

(1915) 02 BOM CK 0007

In the Bombay High Court

Case No : O.C.J. Appeal No. 50 of 1914

**In Re: The Indian Specie Bank Ltd.
 S.N. Pochkhanawalla**

Date of Decision : 18-02-1915

Acts Referred:

Companies Act, 1882 — Section 58

Citation : (1915) 17 BOMLR 342

Hon'ble Judges : Davar, J; Basil Scott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basil Scott, Kt., C.J.—This appeal arises out of a decision of the learned Chamber Judge upon four summonses taken out in the matter of the liquidation of the Indian Specie Bank. In those summonses the applicant, Sorabji Nusserwanji Pochkhanawalla, calls upon the opposing parties, C.A. Patwardhan, Damodardas Hemandas, Girdharlal Harilal Mehta and Jagjiwanddas Kahandas Shah to show cause why the list of contributories should not be amended by substituting their names in place of the name of the applicant in regard to the shares specified in the summonses. The application is made u/s 58 of the Indian Companies Act (VI of 1882) and the Court is asked to make an order upon the summonses on the ground that it has the power u/s 147 of settling the list and rectifying the register in cases in which such rectification is required in pursuance of Section 58. Section 58 provides that if the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company or the Company itself, may make an application for the rectification of the register.

2. Cases in which an application may be made concern therefore, the acts or omissions of the Company keeping the register. In the case of an omission appearing by reason of the fact of a person having ceased to be a member not being entered in the register, it is necessary to show that default has been made

or unnecessary delay has taken place on the part of the Company keeping the register. In all other cases, it is enough to show that the name of some person is fraudulently or without sufficient cause entered in, or omitted from, the register kept by the Company. Thus the evidence in every case must be directed to the acts or omissions of the Company.

3. In the present case, the grievance is that the applicant having sold his shares to the opponents on the summonses before the order for winding up was made, has not been entered on the register as having ceased to be a member and it would, therefore, seem that it is necessary to show default or unnecessary delay in entering that fact in the register on the part of the Company. But even if we assume that, as argued on behalf of the applicant, the case may be treated as a case of omission from the register of a person who is not complaining of the omission, still an absence of sufficient cause has to be shown, and we are of opinion that, upon the evidence, no absence of sufficient cause, no default and no unnecessary delay is proved.

4. For these reasons we think that the learned Judge was right in the order passed by him which we now affirm and we dismiss the appeal with costs.