

(1939) 11 MAD CK 0024
In the Madras High Court

K.N. Guruswamy

APPELLANT

Vs

Indo-Carnatic Bank, Ltd.

RESPONDENT

Date of Decision : 24-11-1939

Acts Referred:

Citation : AIR 1940 Mad 873

Hon'ble Judges : Gentle, J

Bench : Division Bench

Judgement

Gentle, J.—Contributories Nos. 349 and 756 : These two contributories object to being included in the list on the ground that the shares which they held in the company have been forfeited. Contributory No. 349 in his affidavit sets out that in 1936 he received a notice from the secretary of the company asking that payment be made of the first call on or before the 1st March and that if that was not done the question of enforcing Articles 27 and 29 would be placed before the directors for their consideration and that the contributory should make immediate arrangements for payment to avoid forfeiture of the shares. In regard to contributory No. 756, there is no such allegation of an earlier proceeding or notice. In regard to both of them, they each received a notice from the company dated 23rd November 1938 to the effect that in pursuance of the resolution of the board notice was given that if there was failure to pay by 23rd December 1938 the call in respect of allotment money, at the registered office of the company, the shares allotted to the shareholders would be forfeited without further notice as per Articles 27, 28 and 29 of the articles of association of the bank. Neither of these contributories paid the moneys demanded. Article 27 provides that if any member fails to pay any call or instalment on the day appointed, the directors may serve a notice requiring him to pay. Article 28 provides that the notice shall name a day and place of payment and shall state in the event of nonpayment the shares will be liable to be forfeited. Article 29 provides that if there is non-compliance with the notice, then by a resolution of the directors a forfeiture shall be effected of the shares in respect of which non-payment is made. Article 30 directs that notice of forfeiture shall be sent.

2. It is contended on behalf of the contributories that the notice which was given was a combined notice and follows a resolution passed under Article 29 that the shares they held would be forfeited upon non-payment on the specified date. In January 1939, at a meeting of the board of directors, a resolution was passed forfeiting the shares of a number of shareholders but the names of these two contributories were not included in the resolution. Reliance has been placed upon two English cases Woollaston's case (1859) 4 De. G. & J. 437 and Knight's Case (1867) 2 Ch. A. 321. In the first case, the guiding rules of the company, comparable to the articles of association, provided that when a shareholder refused or neglected to pay moneys due in respect of the shares within the time provided the secretary should send to him a notice specifying the amount due, requiring payment within a stated time on pain of forfeiture, and if the amount was not paid the directors could declare the share or shares to be forfeited. A notice was sent to the shareholder conveying the information that at a resolution of the board of directors it was declared that unless the amount due was paid then these shares would immediately be forfeited. For three years following, the company and the shareholder treated the shares as having been forfeited. Turner, L.J. at p. 173 in holding that there was in fact a forfeiture and that the difference between the procedure adopted and which should have been followed was one of form and not of substance, pointed out that both the company and the shareholder had treated forfeiture as having been effected.

3. In Knight's Case (1867) 2 Ch. A. 321 the articles and the facts were somewhat similar save that in addition, although not authorized, the secretary of the company, upon the shareholders failing to make payment, made the necessary entries regarding forfeiture, and in that case it was held too that there was a forfeiture. Both the decisions to which I have referred were considered in Bigg's case (1865) 1 Eq. 309. In that case, the share-holder received a notice that on non-payment of arrears of call by a particular time his shares would be forfeited without further notice. He was the holder of about 150 shares and shortly before the date of expiry of the time given him for payment he went to the company's office, paid the amounts due in respect of about ten shares and intimated that in regard to the balance he was prepared to be treated as a defaulter and his shares to be forfeited. In the course of the judgment, Sir W. Page Wood V.G. in referring to the two earlier cases I cited, pointed out that emphasis was placed upon the conduct which followed the purported action of forfeiture or the giving of the notice, namely that the companies and the shareholders in both the cases treated the forfeitures as having been effected. There was no resolution subsequent to the giving of the notice in Bigg's case (1865) 1 Eq. 309, which provided for a forfeiture, and it was held that there was in fact no forfeiture and the name of the shareholder was included in the list of the contributories. All the above decisions were considered by a Division Bench in Prayan Prasad and Others Vs. Gaya Bank and Trades Association Ltd., . In that case, there was a notice which was to the same effect as was given to the two contributories now before me with which there was non-compliance, and the

articles of the company were to the same effect as those of this company. The learned Judges of the Patna High Court considered all authorities including those I mentioned and held that in the case before them there was no forfeiture effected.

4. In my view, the company has continued to treat these two persons as shareholders inasmuch as in the month following the date of expiration of the notice sent to each of them, at a meeting of the board of directors a resolution was passed that certain persons who were defaulters were to have their shares forfeited. The names of the two contributories before me were not included. There is express provision in the articles providing for the method by which shares should be forfeited. There is no doubt that the machinery laid down in the articles has not been strictly followed. Construing the notice which was sent, it means that unless payment was made by 23rd December of the amount due to the company, it was the intention of the directors to proceed to forfeiture without giving any further notice of such intention. The notice contains reference to the articles under which forfeiture is made and the machinery to be followed, and in my view, the notice which was given was not one in which on the failure of the shareholder to comply with the payment required, automatically the forfeiture of the shares would follow. The result is that these two contributories will remain in the list filed by the official liquidators of this company.