

(1959) 02 CAL CK 0019
In the Calcutta High Court
Case No : Matter No. 163 of 1956
In Re: Darjeeling Bank Ltd.

Date of Decision : 16-02-1959

Acts Referred:

Companies Act, 1956 — Section 467, 470

Citation : AIR 1959 Cal 335 : (1960) 30 CompCas 50

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Judgement

P.B. Mukharji, J.—Some of the contributories in this case belonging to the Sonapur Raj family are objecting to this call being made upon them. Necessary applications have been made by them for setting aside the order settling the list of contributories on the 7th September, 1955 and the order of the 5th June, 1956 granting leave to the liquidator to make calls and for rectification of the share register by deleting their names from the register. Their main contention is that they were not shareholders at the time this Banking Company was wound up and the share register showing them as share-holders is incorrect and should be rectified.

2. The facts are not disputed. These shares were sold by the Maharaja of Sonapur and his family as early as 20th November, 1945. The copies of the sold notes are annexed with the records. The fact of sale cannot really be disputed. In fact, on the 20th December, 1945, the bank itself wrote stating that it had received the relative receipts for allotment money for registration of these shares in the name of Kumar Pinaki Bhusan Deo Rai of Naldanga. This shows that the transferee had lodged these relative receipts with the bank and that is why the bank wrote on the 20th December, 1945. The terms of the letter which the managing director of the bank himself wrote on the 20th December, 1945 to the Maharaja of Sonapur and the members of his family are significant :

"If you have any objection to the transfer being effected, please lodge the same with us within two weeks from the receipt of this letter. If no objection from you would be forth-coming, necessary action would be taken by the directors for

registering the transfer, which please note."

Now this was clear and unequivocal notice by the Bank to register the transfer if no objection against it was lodged within a fortnight. There was no objection to the transfer and in normal course the registration should have taken place in terms of this notice. In fact, however, the bank's registers were not corrected in accordance with the terms of its own letter. About three years later, sometime in April 1948, the bank was wound up. Thereafter, a notice of preliminary settlement of list of contributories was sent to the Maharaja and the members of his family on the basis of the register showing them as share-holders and thereby intending to make them liable as contributories. The Maharaja wrote on the 10th August 1953 drawing specific attention to the fact that all these shares of Darjeeling Bank were sold through bona fide stock brokers, Messrs. A. C. Dutt and Co., of 2, Royal Exchange Place, Calcutta as early as the 26th November, 1945 and also that the bank had received requests from the transferee Kumar Pinaki Bhusan Deo Rai of Naldanga for registration of those transfers in his name. The letter of the 10th August, 1953 from the Maharaja made it clear that they had ceased to be share-holders of the bank and they had no liability to the bank and they could not be included in the list of contributories. No reply apparently was given by the liquidator contesting this position. In fact, I think, there is no answer to the facts stated in the letter of the 10th August, 1943.

3. Thereafter, the list of contributories was settled on the 7th September, 1955, but receipt of notice of the final list of contributories is denied by the disputants. The order of the 5th June, 1956 granting leave to the liquidator to make calls on the basis of this register is also contended to be without notice to these disputants. In fact, the liquidator says that these notices were sent under Certificate of Posting and not under registered covers with acknowledgment due. I accept the submission of the disputants that they did not receive notice of the final settlement of the list of contributories nor of the order granting leave to make calls, because there is no obvious reason why they should not object, when in fact they had objected before. On the 30th June, 1956 a notice is again supposed to have been sent by the official liquidator demanding payment of the call money. This, again was not received by the disputants. On the 7th September, 1956 the liquidator sent a reminder. It was to this reminder that the disputants replied again stating the facts and making an express reference to the previous letter of the 10th August, 1953.

4. Mr. Chatterjee, on behalf of the liquidator, has drawn my attention to two well-known cases, Walker's case, *In re, Anglo-Danubian Steam Navigation and Colliery Co.* (1868) 6 Eq 30, and Gower's case, *In re, London and Provincial Starch Co.* (1868) 6 Eq 77. On behalf of the disputants, Mr. Chowdhury has relied on Fyfe's case; *In re, Joint Stock Discount Co.* (1869) 4 Ch A 768. These are well-known authorities which are all collected in the 13th Edition of Buckley's Companies Acts at p. 291. No Indian authority has been cited at the Bar and I am told there is none. The principle is that a transferor cannot avoid liability in

the winding up as a contributory if his name continues to appear as a share-holder on the register notwithstanding the transfer unless he can establish that the non-registration of the transfer was due entirely to the default of the company. Transferor's delay or default to have his name removed from the register of members will bar his relief after the company is wound up. When the share-holder is himself in default then his default will bar the share-holder's right to relief after the winding up notwithstanding any superadded default of the company. But when the share-holder is not in default but the company alone is, then the default will not avail as against the share-holder although it may as against the company.

5. I do not find from the facts of the case that there are really any laches or default at all on the part of the transferor. In fact, the transferor had not only parted with the shares but also the transferee in this case actually lodged the receipts for registration of the shares in his name. Upon that application by the transferee for the registration of the shares in his name the bank took the step of actually intimating to the transferor that the bank would register the shares unless objection was received within a fortnight. No such objections were made. How would then the transferor know that the company has not done what it itself had notified to do? Even when the liquidator gave the first notice of settlement of the list of contributories the disputants immediately apprised the liquidator of the fact of transfer and [the previous correspondence on the subject. It is necessary to emphasise that the transfer in this case was ante litem motam, long before liquidation and through accredited stock-brokers and must therefore be held as bona fide and genuine. Therefore, the laches were entirely on the part of the bank alone and not on the part of the transferor in this case. Applying the principles I have laid down, these disputants must be relieved.

6. For these reasons, I set aside the order settling the list of contributories made on the 7th September, 1955 and the order of the 5th June, 1956 making a call but only in respect of these disputants. I hold further that Mr. Choudhury's clients are not liable as contributories and were not share-holders at the time when the bank went into liquidation, and due entirely to the Banking Company's default the share register was not rectified.

7. Each party will bear his own costs and the liquidator will retain his costs out of the assets in his hands.

8. Certified for Counsel.