

(1929) 11 AHC CK 0053
In the Allahabad High Court
In Re: Union Indian Sugar Mills Co. Ltd.

Date of Decision : 18-11-1929

Acts Referred:

Companies Act, 1956 — Section 153
Evidence Act, 1872 — Section 115
Transfer of Property Act, 1882 — Section 43

Citation : AIR 1930 All 330

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Mukerji, J.—This is an application on behalf of the Official Liquidators asking the Court to proceed to carry out the orders passed by their Lordships of the Privy Council.

2. A short history of the case will be necessary to appreciate the situation. When the Union Indian Sugar Mills Co. Ltd., was ordered by the Court to be wound up, the question arose as to how money was to be raised in order to pay off the creditors. The usual method was to sell the assets of the company and raise money and accordingly the method was adopted and advertisements for sale of the mills were put in papers. For the present moment we will skip over what happened, till Mr. Kamlapat appeared on the scene with his offers. It may be mentioned here once for all that Mr. Kamlapat is the principal actor in the scene and Mr. Motilal's name was joined at his instance, probably because that gentleman was a partner or relation to Lala Kamlapat. It would be enough to continue the history with the name of Mr. Kamlapat alone. The offer of Mr. Kamlapat was that he would either take a mortgage (with powers of Managing Agents for 10 years) or he would purchase the mills. It was decided at a certain stage that Mr. Kamlapat would either be a mortgagee with possession of the property or that he would be its purchaser. He was accordingly put in possession of the same. Ultimately it was decided that Mr. Kamlapat should be a mortgagee in possession in consideration of his advancing Rs. 10 lakhs. The consent of the shareholders of the company was obtained. Then it was discovered that the

amount of 10 lakhs would not be enough to pay the creditors and to meet the costs of liquidation. Mr. Kamlapat, accordingly offered to pay Rs. 62 thousand more. This offer was accepted and it was not thought necessary to consult the shareholders of the company again. The terms on which Mr. Kamlapat was to hold as the mortgagee were settled by the Court and the "Official Liquidators were directed to execute a deed of mortgage with possession in favour of Mr. Kamlapat. Mr. Kamlapat was however, dissatisfied with the terms of the mortgage as settled by the Court and it was also one of his contentions that he never undertook to be a mortgagee in possession and that he was to be a simple mortgagee as also the Managing Agent of the mills.

3. Being dissatisfied with the terms of the mortgage as settled by this Court, Mr. Kamlapat went up to their Lordships of the Privy Council in appeal. Their Lordships were of opinion that the altered scheme of mortgage, viz., a mortgage for 10 lakhs and 62 thousand rupees should have been put before the shareholders for their consent (if they gave one) and their Lordships, therefore, set aside the orders of the Court subsequent to the stage at which, in the opinion of their Lordships, the scheme should have been put before the shareholders. Their Lordships gave directions in the following language:

A meeting of the shareholders should be summoned to consider the amended scheme; and it seems advisable that the scheme as laid before the shareholders should be more detailed than before and should reserve the power to the Court to approve modifications. Meanwhile the proceedings in the liquidation should be confined to the steps necessary for laying the scheme before the meeting and reporting thereon to the Court.

4. Their Lordships expressed the opinion that the proposed mortgage in favour of Mr. Kamlapat was to be a usufructuary one.

5. When the matter came back to this Court, Mr. Kamlapat made an application to the Court stating:

they were unwilling to keep the offers made by them or either of them open any longer. Your petitioners hereby withdraw and revoke such offers unequivocally.

6. It is significant that the applicants did not ask for any refund of the money (10 lakhs 62 thousand) they had handed over to the liquidators. On this application being made to the learned Company Judge, he directed that the withdrawal of the offer be recorded, The learned Judge left it open to the liquidators to take such steps as they might be advised. It was in pursuance of this last order that the liquidators made the application as stated in the earlier part of this order.

7. When the application of the Official Liquidators came up for hearing, Messrs. Kamlapat and Moti Lal who had been given previous notice of the application appeared by counsel. It was argued on one side that it was open to Messrs. Kamlapat and Motilal to withdraw the offer and it was argued on the other side that they could not withdraw the offer and the directions given by their Lordships

of the Privy Council must be carried out.

8. We have now to determine whether we can allow Messrs. Kamlapat and Moti Lal to withdraw the offer or whether the modified scheme of mortgage with possession should be placed before the shareholders. We have also to determine whether, in the case of any matter going before the shareholders, we should not also ask them to consider the offer of purchase made by Mr. Kamlapat, in the event they preferred it to the mortgage for 10 lakhs and 62 thousand rupees. If we decide that the matter should go before the shareholders, it would be necessary for us to frame the questions in some detail as to what were the points which the shareholders should consider as directed by their Lordships in their judgment and we have also to reserve power in suitable language to approve modifications.

9. The main thing for the present to consider is, whether it is open to Lala Kamlapat to withdraw his offer. The main argument on behalf of Lala Kamlapat is that a party who has made an offer is entitled to withdraw it before it has been accepted by the other side. It is urged that it was for the shareholders to accept the offer and as the offers have not yet gone before them it is open to the person making the offer to withdraw it. On the other hand, the contention on behalf of the Official Liquidators and Dr. Katju who represented some of the shareholders is that Mr. Kamlapat is estopped from withdrawing his offers in the circumstances of this case.

10. The argument on behalf of Mr. Kamlapat presupposes that he is in the position of a person making a proposal and the shareholders are in the position of the person to whom the proposal has been made and there is no other party concerned in the affair. Their Lordships of the Privy Council have not decided whether Section 153, Companies Act was applicable to the case of the offer made by Mr. Kamlapat, but has directed that whether it was applicable or not, the procedure laid down in Section 153 should be followed as it was once followed. Looking therefore into Section 153, we have to determine the position of the shareholders. A reading of sub-S. (2), Section 153, will show that a mere agreement on the part of the members or shareholders is not enough for the acceptance of a scheme. It is ultimately for the Court either to sanction it or not to sanction it. It may, however, be argued that, as the modified scheme of mortgage has not yet been put before the shareholders and has not yet been sanctioned by the Court, it is open to Mr. Kamlapat to withdraw the offer to take a mortgage or to become the purchaser. It is therefore, necessary to examine whether the contention of the Official Liquidators and the shareholders that Mr. Kamlapat is estopped is right.

11. The plea of estoppel is based on two grounds, first, it is urged that Messrs. Kamlapat and Motilal were bound to mention before their Lordships of the Privy Council that they intended to withdraw the offer, in case their Lordships held that the modified scheme of mortgage should go before the shareholders. As matters now stand, if the offer is validly withdrawn, this Court will not be in a position to

carry out the orders of their Lordships of the Privy Council. We think that this contention of the liquidators is correct, though we would not content ourselves with this opinion and would like to enter into the merits of the case and examine how far Kamlapat is estopped by his conduct in the proceedings in India the second ground of alleged estoppel.

12. In order to find out how far Mr. Kamlapat is estopped from withdrawing his offers, it will be necessary to go, with some detail, into the previous history of the case. We may state here that although there is the Official Liquidators' petition stating certain facts, we have not accepted those facts for the purposes of this decision and for two reasons. The statement is not contained in an affidavit and, at the date of hearing, on behalf of Mr. Kamlapat a petition was put in, stating some facts rather differently. We felt that it was not necessary to take evidence either by calling witnesses or by affidavits. We decided to accept only such facts as already appeared on the record.

13. The references which we are going to make will be references to the paper book printed for the use of their Lordships of the Privy Council. The winding up order in the case after some contest by some of the shareholders was made and two gentlemen being members of the Bar were appointed Official liquidators (see p. 7). Notices for sale were issued by the Official Liquidators and one of the notices will be found printed as No. 7 on p. 9. The reserve price was Rs. 8 lakhs. On 23rd October 1926, the Official Liquidators made a report to the Court, in which they said that the maximum offer so far received by them came from two gentlemen, Lala Girdhari Lal and Lala Hazari Lal of Jhusi, who offered 11 lakhs of rupees and also to bear all the conveyancing charges, which would by no means be small. The Company Judge to whom the application was presented, at a late hour, did not decide to accept the offer at once and passed orders printed at p. 15. He proposed to confirm the sale on 18th November 1926. It was discovered, shortly after that better offers were likely to come and it would not be desirable to conclude the sale with the gentlemen from Jhusi. On 22nd November 1926, the Court had before it at least three offers of importance. One was for the sale of the entire property for 11 lakhs made by the Jhusi gentlemen. Another was made by Lala Harkishen Lal of the Punjab and the third by Mr. Kamlapat. The last mentioned two offers are printed at pp. 17 and 16 respectively of the paper book. In the result, on 22nd November 1926 the Court by an order, decided that in view of the offers since received, it could not sell the property out and out to the Jhusi gentlemen, Girdhari Lal and Hazari Lal.

14. They were therefore practically sent out of the case. The case was adjourned to 24th November 1926 for ascertaining certain terms proposed on behalf of Lala Harkishen Lal and it was directed that Messrs. Girdhari Lal, Hazari Lal and Kamlapat should also be represented in Court on that day. The proceedings of 24th November 1926 are printed at p. 1. They show that the three parties anxious to obtain the mills were represented in Court by learned counsel. After its reconsideration at the request of a learned counsel the offer of Messrs

Girdhari Lal and Hazari Lal was rejected. The several offers then before the Court were considered and it was ordered that they should be placed before the shareholders. These offers are detailed at the bottom of p. 19. They were a scheme for carrying on the company as proposed by Lala Harkishen Lal. Then there was the scheme of Lala Kamlapat about his being the usufructuary mortgagee and Managing Agent. The third offer was of Lala Harkishen Lal to purchase the entire concern for 11 lakhs of rupees and lastly came the offer of Lala Kamlapat to purchase the entire concern for 12 lakhs of rupees. The Court described the offers of management and mortgage as "schemes" and fixed 16th December for the shareholders to consider the four offers already described. The Court then intimated to the public by a clear order that it was not prepared thereafter, to receive any further offers unless and until the offers then before it had been accepted or rejected by the shareholders. In spite of the rejection the offer of 11 lakhs of rupees made by Lala Girdhari Lal and Hazari Lal to purchase the concern their counsel agreed to keep the offers open.

15. A meeting of the shareholders was held. A report of the proceedings is to be found printed at p. 22 to 25. Ultimately the shareholders accepted the scheme of mortgage in favour of Lala Kamlapat (see Order 24). The result was that all other competitors had to leave the field and Mr. Kamlapat was in sole possession of it. The scheme which is printed at p. 16 was partly to the effect that Mr. Kamlapat was depositing 1? lakhs of rupees on 22nd November 1926 and would deposit 8? lakhs within a month. He was accordingly called upon to deposit the balance of 8? lakhs of rupees in two days by an order dated 20th December 1926. The next day the Official Liquidators reported that they had ascertained the amount of debt payable by the concern and had discovered that the total amount of debt payable would be somewhere near 10 lakhs and 62 thousand rupees. The matter accordingly came up before the Court on 21st December 1926. The proceedings and the order are printed at p. 29 of the book.

16. It was found that some more money was required and it was stated that if Mr. Kamlapat advanced the required sum of money, it would not be necessary to sell the property out and out to Mr. Kamlapat for 12 lakhs of rupee's. For it was discovered that the scheme of mortgage would not meet the situation as it did not raise more than 10 lakhs of rupees. The only other alternative left was to sell the property to Lala Kamlapat who had made the highest offer as the price. On behalf of some of the shareholders, Mr. Indu Bhusan Banerji, a learned counsel, stated that he had reasons to believe that Lala Kamlapat had the interests of the shareholders at heart and he requested the Court to defer passing final orders till the Courts reopened after the Christmas holidays. He suggested that Lala Kamlapat might be given immediate possession over the Mills on the understanding that either an out and out sale or a mortgage would be effected in his favour in the near future. Mr. Kamlapat was not present in person, but was represented by his counsel Mr. Ramakant Malaviya. He also agreed to the postponement of the final order. It was ordered that Mr. Kamlapat might be put in immediate possession of the mills and accessories on the understanding that

he would be either a mortgagee as proposed by him or a purchaser, in either capacity he being entitled to possession. The money paid by Lala Harkishen Lal into Court was ordered to be returned. The Court fixed 7th January 1927 for further orders in the case. In pursuance of this order Mr. Kamlapat was put in possession on 24th December 1926. The report to that effect of the Official Liquidators is printed at pp. 30 and 31 of the paper-book.

17. On 7th January 1927, Mr. Kamlapat made an application which is printed at p. 32. In it he stated that he had seen most of the creditors of the company and fully believed that the liabilities of the company would be discharged in full with a sum of Rs. ten lakhs and thirty-seven thousand. Taking another twenty-five thousand as the expenses of liquidation, Mr. Kamlapat agreed to pay sixty-two thousand more and to take a mortgage on the terms proposed for advancing Rs. ten lakhs. He also intimated that he would keep his offer for purchasing the Mills for twelve lakhs of rupees open for another six months. On that day, the Official Liquidators made another report, that the total claims received up to that day amounted to ten lakhs and sixty three thousand rupees. The Court then passed an order (dated 7th January 1927) which is very important.

18. The Court noted the fact that the Official Liquidators had reported that the total amount of the claims received came to well nigh ten lakhs and sixty four thousand rupees; that Lala Kamlapat had made an application estimating the total liabilities of the company at ten lakhs and thirty-seven thousand rupees, that he had expressed his willingness to advance a further sum of rupees sixty-two thousand on the same terms as he had formulated, for advance of Rs. ten lakhs and that he had agreed to purchase the entire concern for twelve lakhs of rupees if it was found that the total debts payable by the concern exceeded the sum of Rs. ten lakhs and sixty-two thousand. The Court also noted that Mr. Kamlapat had agreed that his offer to purchase at twelve lakhs would remain open for a period of six months from 7th January 1927. Then the Court passed the following order. We shall only quote the more important passages. The entire order is printed at p. 35:

It appears to us that as far as can be seen at present, the sum of Rs. ten lakhs and sixty-two thousand should be sufficient to meet all valid claims of the creditors including the costs of liquidation and the information accorded to us at present is sufficient to justify our thinking that the creditors will run no risk if the offer of Lala Kamlapat which has been made today is accepted.... We accordingly fix 28th February. The Official Liquidators shall submit their report on 28th January... and it will be only for some cogent and some unforeseen reason that we shall refrain from passing a final order on 25th February. That order will either be acceptance of the scheme of mortgage or acceptance of Rs. twelve lakhs" from Lala Kamlapat. We are not prepared to entertain any alternative scheme of any description at this stage of the proceedings.

19. It was found that the sum of Rs. ten lakhs and sixty-two thousand proved sufficient to pay all the creditors, some of whom agreed, by way of compromise

to receive less than their full claim. On 25th February the Court directed that mortgage deed be executed in favour of Mr. Kamlapat for the sum of Rs. ten lakhs and sixty-two thousand: see p. 37. The situation at present is that the creditors have been paid and a sum of money is in the hands of the Official Liquidators, sufficient to meet the liquidation expenses and expenses of Court unless further litigation is to follow.

20. The question now is whether in the circumstances detailed above Mr. Kamlapat is to be permitted to withdraw his offer. The withdrawal of the other involves the return of his money to Mr. Kamlapat. It is impossible now for the Official Liquidators to find the money and, on the information furnished by Mr. Kamlapat's counsel, the value of the machinery has considerably gone down and it is not to be hoped for that any sale of the property would bring anything like twelve lakhs of rupees offered by Mr. Kamlapat.

21. In the teeth of the history of the case, as narrated above, the learned counsel for Mr. Kamlapat has argued that there can be no case of estoppel against his client. His argument was that Section 115, Evidence Act, did not apply, that his client did not assert the truth of "a thing" and he was not making an assertion to the contrary of any of his assertions made before and that Section 115 contained only a rule of evidence and nothing more. Acceding, without deciding, that Section 115 does not apply, it is clear to us that the entire rule of estoppel is not contained in Section 115, Evidence Act. For example, Sections 41 and 43, T.P. Act, contain rules of estoppel. It is, therefore, not right to say that if the present case do not fall within the language of Section 115, Evidence Act, Mr. Kamlapat is entitled to withdraw his offer quietly and, thereafter, to ask for repayment of his money.

22. Authorities have laid down from time to time that people, who have induced others to act on the assertion that they were going to act in a particular manner, have not been allowed to act otherwise than in the way promised, if the other party have acted in the manner suggested, and have thereby changed their position. This was held, without any reference to Section 115, Evidence Act. The case of *Sarat Chandra Deb v. Gopal Chandra Laha* [1893] 20 Cal. 296, decided by their Lordships of the Privy Council may be described as one of the leading cases on the law of estoppel. In that particular case, the party who was held, to have been estopped by his conduct held out that the mortgagor was entitled to mortgage the property and the case fell within the language of Section 115, Evidence Act. But their Lordships quoted at p. 311, the following passage from a decision of the House of Lords, with approval:

The doctrine will apply, which is to be found, I believe, in the laws of all civilized nations, that if a man, either by words or by conduct, has intimated that he consents to an act which has been done and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he, therefore, induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned, to the

prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct....

23. The quotation is from *Cairncross v. Lorimer* [1861] 3 H.L.C. 829.

24. In the case of *Amir Ali v. Inderjit Singh* [1870-72] 14 M.I.A. 203, the appellant's counsel asked the High Court of Calcutta to confine their decision to one particular point, the counsel having given an undertaking that no appeal could be filed to Her Majesty in Council. The High Court acceded to the request and decided that point alone. By asking the High Court to confine their decision to one point only, the appellant obtained an advantage, as described in the judgment. Notwithstanding this undertaking given to the Court, the appellant filed an appeal before Her Majesty in Council. It was held that the appeal was not maintainable. Their Lordships held (at p. 207 of the report) that the appeal had been brought in violation of good faith and it could not be maintained. This case is a sufficient answer to the argument of Sir Tej Bahadur Sapru, advanced on behalf of Mr. Kamlapat, that whatever his client agreed to do was in the nature of an offer to the Court, that a Court could not be a party to a contract and that, therefore, his client was entitled to resile from his offer. In the case before their Lordships of the Privy Council it might very well have been argued that the High Court of Calcutta accepted the offer of counsel and the Court, as such, could not be a party to a contract.

25. There are numerous cases decided in India where parties to proceedings in Court have been held bound to respect the undertakings given by themselves.: *Uttam Chandra v. Khetra Nath* [1902] 29 Cal. 577 was a case in which, in execution of a decree, a certain property was sold and the judgment-debtor applied for the setting aside of the sale on the ground of irregularity and fraud. It was agreed between the decree-holder and the judgment-debtor that the latter should have given him a certain amount of time to pay up the decretal amount and that if he failed to pay up, the sale should stand good. The judgment-debtor did not pay in full and asked for his application to be tried. The High Court held that the judgment-debtor was bound by his agreement and he was estopped from contesting the legality of the sale. This case again, is an answer to Mr. Kamlapat's counsel's argument, that whatever advantage his client received, he received it at the hands of the Court and that, therefore, he was in a position to lawfully withdraw from his offer.

26. In the case of *Pratap Chandra Das v. Arathoon* [1882] 8 Cal. 455, the judgment-debtor was arrested in execution of a decree before the time for filing an appeal against the decree had expired. He put in a petition to the Court agreeing not to prefer an appeal against the judgment and the decree-holder agreed that the judgment-debtor might be released from the arrest and might be allowed to pay the decretal amount by instalments. The judgment-debtor, notwithstanding this agreement, filed an appeal. It was held that the appeal could not be maintained by him. A similar decision was arrived at by a Full Bench of our own High Court in the case of *Ananta Das v. Ashburner & Co.* [1875] 1

A11. 267 (F.B.).

27. It is not necessary to quote more cases. Let us now consider the facts of the present case in the light of the law as settled by the authorities quoted above. We have mentioned that, to start with, Messrs. Girdhari Lal and Hazari Lal offered to purchase the entire assets of the company for Rs. 11,00,000. Then appeared on the scene, besides others, Messrs. Har Kishen Lal and Kamlapat. Lala Harkishen Lal's terms are noted at p. 14 of the paper-book, in the order of the Court. Lal Har Kishen Lal agreed to be an usufructuary mortgagee for a period of ten years, at the end of which he offered to return the premises free from all encumbrances. He also offered to purchase the entire property for Rs. 11½ lakhs. As already stated, the terms of Kamlapat's offers are to be found at p. 16 of the paper-book. Initially, he offered, besides his offer to be a mortgagee, to purchase the property for Rs. 11½ lakhs. When he found that Lala Har Kishen was agreeable to pay that sum, he increased his offer of purchase for Rs. 12½ lakhs. Mr. Kamlapat, by offering more acceptable terms, ousted all competitors from the scene and induced the Official Liquidators and the Court to accept his offers. If he now withdraws his offer, on his own showing, it would be impossible to get Rs. 12 lakhs for the property and it would be impossible to get a man who would take a usufructuary mortgage for Rs. 10 lakhs and sixty-two thousands. Sir Tej Bahadur Sapru, on behalf of Mr. Kamlapat stated to us that the machinery with which the factory was fitted was meant to manufacture sugar out of raw sugar or gur, that the machinery now in vogue and yielding more profits was a machinery which used, instead of raw sugar, sugarcane directly and that unless and until a further large sum of money was invested, it was not likely that the concern would ever pay. It is, therefore, in view of the change in the method of manufacture that Mr. Kamlapat is anxious to withdraw from his bargain. It may be pure ill-luck that induced him to enter in to the bargain, but he cannot dump his own misfortune on other people and back out of his undertaking. We need hardly point out that Mr. Kamlapat has been in possession of the entire belongings of the company from 24th December 1926. If he has been unable to make any profits, that is neither here nor there.

28. The proceedings before the Court which considered the several offers made by several persons for taking mortgage of the property or purchasing the same may be looked upon as negotiations between those parties and the Official Liquidators, under the supervision of the Court. In so far as the Court intervened, it intervened for the benefit of the Official Liquidators and through them for the benefit of the creditors and ultimately of the shareholders. The offers that were accepted by the Court, when accepted on behalf of the Official Liquidators and the offer and acceptance may be regarded as a valid and binding contract between Mr. Kamlapat and the Official Liquidators, although the Judges themselves took a great interest and an active part in the settlement of the terms. In the Privy Council case of *Amir Ali v. Maharani Inderjit Singh* [1870-72] 14 M.I.A. 203, the offer of the counsel through the Court was accepted as a valid agreement by their Lordships of the Privy Council. Whether, therefore, we look

upon the final conclusions as an agreement enforceable in law and, therefore, a contract, between Mr. Kamlapat on the one hand and the Official Liquidators on the other, or whether we say that Mr. Kamlapat is estopped from withdrawing his offer, the result is the same. The result is that Mr. Kamlapat's offer to take a mortgage for Rs. ten lakhs and sixty-two thousands and in the alternative, to purchase the entire concern for Rs. 12 lakhs must go before the shareholders of the company for their approval.

29. It seems to us to be abundantly clear that the offer to take a mortgage of the property of the company for Rs. ten lakhs sixty-two thousand alone cannot go before the shareholders. The parties must be restored to the same position in which they were before the Court accepted Mr. Kamlapat's offer to increase the mortgage money by Rs. sixty-two thousand. It may be as pointed out by their Lordships of the Privy Council themselves, that the addition of Rs. sixty-two thousand to mortgage money might have influenced the judgment of the shareholders. They might have preferred an out and out sale of the premises and machinery instead of allowing a mortgage for the increased amount. It was only when one of the offers, viz., that of mortgage, described as "the scheme" was accepted that the offer of purchase fell through. Mr. Kamlapat stated, in so many words, that he left his offer or purchase open for a period of six months. He had to keep that offer open, for it was not yet known whether the sum of Rs. ten lakhs sixty-two thousand would be enough to meet all the claims against the company see p. 32, application of Mr. Kamlapat and the Court's order at p. 35, both dated 7th January 1927.

30. Their Lordships of the Privy Council have directed that the terms for the consideration of the shareholders should be in greater detail and there should be reserved a power for the Court to modify the terms. It is, therefore, necessary to hear the parties further, in order to enable the Court to formulate the terms of the offers that should go before the shareholders and to formulate the language in which the Court's power to interfere is to be reserved. This judgment only determines the procedure which the Court has decided to adopt, in pursuance of the orders of His Majesty in Council, and in spite of the formal withdrawal of the offer by Messrs. Kamlapat and Moti Lal. The case should now be put up on 20th November 1929, for the purpose indicated above.