

(1943) 11 MAD CK 0002
In the Madras High Court

Kanduri Lakshmiah Chetty and Another	APPELLANT
Vs	
Adoni Electric Supply Co. Ltd. by Managing Agents T.R. Rao and Co. by partner and director, N. Vembu and Another	RESPONDENT

Date of Decision : 23-11-1943

Acts Referred:

Citation : AIR 1944 Mad 322 : (1944) ILR (Mad) 796 : (1944) 57 LW 69

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—These three appeals arise out of different suits filed in the Court of the District Judge of Bellary. The cause of action was the

same in each case and as the actions were tried together the trial Court dealt with them in one judgment. It will be convenient to adopt the same course here.

2. We will first state the facts in Appeal No. 137 of 1942. The plaintiff is a limited liability company. It was registered on 3rd November 1932 with

a nominal capital of Rs. 300,000 divided into 3000 shares of Rs. 100 each. The object for which the company was formed was the supply of

electricity to the town of Adoni. The appellant signed the memorandum of association as a subscriber for 50 shares, but the articles of association

do not state the date on which a subscriber has to make payment. In *Alexander v. Automatic Telephone Co.* (1900) 2 Ch. D. 56 the Court of

Appeal held that, in the absence of any special agreement or article requiring a subscriber of the memorandum of association of a company to

make some payment on application or allotment, nothing is payable by him in respect of his shares until a call is made upon him. On 20th

September 1935 the company wrote to the appellant demanding payment of Rs. 25 per share as money due on application and Rs. 25 per share

as money due on allotment. One month's time was given for the payment. The demand was not complied with. On 9th October 1937 the

company made a call of 25 per cent. to be paid on 10th November 1937 and on 3rd August 1938, made another call for the payment of the

balance by 11th September 1938. These calls were not met. On 4th October 1939 the company gave notice of forfeiture of the appellant's

shares, and he was informed that unless he paid what was owing by him in respect of the 50 shares with interest at six per cent before 31st

October, his shares would be forfeited. Article 63 of the articles of association gives the company the power of forfeiting shares for the non-

payment of calls or instalments. This notice was ignored and on 27th December 1939 the directors passed a resolution forfeiting the appellant's

shares. On 4th November 1940, the suit out of which this appeal arises was filed. The appellant advanced numerous pleas in defence. Inter alia he

alleged that he had been induced to sign the memorandum of association as the result of fraud practised by the promoter of the company, that the

suit was barred by the law of limitation and that in any event the forfeiture of his shares was unlawful as the requirements of the articles of

association had not been complied with. The District Judge found against the appellant on all the issues. Consequently, he passed a decree for Rs.

5000 due on the shares with interest at six per cent from the date of suit. In his memorandum of appeal the appellant raised all the contentions to

be found in his written statement, but the only contention which has been pressed at the hearing of the appeal is the one that the forfeiture of the

shares was unlawful. The company has filed a memorandum of cross-objections as it contends that the learned District Judge erred in not allowing

interest from the date of the respective calls.

3. The contention that the forfeiture was in. valid is well founded. Article 62 of the articles of association states that the notice shall name a day (not

being less than 14 days from the date of the notice) and a place or places on and at which the call or instalment and interest and expenses are to be

paid. The notice issued to the appellant did not state where the payment should be made and did not correctly state the dates on which the calls

were to be met. For the purpose of calculating interest it was necessary that correct dates should be stated. In *Johnson v. Lyttle's Iron Agency*

(1877) 5 Ch. D. 687 the Court of Appeal held that a forfeiture was invalid where the notice claimed interest from the date of the call, instead of

from the date fixed for payment. In that case James L. J. observed:

It was the established rule of the Court of Chancery and of the Courts of Common Law that no forfeiture of property could be made unless every

condition precedent had been strictly and literally complied with. A very little inaccuracy is as fatal as the greatest. Here the notice is inaccurate. It

is therefore bad and the forfeiture is invalid.

4. The position is the same here and we must hold that the appellant's shares have not been forfeited. If the appellant does not pay for his shares,

the company can, of course, still forfeit them if it takes proper steps. The appellant is undoubtedly liable to the company in the principal sum of Rs.

5000 with interest on Rs. 2500 from 20th October 1935 (the date on which he should have paid the application and allotment money), on rupees

1250 from 10th November 1937 and on Rs. 1250 from 11th September 1938 as the appellant has signified his willingness to meet his liability we

will vary the decree of the trial Court by declaring that the forfeiture is invalid and that the appellant is entitled to remain on the register as the holder

of 50 shares, provided he pays Rs. 6000 with interest as specified above, and the costs awarded by the lower Court within two months of this

date. If he fails to make the payment within the time specified, his appeal will stand dismissed with costs and the memorandum of cross-objections

will be allowed with costs. To this the appellant agrees.

5. The facts in Appeal No. 190 of 1942 are the same except that the appellant only subscribed for ten shares. By consent, there will be a similar

order passed here. Interest will run in respect of Rs. 500 from 20th October 1935, on Rs. 250 from 10th November 1937 and on Rs. 250 from

11th September 1938. The appellant will also be allowed two months' time in which to pay the principal and interest, plus the costs awarded by

the trial Court. If he fails to make such payments in full his appeal will stand dismissed with costs.

6. The company is the appellant in Appeal No. 216 of 1942. The respondent signed the memorandum of association as a subscriber for ten

shares. He pleaded that he was not liable to pay as the promoter of the company had agreed to allot these shares to him for legal services rendered

in connexion with the promotion of the company. The District Judge held that the respondent was not liable because he considered that it was a

case where strictly legal considerations must give way to equity. He went on to observe:

My difficulty in finding on this issue arises mainly out of a chaotic muddle industrial concerns so often pass through amongst the names of Indian

Company Law without skilled and expert guidance by specialised lawyers who can guide them aright. A broad, liberal and sympathetic view,

therefore, I consider, has to be taken by Courts in dealing with claims such as this, as to apply strict law without invoking equity, might result in

substantial injustice.

We certainly cannot subscribe to this opinion. The case has to be decided on the law and only on the law. The respondent subscribed to the

memorandum of association and therefore is liable to pay for his share in cash. If he did in fact enter into an arrangement with the promoter of the

company under which he was to receive ten shares for his services, the position would not be altered. The decree of the District Judge must be set

aside with costs in the trial Court. As the respondent is agreeable to the same order being passed in this case as in the other appeals there will be a

declaration that the respondent is entitled to remain on the register as a holder of ten shares, provided he pays the principal sum of Rs. 1000 with

interest as payable by the appellant in Appeal No. 190 of 1942 and the costs of the company in the trial Court within two months. In default the

company will get a decree as prayed for with costs throughout.