

(1948) 03 BOM CK 0014
In the Bombay High Court
Case No : O.C.J. Suit No. 599 of 1944

Karachi Oil Products Ltd.

APPELLANT

Vs

Kumar Shree Narendrasinghi

RESPONDENT

Date of Decision : 22-03-1948

Acts Referred:

Companies Act, 1913 — Section 101, 30, 30(2), 31
Specific Relief Act, 1877 — Section 22

Citation : AIR 1950 Bom 149

Hon'ble Judges : Bhagwati, J

Bench : Single Bench

Advocate : M.R. Parpia, for the Appellant; S.T. Desai, for the Respondent

Final Decision : Dismissed

Judgement

Bhagwati J.

1. The plaintiffs have filed this suit against the defendant who had been a director of the plaintiffs from the date of their incorporation up to 29th October 1942, to recover from him the sum of Rs. 5,000, being the amount payable by him to them for 500 qualification shares together with interest thereon at the rate of 9 per cent. per annum from 28th October 1943.

2. On or about 11th July 1941, the defendant consented to act as a director of the plaintiffs and also agreed to take from the plaintiffs and pay for 500 shares of Rs. 10 each, being the number of qualification shares prescribed for the purpose of holding the office of the director of the plaintiffs. A statement in lieu of prospectus was signed by the defendant on 11th September 1941. This agreement by the defendant to take 500 shares from the plaintiffs was treated by the plaintiffs as an application for the shares and was given a number, being No. 4 shown in their book containing applications for and allotment of shares. The defendant acted as a director of the plaintiffs and attended several meetings in July 1941, and he was paid Rs. 50 each on two occasions, 11th July 1941 and

17th July 1941. There were other meetings which he attended both in 1941 and in 1942, but owing to the adverse financial circumstances of the plaintiffs no fees were charged by or paid to any of the directors who attended the several meetings. On 15th June 1942, the board of directors of the plaintiffs passed a resolution saying that "the director's 500 ordinary qualification shares applied for by the defendant be and are hereby allotted to him" and intimation of the allotment was given by the plaintiffs to the defendant by the letter dated 22nd June 1942. The resolution of allotment was in the ordinary course entered into the minute book of the proceedings of the meetings of the board of directors. On receiving this letter dated 22nd June 1942, from the plaintiffs, the defendant wrote a personal letter to Borkar, a partner of the managing agents' firm of the plaintiffs and also wrote another letter on the same day to Borkar & Co., the managing agents of the plaintiffs, enclosing a copy of the letter which he had personally addressed to Borkar and intimating to them that he was prepared to resign his directorship if they so desired and asking them to cancel the resolution of 15th June 1942, whereby the shares had been allotted to him and put the matter right. The contents of the letter which he addressed to Borkar personally are not before me but presumably they put on record what has been urged by him in para. 2 of his written statement herein contending that he had merely given his formal consent to act as a director and also agreed to take up the qualification shares on the strength of certain representations made by Borkar to him. These representations do not matter. They were made by Borkar personally and they do not affect the plaintiffs. Even though these allegations were set out in para. 2 of the written statement, no issue was raised in respect of the same and the only importance of this being adverted to by me is that on 16th July 1942, he raised a protest for whatever it was worth against the plaintiffs having allotted to him the 500 qualification shares in the manner they did on 15th June 1942, and asked them to cancel the resolution and put the matter right. Evidently, in consequence of this communication which the defendant addressed to Borkar & Co., the managing agents of the plaintiffs, the board of directors of the plaintiffs cancelled the resolution dated 15th June 1942, as appears from the scoring in the part of the minutes of the proceedings of the board of directors dated 15th June 1942, appertaining to this resolution and the initials of the chairman of the board of directors Jamnadas Madhavji Mehta as against the same. The position, therefore, which obtained towards the end of July 1942 was that an allotment of these 500 shares had been made by the plaintiffs to the defendant and that allotment was cancelled, for whatever reasons there may have been by scoring through the minutes of that resolution in the minute book of the proceedings of the board of directors. In the return of allotment of shares submitted by the plaintiffs to the Registrar of Companies as of 30th October 1942, the defendant was therefore not shown as a holder of any shares of the plaintiffs. It was only when we come to 16th January 1943, that we find another resolution passed by the board of directors of the plaintiffs that 500 ordinary shares of the face value of Rs. 5,000 are hereby allotted to the defendant and that allotment notice should be given to him. This was the allotment which was

followed up by a letter of allotment bearing no. 10 dated 19th January 1948, whereby intimation of the allotment was given by the plaintiffs to the defendant. In the summary of share capital as of 19th January 1943, which was filed by the plaintiffs with the Registrar of Companies, the defendant was shown as a holder of 500 shares, though he having retired with effect from 30th October 1942, as a director his name was not mentioned as one of the directors. After this letter of 19th January 1943, was received by the defendant he carried on correspondence beginning with the letter dated 2nd February 1943, in the course of which his attorneys asked for and were given inspection of the relevant documents in the custody of the plaintiffs. Nothing further transpired until we come again to 13th September 1943, when the defendant not having paid the sum of Rs. 5,000 being the price of the 600 shares, a notice was addressed by the plaintiffs to the defendant stating that although the shares had been allotted to him and the letter of allotment No. 10, had been forwarded to him on 19th January 1943, he had not paid Rs. 5,000 and that in default of the defendant paying the sum of Rs. 5,000 to the plaintiffs within 15 days from the receipt thereof the shares allotted to him would be forfeited without any further reference. The defendant failed to pay the sum of Rs 5,000 with the result that the board of directors of the plaintiffs passed on 28th October 1943, a resolution that "the shares allotted to the defendant be and are hereby forfeited". On 23rd November 1943, the plaintiffs gave intimation to the defendant that they had forfeited the shares which had been allotted to him and claimed a sum of Rs. 5,000 with interest thereon at 9 per cent. per annum from the defendant. The defendant did not pay the sum as demanded and in the result the plaintiffs filed this suit against him.

3. Though the defences as regards the misrepresentation by Borkar and as regards the allotment of the shares to the defendant on 16th January 1943, contravening the provisions of Section 101, Companies Act were taken up in the written statement, no issue was raised as regards the first of these defences and even though an issue was raised in regard to the second of those defences, that issue was not pressed at the trial before me. The whole argument before me proceeded on the basis that the forfeiture dated 28th October 1943, was invalid and that therefore no liability arose under Article 34 of the Articles of Association of the plaintiffs which would give the plaintiffs a cause of action against the defendant, that the allotment dated 15th June 1942, was bad in so far as it was not within a reasonable time of the application or offer in respect of these 500 qualification shares, that the allotment dated 15th June 1942, having been once made it was not open to the plaintiffs to cancel the same, that in any event the allotment dated 16th January 1943, even though it might have been competent to the plaintiffs to resort to was again bad on the same grounds as before that in giving the notice of forfeiture the plaintiffs had relied upon the allotment dated 16th June 1943, and the non-payment of the monies by the defendant as a result thereof as the ground for forfeiture of the shares which had been allotted to the defendant and that the allotment being bad, it could not avail the plaintiffs as a handle for the forfeiture, with the result that the forfeiture dated 28th

October 1943, was in any event invalid and could not give rise to a fresh cause of action against the defendant by attracting the operation of Article 43 of the Articles of Association of the plaintiffs. These were the grounds which were urged by counsel for the defendant as discharging the defendant from liability in respect of the price of the shares. It was further urged that in any event by canceling the allotment dated 15th June 1942, the plaintiffs had accepted the position which had been taken up by the defendant in his letter dated 16th July 1942, addressed by him to Messrs. Borkar and Co., the managing agents of the plaintiffs, and that apart from anything else the defendant was discharged from any liability by reason of that action of the plaintiffs.

4. Counsel for the plaintiffs possibly realising the force of some of the contentions which were urged by counsel for the defendant adopted quite another line of attack. Even though in the plaint it had been categorically stated that after the agreement to take up the shares had been signed by the defendant and he had acted as a director of the plaintiffs, the plaintiffs had allotted the shares to the defendant and due notice there, of had been given to him and that the plaintiffs had forfeited the shares as they were entitled to do under the provisions of the articles and the defendant had become liable to pay the value of the said shares with interest, viz. Rs. 5,000 with interest at 9 per cent. per annum from 28th October 1913, being the date of forfeiture, he contended that all the averments in regard to the allotment of the shares and the forfeiture thereof were to be treated as having been absolutely unnecessary or superfluous and the only cause of action which could be spelt out of it was the agreement to act as a director and to take up the 500 qualification shares of the plaintiffs. He therefore contended that all the arguments as regards the allotment of 15th June 1912, not being valid, about the cancellation of the allotment of 15th June 1942, not being competent to the plaintiffs, about the allotment dated 16th January 1943, also being invalid, about the notice of forfeiture not being valid by reason of its referring only to the allotment dated 16th January 1943, and about no cause of action having accrued to the plaintiffs by reason of the forfeiture were beside the mark.

5. These are the rival contentions of the parties which have been agitated before me with considerable force on both the sides. The plaintiffs have been, if not actually on the rocks, almost on the brink of liquidation. They have done no business worth the name and the only asset, which they appear to have got is one decree which they have obtained and in respect of which they have not been able to recover anything so far, and the prospects of getting a decree against the defendant, if they succeed in getting one here from me. As a matter of fact, after the directors had been paid their fees in respect of the attendances at the two meetings dated 11th July 1941 and 17th July 1941, the directors either did not claim or were not paid any fees for their attendances at the meetings of the board of directors which took place on several occasions both in the year 1941 and the year 1942. These Rs. 5,000 which they expect to recover from the defendant would certainly stand them in good stead and that is why the matter

has been very strenuously and exhaustively dealt with by counsel for the plaintiffs.

6. Counsel for the defendant has equally strenuously fought the matter and pressed the contentions on behalf of his client even though the defense of misrepresentations was not available to him (the defendant) in law. The defendant seems to have been all along nursing a grievance by reason of what Borkar is alleged to have represented to him. He actually offered on 16th July 1942, to cease acting as a director if the plain tiffs so wanted, and pressed for the cancellation of the allotment of the 500 shares to him which the plaintiffs had made on 15th Juno 1942, and for the time being it appears that the plaintiffs acquiesced in that position and cancelled that allotment. The circumstances appear, however, to have been beyond the control of the plaintiffs and they seem to have thought better after the disappearance of Borkar from the scene. One Mangaram came into charge and active management of the plaintiffs after the disappearance of Borkar and he seems to have been advised to allot the shares once again to the defendant on 16th January 1948, and to press forward the claim of the plaintiffs against the defendant for the price of these 500 shares. The defendant naturally resisted this claim owing to what had happened before and that is the reason of the strenuous fight which has been put up on his behalf.

7. The position in law on forfeiture is quite clear, As is stated in Palmer's Company Law, Edn. 17, p. 138, forfeiture of shares prevents prima facie any action by the company for past calls, Once there is forfeiture, the only liability which the shareholder would have to pay the monies would arise by reason of the articles of association, and the articles commonly provide that where a share has been forfeited the member shall be liable for payment of the call with interest, and this creates a new obligation which can be enforced by action at law. A similar article is also to be found in the articles of association of the plaintiffs, and it is Article 34. If there was a valid forfeiture of these 500 shares by the plaintiffs a new cause of action would accrue to them by reason of Article 34 which they would be entitled to sustain by filing a suit as they have done here, In order, therefore, to understand whether there was a valid forfeiture, we have got to see what was the position as it obtained in this case. It is also clear that forfeiture is treated very strictly by the Courts, and the directors seeking to enforce it must exactly pursue the coarse of procedure marked out by the articles. A slight irregularity is as fatal as the greatest. Thus if the call, in respect of which the forfeiture is made, was not validly made or if the notice on which the forfeiture is founded is inaccurate in requiring payment of interest from a wrong date, e. g., the date of the call instead of the date appointed for payment, the forfeiture may be held invalid. (See Palmer's Company Law, p. 136), It is contended before me by counsel for the defendant that the forfeiture in this case was based on the non-payment by the defendant of the monies due in respect of the allotment of the shares pursuant to the resolution dated 16th January 1943, a resolution which was invalid as having been passed by the plaintiffs after the lapse of a reasonable time from the date of the offer by the defendant and also

by reason of what had previously happened viz., the allotment dated 15th June 1942, and the cancellation thereof. The authorities lay down that an allotment of shares should be made within a reasonable time and the applicant is not bound to accept the allotment after the lapse of a reasonable time. Vide *Indian Co. operative Navigation & Trailing Co. Ltd. v. Padamsey* 36 Bom. L. R. 32: A.I.R 1934 Bom. 97 and *Palmer's Company Law*, page 96, where it is stated that it is an implied term in an application for shares that the offer must be accepted within a reasonable time, and, if it is not, the applicant is entitled to repudiate the allotment. In this case the application, if it can be so called, was made, on 11th July 1941, and the allotment was made, according to the case of the plaintiffs on 16th January 1943, almost 18 months after the date of the application. It cannot be argued that this lapse of time was not unreasonable, and does not bring the allotment within the mischief of these authorities, The further ground which was urged by counsel for the defendant was that once an allotment was made it was not competent to the company to cancel it by any means whatever, and that the plaintiffs had first made the allotment on 15th June 1942, and having made that allotment, it was not within their power to cancel such allotment. The authorities again support this contention of counsel for the defendant. *Halabury's Laws of England*, vol. v. p. 256, para. 443:

"Where an allotment has been made on a binding contract to take shares, it cannot be cancelled by the company."

and Sircar and Sen on *Indian Companies Act*, p.288:

"Once an allotment is made and communicated, the directors have no power to release the shareholder by cancelling the allotment--not even on the ground that the shares have been taken under a mistake."

There is, therefore, considerable force in the argument which has been advanced by counsel for the defendant that the allotment dated 15th June 1942, having been made and communicated to the defendant, it was not competent to the plaintiffs to cancel that allotment. If it was not competent to them to do so, it was much less competent to them to pass a second resolution on 16th June 1943 allotting the 500 shares to the defendant. If it was not competent to the plaintiffs to do so, that allotment and the non-payment of the monies due thereunder could certainly not be made the foundation of any notice for forfeiture which could be validly addressed by them to the defendant and such invalid notice of forfeiture could certainly not be made the basis of a valid resolution of forfeiture which they purported to pass on 28th October 1943. These being the steps in the argument, it does follow that no fresh cause of action arose to the plaintiffs under Art, 34 of the articles of association which could be made the basis of the present suit. Even the allotment of 15th June 1942, was within the mischief of the authorities which I have cited above as being not made within a reasonable time of the application or offer made by the defendant. That also was made on 15th June 1942, which was almost a year after the date of the application or offer. That also was not, in my opinion, within a reasonable time and the

allotment, if any, made on 18th June 1942, was, therefore, not competent to the plaintiffs to make, It may be noted in this connection that the defendant immediately repudiated the allotment on the intimation being given to him thereof by his letter dated 16th July 1942, which he addressed to Messrs. Borkar & Co., the managing agents of the plaintiffs.

8. The allotment as also the forfeiture being bad, in the manner I have indicated above, the only thing which remains to consider in this connection is what is the effect of the agreement to take up the shares signed by the defendant on 11th July 1941. Does that agreement by itself entitle the plaintiffs to sustain this claim against the defendant? As I have already stated the cause of action as it has been set out in the plaint is not based merely on this agreement by the defendant to take up the qualification shares. The cause of action is the agreement to take up these shares, the allotment of these shares and the forfeiture thereof on non-payment of the monies due in respect of the shares. It is only as a last resort that counsel for the plaintiff's has been driven to this line of attack as I have already stated. Let us, therefore, consider how far this contention on the part of the plaintiffs can be substantiated.

9. In connection with this argument of his, counsel for the plaintiffs relied upon several authorities consisting of decisions of the Courts in England, The first three authorities which he cited were Issacs' Case (1892) 2 Ch. 158, Salisbury Jones and Dale's Case (1894) 3 Ch. 356 : 64 L. J. Ch. 27 and In re Portuguese Consolidated Copper Mines, Ltd.: Ex parte Lord Inchiquin (1891) 3 Ch. 28: 60 L. J. Ch. 556. All these were, however, cases in winding up and apart from anything else these cases turned on the construction of section 23, English Companies Act, whereby merely on an agreement the director was held liable to be put on the list of contributories. These authorities, therefore, do not furnish any guide to me. The two other authorities which he cited were, however, more to the point. They were Salton v. New Beeston Cycle Co. (1899) 1 Ch. 775:68 L. J. Ch. 370 and Molineaux v. London, Birmingham and Manchester Insurance Co. (1802) 2 K. B. 589 : (71 L. J. K. B. 848). In Salton v. New Beeston Cycle Co. (1899) 1 Ch. 775 : 68 L. J. Ch. 370, the question which arose was the right of the assignee from the director to recover the amount of remuneration due to him under the agreement with the company and the company's right of set off against that remuneration in respect of the monies payable by the director in respect of certain qualification shares which he had agreed to purchase. Gozens. Hardy L. J. applied his mind mainly to the question of the assignee's right to remuneration on stepping into the shoes of the director who had a right to receive the remuneration, It was only at the end of the judgment that the learned Judge stated that he thought that the company was entitled to the set off as against the plaintiff in respect of ?250 due from the director to the company for the shares which he had been liable to take and pay for since the relevant date. This judgment, therefore, even though it does express as opinion of a Judge of the eminence of Cozens-Hardy L. J., does not help me in the decision of the question before me. When one goes, however, to Molineaux v. London, Birmingham, and

Manchester Insurance Co. (1902) 2 K. B. 589 : 71 L. J. K. B. 848, the position is more in favour of the plaintiffs. In that case after the plaintiff had acted as a director he had purported to resign his office as a director and had contended that he not having acquired the qualification shares within a reasonable time of his having signed the letter of consent and agreement he was free from liability for payment, Cozens-Hardy L. J. discounted that contention of his and observed that the plaintiff was bound to have acquired his qualification shares before signing the prospectus, that that was a statutory duty imposed upon him as a director and that his name having been duly placed on the register of shareholders in respect of the said shares he was bound to pay for the same. This judgment of Cozens-Hardy L. J. truly sets out the legal position. The same position has been enacted by our own section of the Indian Companies Act, viz. Section 30, which, defines a member as under :

" (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other 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."

It is Section 30, Sub-section (2), which comes in for consideration so far as the defendant is concerned. Incidentally, I may observe that the very same position is set out in Palmer's Company Law, 17th Edn., at page 87. So every person who comes under the category of members u/s 30 (2) is one who agrees to become a member of a company and one whose name is entered in its register of members. Here the section contemplates two things:-- (1) an agreement; and (2) entry in the register. An agreement alone does not create the status of membership. It is a condition precedent to acquiring such status of membership that the share-holder's name should be entered on the register. So also at p. 95:

"Entry on Register-- Where membership is constituted otherwise than by subscribing the memorandum of association, entry in the register of members is, by Section 25, made a condition precedent to membership."

10. I have therefore got to consider what is the position of the defendant having regard to the provisions of Section 30 (2), Companies Act. The position in England and India is, as I have observed, the same, viz. an entry in the register of members is made a condition precedent to membership. In the present case before me, there is no doubt that by subscribing the letter of consent and also the agreement to take up these qualification shares on 11th July 1941, an agreement had come into existence as contemplated by Section 30 (2). The defendant had agreed to become a member of the company. It does not avail the defendant to say that the plaintiffs had not accepted his offer or application for the shares. If it had been the case of an ordinary shareholder, that defence would have availed him because as I have already observed the allotment was

not within a reasonable time of the application. Hare, however, the case is not that of an application of the defendant to take up the shares of the plaintiffs. It is an agreement which he signed to become a member of the plaintiffs. Even though the plaintiffs in their wisdom passed the resolutions, one on 15th June 1942, and the other on 16th January 1943, allotting these 500 shares to the defendant that allotment was not a necessary condition precedent to the defendant being held liable in respect of the price of these qualification shares. He was bound to pay for them, having agreed to become a member, provided all the conditions laid down in Section 30 (2) were satisfied. He was not absolved from liability merely by saying that he was not willing to become a member and had sent a letter requesting the plaintiffs to cancel the resolution of allotment of shares to him, What however, is in favour of the defendant is that he had not been entered into the register of members in accordance with the provisions of law in that behalf Even discounting the fact that the plaintiffs treated his agreement to take qualification shares of the plaintiffs as an application for shares by him and proceeded to allot the shares as on an application for shares by him, the fact remains that in the two documents which have been principally relied upon by the counsel for the plaintiffs and have been exhibited before me no specific shares have been noted against the name of the defendant as having been held by or allotted to him. If one sees the relevant provisions of the Indian Companies Act which are mandatory, they provide as under :

11. Section 28 which lays down the nature of shares enacts in Sub-section (2) that : "Each share in a company having a share capital shall be distinguished by its appropriate number." Section 29 which talks of the certificate of shares or stock lays down that:

"A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be prima facie evidence of the title of the member to the shares or stock therein specified."

One could not issue a certificate of shares in respect of a share merely in general. It must be a share distinguished by its appropriate number as provided in s 28 (2) A person cannot be a member under a. 30 (2) unless and until--even though he has agreed to become a member of a company--his name is entered in the register of members. How the name is to be entered in the register of members is laid down in Section 31 which says:

"(1) Every company shall keep in one or more books a register of its members and enter therein the following particulars :

(i) the names and addresses and occupations, if any, of the members, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number" and the number cannot be merely 1 share or 500 shares but the specific number which is an appropriate and a distinguishing number as laid down in Section 28(2). It was, therefore, having regard to these provisions of the Indian Companies Act incumbent on the

plaintiffs both in what they called the application for and allotment of shares and also what they called the register of members and the share ledger to give distinctive numbers of shares allotted by them to the defendant. If one sees EX. D-1 which is the application for and allotment of shares, the application of the defendant is numbered as No 4, the number of allotment of shares is No. 10, the number of shares applied for is 500--and I wonder how those in charge of the management of the plaintiffs got this brain wave to treat the agreement to take the qualification shares as meaning that he had applied for the shares to be issued to him -- and the distinctive numbers of shares allotted from blank to blank are again blank. The entries in the further columns do not help the plaintiffs at all. When one goes to Ex. D-2 which is the register of members and the share-ledger there also the position is similar. The number of allotment is mentioned as No. 10, number of shares allotted is 500 and when one sees the distinctive numbers, again, they are blank and as vague as vague can be. I cannot understand the argument that merely because the plaintiffs stated that they had allotted 500 shares, 500 specific shares came to be allotted to the defendant. No doubt it is unnecessary in the resolution allotting these shares and also in the letter of allotment to say that particular shares bearing numbers so and so are allotted to the defendant. But when it comes to the making of an entry in the register of members in order that liability may attach as on a compliance with the mandatory provisions of Section 30(2) one does expect that the distinctive numbers of these shares purporting to have been allotted by the plaintiffs to the defendant should have been mentioned there if one has regard to the other entries which are made in the book containing these exhibits, Ex. D-1 and D-2, viz., the application for and the allotment of shares and the register of shareholders and share-ledger, one finds distinctive numbers as against each and every one except the defendant, in whose case no such distinctive, numbers of shares have ever been given by the plaintiffs.

12. Under these circumstances, I have come to the conclusion that the defendant did not become a member of the company in respect of these 500 shares. Even though he had agreed to take up these shares by reason of the agreement which he had signed on 11th July 1941, the condition precedent to membership which is laid down in Section 30 (2), viz that his name was to be registered in the register of members, was not satisfied as required by Section 31 (1), Clause (1). That being the position, there was no liability on the defendant as the matter stood at all relevant and material times to pay any monies alleged to be due in respect of these 500 qualification shares.

13. Even though that is not the frame of the suit, I may consider one further aspect of the question, viz., that there having been merely an agreement to take these qualification shares it would have been open to the plaintiffs to file a suit for specific performance of that agreement as against the defendant, and thus to claim Rs. 5,000 being the price of these qualification shares which had been agreed to be purchased by the defendant. Unfortunately for the plaintiffs that is not the action before me. But even though I might consider this aspect of the

question by stretching the point in favour of the plaintiffs, there are two objections against this. The first is that the plaintiffs have forfeited these shares by their resolution dated 28th October 1943, and that forfeiture stands till this date. It would not be open to the Court to consider therefore this aspect of the question in favour of the plaintiffs. The second objection is the delay which also is a factor to be considered by the Court. (Vide Palmer's Company Law, page 99)

"Specific Performance :"

"The Court has jurisdiction to decree specific performance of a contract by a person to take, or by a company to allot, shares ; but the matter is one of judicial discretion."

It this question ever came to be considered by me I would certainly hold against the plaintiffs on the ground of delay. The agreement to take shares was dated 11th July 1941, and even though having regard to the provisions of the Limitation Act an action for specific performance of such an agreement could not be barred at the date of the suit which was filed here on 11th May 1944, I would certainly in the exercise of my discretion, having regard to all the circumstances of this case, refuse to grant any specific performance in favour of the plaintiffs.

14. On all the grounds above mentioned, therefore, I have come to the conclusion that the plaintiffs' claim against the defendant fails and that the suit should therefore be dismissed with costs. I accordingly dismiss the suit with costs. Costs fixed at Rs. 1,600.

15. The plaintiffs' attorneys to hand over to the defendant's attorneys the sum of Rs. 750 which is deposited as security for costs by the plaintiffs with them to be appropriated by the defendant towards satisfaction of the costs awarded to him.