

(1931) 05 AHC CK 0014
In the Allahabad High Court

In Re: The U.P. Oil Mills, Co. Ltd. in liquidation

Date of Decision : 06-05-1931

Acts Referred:

Companies Act, 1956 — Section 160, 184

Citation : AIR 1931 All 701

Hon'ble Judges : Young, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Young, J.—This is an application under Sections 184 and 160, Companies Act. The Official Liquidator of the U. P. Oil Mills Co., Ltd. seeks to place upon the list of contributors of the company the heirs of one Syed Alay Nabi who, the liquidator alleges was a signatory to the Memorandum of Association of the company and a subscriber thereunder to the extent of 50 shares in the company.

2. The Memorandum of Association was signed by Syed Alay Nabi and others on 23rd June 1920 It is admitted that he did so sign the memorandum, and that he subscribed thereunder for 50 shares. On the same day he signed the prospectus and later on signed a consent to become a director of the company. On 17th July 1920, the managing agents of the company Paras Ram & Co., wrote to Syed Alay Nabi a letter of that date asking him to remit at his early convenience the application money which was due. Syed Alay Nabi never even answered this latter, and apparently paid no attention to it whatever. Six weeks later on 3rd September 1920, the managing agents again wrote to Syed Alay Nabi demanding again the money due on application. Again there is no record in the company's books that Syed Alay Nabi paid up any attention to this demand. Consequently, on 23rd November 1920, the managing agents wrote to the Registrar, Joint Stock Companies, a letter informing him that because of the failure of Syed Alay Nabi to pay for his shares he had in law ceased to be a director, and asking the Registrar to strike his name off the list of directors. Previously to this however the company had informed Syed Alay Nabi himself on 5th November 1920 by a letter of that date that ha was no longer a director. The

next item of evidence in the case is a letter of 20th June 1921, in which the managing agents wrote to the Registrar, Joint Stock Companies, that not only had Syed Alay Nabi ceased to be a director, but he had also ceased to be a member of the company. Mr. Dar, who appears on behalf of the minors in this case, asks me to draw an inference from the facts I have related that Syed Alay Nabi had repudiated the whole contract to take shares and that the company had accepted that repudiation and in effect had accepted a surrender of the shares. I regret I am totally unable to accept Mr. Dar's view. The evidence is clearly to the contrary. There was no repudiation at all. There was merely a failure to pay for the shares, and a consequent legal position arising from the fact. If I am to assume anything or infer anything in this case, I think the only inference I can possibly arrive at is that Syed Alay Nabi had subscribed 50 shares, which according to the Articles of Association subsequently adopted by the company was the qualification for a director solely for the reason that he was being made a director. When he was struck off the list of contributors owing to his default he no doubt may have thought, and no doubt the managing agents who on matters of this sort were undoubtedly ignorant may have thought that he thereby ceased to be a member of the company.

3. In thinking this however they were entirely wrong in law. The position is clear. A subscriber to the Memorandum of Association remains a member of the company, until such time as either the company which of course must be authorized to do so by the Articles of Association accepts a surrender of the shares for valid reason, " or the subscriber himself pays for the shares and validly transfers them to, somebody else. There is no doubt that) had Syed Alay Nabi still been alive his name would have been placed on the list of contributories. It is clear therefore that I have no alternative but to order that Syed Alay Nabi being dead his heirs should be included in the list of contributories and I order accordingly. However this is a hard case. Syed Alay Nabi undoubtedly thought that he had ceased to be a member. The managing agents undoubtedly thought the same. There was no demand after the letters to which I have alluded made upon him to contribute to the company the price of his shares or any part of it, and there was therefore no refusal or neglect by him to comply with the lawful demand of the company. The question therefore arises as to whether I should order interest to be paid on the amounts outstanding. I do not think that this is a case where interest should either be asked for by the liquidator or granted by the Court. The application under Sections 184 and 160 is granted.