

(1929) 09 MAD CK 0046
In the Madras High Court

(Nidamarthi) Venkataramayya

APPELLANT

Vs

Indian Industrial Bank Ltd.

RESPONDENT

Date of Decision : 02-09-1929

Acts Referred:

Citation : AIR 1930 Mad 325

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—These are,connected appeals. The plaintiff is the appellant in each appeal. The defendant respondent is the Industrial Bank, Limited; but there is no appearance for the bank in both these appeals. The suits filed by the plaintiffs are for the refund of the moneys paid by them to the defendant bank on account of the shares which they agreed to take in pursuance of alluring prospectus issued by the company. The plaintiff's case is that the contract between them and the defendant was vitiated by fraud and misrepresentation, that there was not valid allotment of the shares and that they are entitled to rescind the contract and claim the refund of the moneys with interest at 6 per cent per annum. The learned District Munsiff in a lucid and able judgment discussed the questions at issue at great length and found that the plaintiffs are entitled to a decree for refund of the moneys with interest. The lower appellate Court reversed the decrees of the first Court but on a perusal of its judgment, I am constrained to observe that it missed the vital points in the case and proceeded to determine the issues on what seem to be somewhat irrelevant considerations.

2. The main contention urged on behalf of the appellants is, that two of the directors mentioned in the prospectus are said to have retired even before the allotment of shares, that the plaintiffs agreed to take the shares in the company on the faith of the representations made in the prospectus which entitled them to believe that these two important gentlemen would continue to be the directors in the usual course, and that, if the facts of their resignation had only been

communicated to them, as it ought to have been done, before the allotment of shares, they would have rescinded the contract and claimed the refund of the moneys sent by them. It is an admitted fact that in these circumstances no notice of the resignation or retirement of these two directors was given to the plaintiffs after the issue of prospectus and before the actual allotment of shares. The suppression of this fact is alleged by the plaintiffs to be something which would amount to fraud in the eye of the law, justifying them in going back on their offer and claiming a refund of the moneys. In the course of the correspondence, it is even admitted by the defendant company in their letter dated 16th March 1922: vide Ex. 20 that as regards the change in the directorate before allotment, the plaintiffs were certainly entitled to notice, but they set up an acquiescence on the part of the plaintiffs to justify their refusal to refund the amount. On this question, there is the district authority of a leading case reported in *Re, Scottish Petroleum Co.*, [1881] 17 Ch. D. 373 (Anderson's case) The facts in that case appear to be on all fours with the facts of the present case. In that case, a subscriber for shares in a company received a letter of allotment and at the same time a letter informing him that two of the four directors named in the prospectus had retired. On the very same day he wrote to the company stating that he applied for shares on the faith of those two gentlemen being directors and asked for the cancellation of the allotment and removal of his name from the register of shareholders. What the duty of the company in such circumstances would be is clearly stated in the following passage in that judgment;

I do not think there was when the prospectus was issued, because it was believed that Mr. Gibson and Mr. Ross would act; but when the company found that these gentlemen would not act, they were bound to issue a new prospectus containing other names, and to inform those who had applied for shares, that before the allotment was made other directors had been appointed and then it would be for the applicants for shares to say, under those circumstances, whether they would" adhere to their offer or would withdraw it.

3. The learned Judge in that case proceeded to say, that the directors ought to have said that they would give the applicants the option of withdrawing when the state of things on the faith of which they made the application no longer existed. Any persistence on the part of the company in refusing the option of withdrawing would be an unjustifiable thing in the opinion of the learned judge. In the present case, what happened is exactly as stated above. To the same effect is the decision reported in *Re: Companies Acts 1862 to 1900; Re: Kent County Gas Light and Coke Co.* [1907] 95 L.T. 756. Under similar circumstances, it was held that the shareholders were entitled to rescind the contract following the observation in Lindley's book on Company Law which is as follows:

If an application for shares is made on the faith of a statement which is true when made but which is not true when the shares are allotted the applicant may refuse to take them.

4. In view of these clear principles of law it cannot be said that the plaintiffs are not entitled to rescind the contract and claim a refund. It is a pity that; the lower appellate Court lost sight of these principles, though they were adverted to in the first Court's judgment. The fact that subsequent to the formation of the company after allotment of shares, there is every likelihood of a change in the directorate, has no bearing on the present question, because until the allotment of the shares, the plaintiffs have a right to withdraw their offer, if there should be any breach in the terms of the contract published in the prospectus. On this point alone the plaintiffs would be entitled to the relief asked for by them.

5. It is unnecessary to consider the other questions as regards the validity of the allotment of shares made by the defendant. If that allotment is found to be invalid or ultra vires, that would only be another ground for giving a decision in plaintiff's favour. In the result, these second appeals are allowed and the decrees of the Court of first instance are restored with costs in all the Courts.