(1956) 09 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 1 of 1954

Jagatjit Distilling and Allied Industries Ltd. — APPELLANT

Vs

Shiv Ram Nanak Chand — RESPONDENT

Date of Decision : 17-09-1956

Acts Referred:

Companies Act, 1956 — Section 153, 41, 52, 82
Displaced Persons (Debts Adjustment) Act, 1951 — Section 19, 19(1), 19(2), 2(10)
Trusts Act, 1882 — Section 94

Citation : (1956) 09 P&H CK 0002

Hon'ble Judges : Chopra, J

Bench : Single Bench

Advocate : Bal Raj Tuli, for the Appellant; Dalip Chand, for the Respondent

Judgement

Chopra, J.—This appeal is directed against an order of the Tribunal, Patiala, appointed under the Displaced Persons (Debts Adjustment) Act (70 of 1951).

2. Shiv Ram Batta, Respondent, a resident of Lahore, was the holder of 1280 shares (1230 in his own name and 50 in the name of his sister-in-law, Shakuntla Devi) in the Jagatjit Distlling and Allied Industries Ltd. Hamira, the Appellant. The shares were partly paid-up and each was of the value of Rs. 10/- On 6.8.1947, the Appellant-company made a call of Re. 1/- per share; the money was to be1 paid within a month.

The call-money having not been duly received the shares of Mr. Batta were declared to be forfeited on 5.5.1948. Mr. Batta had in the meantime, left Lahore on account of civil disturbances of the partition days and settled at Nabha. He filed the present application u/s 19, Displaced Persons. (Debts Adjustment) Act before the Tribunal at Patiala on 16.12.1952, praying that the forfeiture of his shares be declared to be void and ineffective and the company directed to restore the shares to the Respondent and also to pay him all the dividends pertaining thereto.

The application was opposed by the company on various grounds, the principal one of which was that the applicant was not entitled to the benefit of Section 19, for he had transferred his shares to a third party sometime before the crucial date, viz., 15.8. 1947.

3. As regards the 50 shares standing in the name of Shakuntla Devi, the applicant gave up his claim. With respect to thirty others, it was found that they had been transferred to one Rup Narain; the Petitioner''s claim to that extent was consequently dismissed.

In respect of the remaining 1200 shares, the application was accepted and it was directed that the, company shall restore these shares to the applicant after converting them into such smaller number of fully paid-up shares as the company may have issued. It was further declared that the applicant was entitled to all the dividends that might have accrued with respect to those shares since 15.8.1947. The present appeal is directed against this order of the Tribunal.

4. Mr. Tulli, learned Counsel for the Appellant, contends that Section 19, Displaced Persons (Debts Adjustment) Act has no application to the present ease for two reasons; (i) the call for non-payment of which the shares were forfeited was made be fore 15.8.1947 and (ii) Mr. Batta did no longer hold shares on 15-8-1947 for he had already transferred them to one Mr. K.R. Erry.

5. The facts with regard to the alleged transfer are: Somewhere in the year 1947 Mr. Batta executed blank transfer-forms in respect of his 1200 shares and handed them over to Laxmi commercial Bank, Lahore, along with the relevant share-certificates. These documents were subsequently passed on to Mr. M.K. Dhawan and Company, Share Brokers, Delhi. They, in their turn, sold the shares to Mr. K.R. Erry.

Mr. Erry then filled up the blanks in the transfer deeds, including his own name as the transferee, and sent them, along with the share-certificates, to the Appellant-company through the Allahabad Bank, Amritsar, for registration of his name, in place of Mr. Batta, as owner of the 1200 shares. The company replied back to say that the transfer could not be accepted as the shares had already been forfeited. This letter of the company is dated 18.6.1948.

It is unnecessary to refer to the subsequent pro- longed correspondence between Mr. Batta or Mr. Erry on the one hand and the company on the other. The company did not agree to restore the shares to either of the claimants and that gave rise to the present application on behalf of Mr. Batta. In the course of the proceedings-before. Tribunal, Mr. Batta admitted his signatures of the blank transfer-forms and the above facts are not disputed before me by his learned Counsel, Shri Dalip Chand.

6. The relevant portion of Section 19, Displaced Persons (Debts Adjustment) Act says:

19(1) Where a company or a co-operative society has made any call upon a displaced person or a displaced Bank in respect of any moneys remaining unpaid on any share held by him or it on the 15th day of August, 1947, in the company or co-operative society, as the case may be, and there has been a failure on the part of the share-holder to pay any moneys due in respect of such call, then, notwithstanding anything to the contrary contained in the Companies Act, or in the memorandum or articles of association or the Co-operative Societies Act, no interest shall be payable in respect of any such moneys due and the company or the co-operative society,, as the case may be, shall'' not be entitled to forfeit the share or any part thereof, and any forfeiture made before the commencement of this Act in respect of any share in the circumstances specified in this Sub-section shall be deemed to have had no effect, and no person shall be deemed to have ceased to be a member of the company or co-operative society merely by reason of such forfeiture.

(2) Notwithstanding anything contained in the Companies Act, or in the memorandum or articles of association, or the Co-operative Societies Act, it shall be lawful for a displaced person or a displaced bank to apply to the company- or the cooperative society, as the case may be, for the con- version of any partly paid-up share held by him or it in the company or society into such smaller number of fully paid up shares as the society or company may have issued and in respect of which calls have already been made.

(3) ...

(4) If the company or the co-operative society refuses to comply with any such request as is contained in an application under Sub-section (2) the Tribunal may, on application made to it in this behalf and if satisfied that there is no cause for such refusal, issue a direction to the company or the cooperative society accordingly, and the company or society shall be bound to comply therewith and every such direction shall take effect from the date thereof.

(5) ...

(6) The provisions of this section shall have effect for a period of ten years from the 15th day of August, 1947, and thereafter shall cease to have effect except as respects things done or omitted to be done.

The contention on behalf of the Appellant Is that Sub-section (1) of the above section can have no application to a case where the call was made before 15.8.1947. I have not been able to understand how that interpretation can possibly be placed on what is actually stated in the Sub-section.

The Sub-section simply requires (i) that the call must have been made from a displaced person and (ii) that the call must be in respect of shares held by the displaced person on 15.8.1947. The date refers to the time when the displaced person must have been holding the shares in respect of which the call was made. Where the displaced person had ceased to be the holder of those shares before 15.8.1947 or if he acquired the shares after that date, the displaced person would not be entitled to the benefit of the provision.

On the other hand, if he was holding the shares on the particular date, it is immaterial whether the call was made before or after 15.8.1947; in either case he shall be entitled to the immunity from his shares being forfeited on account of non-payment of the call-money. This immunity is to apply to the shares already forfeited before the commencement of the Act and is to last for ten years counted from 15.8.1947.

7. According to Section 2(10) of the Act, a "displaced person", inter alia, means any person who, on account of the setting up of the dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has, after 1.3.1947,, left, or been displaced from, his place of residence in any such area and who has been subsequently residing in India.

A call made from a person who, on account of the civil disturbances, migrated to and had settled, in India after 1.3.1947, would undoubtedly be a call "upon a displaced person", even though the call was made before 15.8.1947. The protection is given because of the assumed inability of the person, on account of the peculiar circumstances, to pay the call-money. There appears to be absolutely no reason why benefit of the provision was not intended to be given to a displaced person in case the call was made after 1.3.1947 but before 15.8.1947,

There is all the more reason why it should be so. It is because of the possibility, may almost certainty, of the call-notice having not reached the person at his original address registered with the company. It would be against the very scheme and object of the Act to confine the application of S. 19 to the calls made after 15.8.1947, and not to extend it to those made prior to that date, but alter 1.3.1947, I do no find anything in the Sub-section to support the interpretation placed on it by Mr. Tulli.

8. Mr. Batta states that he left Lahore, on account of the civil disturbances, in July 1947. He first went to Simla and thereafter settled at Nabha. The statement stands unrebuttcd and the correctness of it is not being challenged. It is not denied that notice for the call made on 6.8.1947 was sent to him at his registered address at Lahore.

In view of the extra-ordinary circumstances that then prevailed, the notice may safely be presumed not to have reached him; and he says he did not receive it. Undoubtedly he was a displaced person at the time the call was made, and in case he succeeds in showing that he was holding the shares, with respect to which the call was made, on 15.8.1947, he would be entitled to the concession given by Section 19. The first contention of the Appellant must, therefore, fail.

9. As to the second ground, it is urged that Mr. Batta relinquished all his rights in the shares as soon as he executed the transfer forms in blank and delivered

them and the share certificates to the Laxmi Commercial Bank, Lahore. The scale, so far as Mr. Batta was concerned, became complete and thenceforth his position was to remain as that of a trustee till the shares were registered In the name of the transferee.

When the documents reached Mr. Erry and he filled up his name as the transferee, Mr. Erry, for all intents and purposes, became the sole beneficiary of the shares. The argument proceeds: after the sale, Mr. Batta "was not only the trustee of the corpus but also the trustee of the income and of the dividends that he may receive and that he was bound to pay them over to the beneficiary".

Reliance in this connection is placed on certain observations in Mathalone Vs. Bombay Life Assurance Co. Ltd., and also on E.D. Sassoon and Co. Ltd. v. K.A. Patch 45 Bom LR 46 (B). Particular stress is being laid on the following observation of Pratt J. in the Bombay case:

Under Section 94, Indian Trust Act the transferor holds the shares for the benefit of the transferee to the extent necessary to satisfy his demands. Accordingly as the transferee holds the whole beneficial interest and the transferor has none, the transferor must comply with all (sic) directions that the transferee may give. The reason for this is plain, for the equitable interest of the beneficiary is brought into existence by the Court of Chancery for the purposes of promoting fair dealing.

It would be most unconscionable for the seller of the shares to take advantage of non-registration and to deal with the shares as his own alter taking the price from the purchaser. Equity therefore treats purchaser as if he was the real owner and compos the registered holder to act as the agent of the beneficiary.

10. Mr. Tulli therefore, contends that Mr. Batta could no longer be regarded as owner of the shares and he cannot be said to be holding those shares on 15.8.1947, so as to entitle him at least on his own account, to submit an application u/s 19, Displaced Persons (Deb''s Adjustment (sic) Consequently, the application of Mr. Batta brought us it was on his own behalf, ought to have been dismissed.

11. At the outset, it may be observed that the two decisions cited by Mr. Tulli are of no help to the Appellant. The dispute here is not between the transferor and the transferee or regarding the liabilities of a trustee towards its cestui que trust. It is correct that as against the transferee the transferor holds the shares as a trustee so long as the transferee''s name is not registered as the holder of those shares. As between them, all the incidents that flow from that relationship have to be adhered to.

But, for the purposes of the company and its dealings, the transferor continues to be the legal owner of the shares so long as his name stands as the holder thereof in the companys register of members. Till the name of the purchaser is registered as the holder of those shares, the company ordinarily shall not recognise the rights of the purchaser or take any notice of them. The person who executes a transfer-form in blank in favour of a specified individual remains liable to the company for payment of call money until and unless the transfer is accepted by the company and the name of the transferee is brought on the register.

The company is not concerned with the person in whose favour the transfer-form is executed or who pays the consideration for the transfer. Section 153, Indian Companies Act (1 of 1956) expressly lays down:

No notice of any trust, express, implied or constructive, shall be entered on the register of members or of debenture holders, or be receivable by the Registrar.

12. Section 41, Indian Companies Act provides, inter alia; that every person who agrees to become a member of a company and whose name is entered in its register of members, shall be a member of the company. Section 82 of the same Act says that the shares or other interests of any member in a company shall be moveable property, transferable in the manner provided by the Articles of the Company.

According to Section 84 of the Act, a certificate, under. the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to such shares. These and some such other provisions of the Indian Companies Act leave no doubt that a transfer, of shares becomes valid and enforceable against the company only when it is duly accepted by the company and the name of the purchaser is entered in its register of members.

Till then, the legal title to the shares remains in the vendor, although the beneficial interest is transferred to the purchaser. The registered shareholder alone is liable in respect of anything unpaid on the shares.

13. The matter is further clarified by the Company''s Articles of Association. Article 11 says:

The company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not be bound to recognise any equitable or other claim to or interest in such share on the part of any other person save as herein provided.

Article 14 repeats:

Save as herein otherwise provided, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not except as ordered by a Court of competent jurisdiction or as by statute required, be bound to recognize any benami, cqui able or other claim to or interest in such share on the part of any other person.

Article 43 relates to the transfer of shares and it provides:

The instrument of transfer of any share shall be signed both by the transferor and transferee, and shall contain the name and address both of the transferor and 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.

14. It becomes abundantly clear that so far as the company is concerned, it makes no difference whether the registered member is the beneficial owner of the shares or holds them merely as a trustee for some one else. In his position of a trustee, he may have the right to be indemnified by his cestui que trust against the calls, and he may also be liable to certain duties towards him. But, that is a matter peculiar to the relationship between the transferor and the transferee, with which the company has no concern.

15. In Murshidabad Loan Office Ltd. Vs. Satish Chandra Chakravarty, it was observed:

The whole scheme of the Companies Act seems to be that the Company has got to proceed on the basis of its own register of members and it is neither obliged nor competent to enquire into the rights of other persons whose names are not entered in it.

and again as follows:

Assuming that the registered shareholder is not the real owner of the share but if he is the member in the books of the company it is he alone Who would be entitled to exercise the rights of a Shareholder, viz., to vote as such or to receive the dividends payable in respect of the share and it certainly follows that he alone is liable for share calls or to be put on the list of contributories in case the company is wound up.

16. The dispute in the present case is entirely between the company and a shareholder whose name appears in its register of members, and the disputes relates to the non-payment of a call in respect of the shares entered in his name for which he alone was liable. They were his shares which the company forfeited. The company, therefore, cannot now be heard to say that the Respondent was not the holder of those shares at the time they were forfeited. Consequently, Mr. Batta shall be deemed to be holding the shares on 15.8.1947.

17. No other point has been urged. The appeal is consequently dismissed with costs. Counsel fee shall be Rs. 32/-.

18. The question involved being one . of some importance and not covered by any direct authority. I accept the prayer orally made by Mr. Tulli for grant of a certificate u/s 52 of Ordinance 10 of 2005 Bk.

