
(1932) 02 AHC CK 0027
In the Allahabad High Court

L. Bishambhar Nath

APPELLANT

Vs

The Agra Electric Store Ltd.

RESPONDENT

Date of Decision : 10-02-1932

Acts Referred:

Citation : (1932) 02 AHC CK 0027

Hon'ble Judges : King, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

King, J.—This is a defendant's appeal in a suit by a liquidator of a private limited liability company for recovery of money for certain calls on shares which were not fully paid up.

2. The Agra Electric Stores Ltd., was a private limited liability company and the defendant was a signatory to the Memorandum of Association and he was a subscriber of one share of Rs. 2,000. On 10th November 1924 he paid a sum of Rs. 500. The balance of Rs. 1,500 he was called on to pay on allotment and on two calls made by the company; that is by 2nd March 1925, Rs. 1,500 ought to have been paid by the defendant-appellant on his share.

3. On 22nd March 1926 the directors of the company forfeited the appellant's share. Eventually, on 9th May 1928, Parshotam Das Agarwal was appointed a "voluntary liquidator of the company by a resolution of the company and on 3rd November 1928 certain powers are alleged to have been given to the liquidator. The defendant not having paid the money due, the liquidator instituted the present suit on 16th March 1929 for recovery of the sum of Rs. 1,500 and interest.

4. Various pleas were raised in defence, but the learned Munsif repelled the contention of the defendant and decreed the suit for a sum of Rs. 1,500 with interest at 5 per cent per annum up to the date of forfeiture.

5. The defendant thereupon appealed to the lower appellate Court and the plaintiff filed cross-objection. The appeal was dismissed, but the cross-objection was allowed. Hence the present appeal by the defendant before us. The learned advocate for the appellant has argued before us five points. In our opinion there is no force in any of them except the fifth, which was that the cross-objection of the plaintiff in the Court below should not have been allowed.

6. The first point taken is that the suit is barred by Article 112, Schedule 2, Limitation Act. It was contended by the learned advocate that as on 2nd March 1925 the money on all the calls had become due, the suit ought to have been instituted within three years from the date when the amount became due. The Courts below have held that the forfeiture of the share having been made on 22nd March 1926, the suit of the plaintiff was within time. The Court below repelled the contention of the defendant following the case of Habib Rowji Vs. Standard Aluminium and Brass Works Limited,

7. The learned advocate for the appellant has submitted that the Articles of Association in the Bombay case were different from the Articles of Association in the present case. We have therefore to see whether under Article 28, Table A, Companies Act, which is applicable to this case, gives the liquidator of a company the right to sue within three years from the date of the forfeiture. We have examined the Articles of Association in the Bombay case and we find that there is really no difference between the provision of Article 28, Table A, attached to the Indian Companies Act and the Articles in the Bombay case. We are of opinion that the point raised by the appellant has no force as the present suit was instituted within three years from the date of the forfeiture and Article 115, Schedule 1, Limitation Act applies.

8. The next point that is raised here is that the liquidator had no right to sue inasmuch as in the resolutions of 3rd November 1928, no power was given to the liquidator to institute suits. It was urged that all that the liquidator could do was to sell the assets of the company within one month. It seems to us that this point raised by the learned advocate does not take into account the provisions of the Companies Act. Section 207, Companies Act lays down the consequences of voluntary winding up of a company and the powers of a liquidator appointed. We find that in the resolution referred to by the learned advocate for the appellant there is no express prohibition laid down against instituting suits. It is true there is no express power given to bring suits, but we do not think that it was necessary for the liquidator to have express powers to exercise powers which the law gives him under the Companies Act. We are therefore of opinion that the liquidator was not restricted from instituting the present suit and there is no force in the plea.

9. The third point taken is that one of the directors of the company having written a letter to the liquidator on 21st March 1929, the liquidator could not institute the suit, it being necessary for him to obtain the consent of the directors before he could institute the suit. We find that on 6th March 1929 the liquidator

wrote a letter to one of the directors. He waited for ten days for an answer. He instituted the present suit on 16th March 1929 and it was not till 21st March 1929 that one of the directors wrote the letter referred to by the defendant. In our opinion, the effect of the letter cannot be to take away the statutory rights of the liquidator to institute the present suit.

10. The fourth ground taken is that it was the duty of the directors to take steps to sell the forfeited share and reduce the liabilities of the defendant and that as the company was working at a profit in 1926, the directors should have sold the shares. In our opinion, there is no force in this contention and we cannot allow it to be raised for the first time in second appeal.

11. Lastly, it is urged that the Court below should not have allowed interest from the date of forfeiture to the date of suit. We are of opinion that there is substance in this plea. There was no contract or claim upon which the claim for interest is based. In our opinion the Court of first instance was right in holding that no interest was claimable after the date of forfeiture and before the suit, in the absence of any provision of law or contract. The lower appellate Court has held that under Article 14, Table A, interest was payable, but in our opinion interest that is payable under Article 14 is interest as a share-holder and the defendant ceased to be a share-holder of the company on the date when the share was forfeited : see also the case of *In re Blakely Ordinance Co. Stocken Ex parte* [1868] 3 Ch. 412. We therefore modify the decree of the lower appellate Court and restore the decree of the Court of first instance. Parties will pay and receive costs in proportion to failure and success, in this Court and the lower appellate Court.