder for the time being obtains registration in his own name. It would, therefore, be more accurate to say that such delivery passes, not the property of the shares but a title, legal and equitable which will enable the holder to vest himself with the shares without risk of his right being defeated by any other person deriving title from the registered owner.

8. In *Colonial Bank v. Hepworth* (1887) 36 Ch. D. 36 Chitty J. at p. 44 said as follows:

The normal mode of transfer as appears from the documents themselves and the evidence is as follows : The transfer and power of attorney are signed by the registered share-holder whose name appears on the face of the certificate, and his signature is attested by a witness. The name of the transferee is filled in and the documents are taken to the office of the company; the certificates are surrendered and cancelled, and a new certificate is issued to the transferee whose name has been entered on the register. According to a practice which has extensively prevailed and has been recognised and acted upon by the company, the transferor signs the transfer and power of attorney without filling in the names of the transferee and attorney; and these blank transfers readily pass on the market from hand to hand by delivery only until the documents reach the hands of some holder who desires to be registered. His name is then filled in by himself or on his behalf. The documents are then left with the company, the certificates are cancelled, the transferee is registered, and new certificates in his name are issued in the manner already described.

The plain legal effect of this recognized practice is, that the transferor who executes in blank confers on the holder of the documents for the time being an authority to fill in the name of the transferee; and each successive holder for the time being, when the documents pass through several hands, passes on this authority. The holders must of course be *bona fide* holders for value without notice.

9. And at page 53:

Having regard to the practice proved and the condition in which these documents are when they pass from hand to hand, the right principle to adopt with reference to them is to hold that where (as is the case before me) the transfers are duly signed by the registered holders of the shares, each prior holder confers upon the bona fide holder for value of the certificates for the time being an authority to fill in the name of the transferee and is estopped from denying such authority.

10. In addition to these statements there are the provisions of Section 202, Indian Contract Act, to the effect that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. And Illustration (a) provides as follows:

A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to " him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death," the authority for the proposition being *Gausson v. Martin* (1830) 10 B. & C. 731 if the petitioner therefore is to be regarded as the agent of the original transferor, clearly he has an interest in the property for which he has paid Rs. 2400 to Suhrawardy and for which Suhrawardy paid Bs. 2100 to the original transferor. This section of the Contract Act, merely states in a codified form the well-known principles of English law regarding authority coupled with interest. Mr. Sushil Sen has drawn my attention to a passage in *Gore-Browne's Hand-book on Joint Stock Companies*, Edn. 38, at p. 246 as follows:

Even when a deed is not required, it appears that if the original transferor died, the authority to fill in the blanks would be at an end, although no doubt an equity would subsist to compel the executors to give effect to the contract.

11. This is a tentative suggestion on behalf of the learned authors based upon the following authorities : *In re Tahiti Cotton Company; Ex parte Sargent* (1873) 17 Eq. 273 (to which I have referred); *Powell v. London & Provincial Bank* (1893) 1 Ch. 612 *Powell v. London & Provincial Bank* (1893) 2 Ch. 555 and *Kelley v. Munster & Leinster Bank* (1891) L.R. 29 Ir. 19. I have not been able to obtain the last authority, but I have carefully examined the other two and cannot find that they furnish any support for the proposition advanced in the text. On the contrary, the learned authors refer in a note on the same page to the case in *Carter v. White* (1884) 25 Ch. D. 666, as an authority in opposition to the proposition stated. This case seems directly in point. The headnote is as follows:

A bill of exchange accepted for valuable consideration, with the drawer's name left blank, may be completed by the drawer's name being added after the death of the acceptor.

12. *Cotton, L.J.* at p. 669 says as follows:

It was said that the documents were not bills of exchange, and not promissory notes, and assuming that they could be filled up and made perfect before the death of the acceptor yet that after his death no one had power to fill them up. That was the only point decided by Kay J. who held that they could be now filled up, and in my opinion it was correctly decided. The power which White had to fill up the acceptances was not in consequence of White being appointed by Randle his agent to fill them up on his behalf, but, in consequence of a contract that the person to whom they were given, or any one authorised by him, should be at liberty to "fill them up. That contract was not put an end to by the death of the acceptor.

13. And Fry L.J. at p. 672 said as follows:

The question before Kay J. was whether such a document as we have in this case can be filled up after the death of the acceptor; and it was argued that the delivery of the acceptance conferred an authority to fill it up, which came to an end with the death of the person who gave it, and therefore that it was too late now to make the acceptance a complete bill. In my judgment that reasoning proceeds upon a false proposition. It is not by an authority, but by a contract between the acceptor and the intended drawer, that the drawer had a right to fill up the instrument and make it a complete bill. That is the nature of the transaction between them, you may call such a right an authority, but it is a right founded on a contract, and being a contract it does not come to an end by the death of the acceptor. The instrument may be made perfect after the death of the acceptor, as well as before. Therefore, in my opinion the judgment was right.

14. It seems clear therefore that whether it be a matter of agency or authority or contract, the transferee in cases of transfers in blank has the right to fill in the necessary particulars including his own name as transferee and the date of the transfer, after the death of the original transferor. If it were otherwise the vast amount of business done by means of blank transfers would have to cease, because it would be quite impossible in many cases to ascertain without much trouble and inconvenience whether the original transferor was alive or not. If therefore the petitioner fills in the date of the transfer from Suhrawardy to himself, namely, 10th December 1940, the instrument will be complete and he will be entitled to have his name registered as the holder of these shares. Subject therefore to that condition, he is entitled to an order for rectification of the register." The application is allowed with costs. Certified for counsel.