

(1962) 04 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 38 of 1956

People's Insurance Co. Ltd.	Vs	APPELLANT
Sardar Sardul Singh Caveeshar		RESPONDENT

Date of Decision : 30-04-1962

Acts Referred:

Companies Act, 1913 — Section 185, 235, 543
Evidence Act, 1872 — Section 115
Insurance Act, 1938 — Section 52

Citation : AIR 1962 P&H 543

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Judgement

(1) This is a petition on behalf of the People's Insurance Company, Limited, (in liquidation), u/s 185 of the Indian Companies Act, 1913, which provides that the Court may, at any time after making a winding up order, require any contributory, any trustee, agent, officer of the Company, etc., to pay, deliver, surrender or transfer to the official liquidator any money, property or documents in his hands to which the company is prima facie entitled. It is consequently prayed that Sardar Sardul Singh Caveeshar be ordered to pay a sum of Rs. 5,73,100/- to the Official Liquidator of the Company. The Company was ordered to be compulsorily wound up on 29th of April 1955 by the District Judge, Delhi. The respondent was the Managing Director of the Company and as such he was an officer of the Company and also occupies the position of the trustee of the Company. The three amounts totaling Rs. 5,73,100/- which are claimed to belong to the Company are as under:

(a) The difference in the costs and sale Price of the Company's

property in Pakistan (as mentioned in Director's resolution dated 27-6-1953). Rs. 1,48,100-0-0.

(b) Received as a free gift out not deposited with the Punjab National Bank Ltd., Queenway, New Delhi, the Bankers of the Company (as mentioned in Director's

resolution No 2 dated 31-12-1953).

Rs. 1,00,000-0-0.

(c) Amount drawn by the respondent on 29-11-54 from the free gift account.
Rs. 3,25,000-0-0.

Grand Total: Rs. 5,73,100-0-0.

The first two amounts against (a) and (b) totaling Rs. 2,48,100/- have been shown as income in the Revenue account of the Company under the head. "Free Gift from the Managing Director" in the balance-sheet of the Company as on 31st of December 1953. It is stated that this amount was never deposited with anyone of the Company's Bankers and is shown to have been debited to the Company's Investment Department of the Company was nothing else but the respondent himself. The third item of Rs. 3,25,000/- consisted partly of three Free Gift amounts of Rs. 75,000/- each as credited in the account-books of the Company as per Director's resolution dated 28th of March 1954, 28th of August 1954 and 29th of September 1954 and partly of the other assets of the Company. The entire sum of Rs. 3,25,000/- has been debited to Free Gift Account of the Company, but this account instead of being in credit of Rs. 3,25,000/- is left in debit of Rs. 1,00,000/-. This amount is stated to have been drawn and credited to the personal account of the respondent partly in Suspense Ledger and partly in the Investment Department. It was consequently contended that the sum of Rs. 5,73,100/- was wrongly held by the respondent and he did so without any valid authority. In this connection it was mentioned that the "Free Gist Account" was nothing but a well-calculated fraud played both upon the public and on the Government with a view to avoid threatened action of the Controller of Insurance u/s 52A of the Indian Insurance Act and in order to regain the lost confidence of the Public and the shareholders. In this manner the respondent was said to have managed to have another avenue to misappropriate the Company's property and to convert it to his personal use. It was also alleged that several other amounts of the Company were recoverable from the respondent for which investigations were proceeding and the present petition confined itself to the claim of Rs. 5,73,100/-.

(2) The above averments were not admitted as correct in the written statement and the respondent denied his liability in toto. It was denied that the respondent made any free gift of Rs. 1,00,000/- against the second item. He also denied having received Rs. 3,25,000/- and submitted that under coercion and duress of the Controller of Insurance he had agreed to pay Rs. 3,25,000/- to the Company by way of free gift, but did not actually do so because he was not in a position to pay. The amount of Rs. 3,25,000/- was no doubt shown in the books of the Company as withdrawn. He said that he has not bound to make any gift to the

Company and, therefore, the Company had suffered no loss. There were book entries made but they were not evidenced by passing of money. In other words, there was no payment in or withdrawal from the Free Gift Account.

(3) In the replication the Company reiterated the stand that it had taken in the petition. The following issues were framed:

(1) Whether the application is maintainable u/s 185 of the Companies Act, 1913?

(2) Whether the respondent is in possession of the sums in question belonging to the Company?

(4) No arguments have been addressed on the first issue regarding the maintainability of the petition.

(5) On the merits the petitioner had relied upon a number of documents placed on the record and has also referred me to the oral evidence. The respondent appeared as his own witness.

(6) On 2nd of December 1950 resolution No. 2 was passed at the Board meeting. This resolution reproduced a letter from the Controller of Insurance dated 4th of November 1950 which was considered. The gist of this letter was that the assets of the Company as stated should be replaced by Government securities and other approved assets of the market value equivalent to the book value of the present assets as on 31st of December 1948. The present assets of the Company ought, therefore, to be replaced by Government securities. It was suggested that the Director's resolution should be revised in the light of the observations made in the letter. Consequently, it was resolved that the modifications suggested in the letter should be accepted in toto.

(7) Exhibit P.W. 1/J is resolution No. 2 dated 1st of March 1951 passed by the Board of Directors of the Company resolving that the assets which have been objected to by the Department of Insurance be replaced by the Company before the year 1952 by Government securities of the value equivalent to 1948 book value of the assets. Among the several items there was house property in Pakistan of the value of Rs. 3,48,074/-.

(8) Exhibit P.W. 1/L, is copy of the account styled "Free Gift From Managing Director" as mentioned in the Company's General Ledger for the year 1954. In this account the debit balance is shown as Rs. 3,25,000/- and on the credit side there is one item of Rs. 1,00,000/- on account of balance from old ledger and three items of Rs. 75,000/- each. There are a number of debit and credit vouchers supporting entries made in the account.

(9) Exhibit P.W. 1/M is copy of the account styled as "House Property in India" as maintained in the General Ledger of the Company for the year 1946. In the credit column there is shown a sum of Rs. 3,48,074/6/-.

(10) Exhibit P.W. 1/N is copy of the relevant entries in the Free Gift Account under the head "Life Investment Department" as maintained in the General

Ledger of the Company for the year 1953-54. Exhibit P.W. 3/3 is the balance-sheet of the Company for the year ending 31st of December 1953 showing a sum of Rs. 2,48,100/- as "free gift from the Managing Director."

(11) There is resolution No. 6 of 27th of June 1953 passed by the Board (Exhibit P.W. 1/A) resolving that in order to comply with a previous resolution of 27th of October 1950 it was necessary that the Board should arrange to contribute Rs. 1,48,000/- on account of amount less received on account of sale of Pakistan property, to funds of the Company. The resolution then proceeded-

"As Sardar Sardul Singh, Managing Director, has offered to pay the amount in the interest of the Company, the Board accepts the offer and directs that the amount so received be invested in Government securities and credited to funds of the Company."

(12) On 4th of November 1953 a resolution was passed at the Director's meeting that an account be opened with the Punjab National Bank, Ltd., Queensway, New Delhi.

(13) On 31st of December 1953 the Board passed a resolution (Exhibit P.W. 1/B) stating that with a view to avert the threat given by the Controller of Insurance Sardar Sardul Singh Caveeshar agreed to contribute the sum of Rs. 1,00,000/- as a free cash gift and "has deposited the same in the Bank in Company's account with the Punjab National Bank, Limited, Queensway, New Delhi." Another resolution was passed. It may be mentioned that, in fact, no account with the Punjab National Bank, New Delhi, had been opened.

(14) Exhibit P.W. 1/D is a copy of resolution No. 2, dated 28th of March 1954 regarding the willingness of Sardar Sardul Singh Caveeshar to pay a further sum of Rs. 75,000/- as free cash gift towards Life Fund of the Company which the Company was willing to accept with a sense of appreciation and gratitude.

(15) A similarly worded resolution was passed on 28th of August 1954 (Exhibit P.W. 1/E) in respect of a sum of Rs. 75,000/- and also another resolution dated 29th of September 1954 (Exhibit P.W. 1/F) regarding another amount of Rs. 75,000/-.

(16) The amount totalling Rs. 3,25,000/- which was said to have been received from Sardar Sardul Singh Caveeshar as a free gift was, by means of a subsequent resolution, refunded. It was stated in resolution No. 2 dated 24th of October 1954 (Exhibit P.W. 1/G) that Sardar Sardul Singh Caveeshar by his letter had explained, his personal circumstances to the Board and the legal opinion sought on the validity of Section 52-A of the Insurance Act. In view of this it was resolved that his demand might be accepted and in "the contributions so far received total amounting to Rs. 3,25,000/- be refunded without interest to which he has agreed."

(17) Four certificates because the signatures of Sardar Sardul Singh and of Batra and Company, Chartered Accountants, have been placed on the record as

Exhibits R. W. 1/4 and R. W.1/6 to R.W.1/4 relates to Rs. 1,00,000/- and the other three to Rs. 75,000/- each. It was certified that the sum mentioned in the certificate was paid by Sardar Sardul Singh Caveeshar, Managing Director of the People's Insurance Company Limited, as free gift for credit to the Life Fund of the People's Insurance Company in terms of his undertaking to the Controller of Insurance. It was also certified that the sum was deposited with the Punjab National Bank Limited, Queensway, New Delhi, in Company's account. At the bottom the Chartered Accountant certified that the particulars given in the above statement were correct.

(18) The truth of the matter which is not denied by either party is that these four certificates were absolutely false and no sum was actually paid by Sardar Sardul Singh Caveeshar and consequently nothing had been deposited with the Punjab National Bank. In fact, no account of the Company as alleged had been opened.

(19-27) In these proceedings the stand of the Official Liquidator is that the respondent should be pinned to the abovementioned documentary proof showing that the several amounts referred to above were first paid by him to the Company and then withdrawn by him. On the basis of these documents the argument is that as the books of the Company show that Sardar Singh Caveeshar had not only undertaken to pay but had actually paid the various sums, those sums should be treated to be the property of the Company and actually received by it. As according to the documentary record those amounts have been withdrawn, he should not be required to refund to the Company the sums which had become the Company's property. The case of the respondent is that all the entries referred to above were absolutely false, the object being to satisfy the objections of the Controller of Insurance. Both the credit and the debit entries were false and fictitious and no transactions as entered in the books, in fact, took place. The respondent has maintained that all this was done under coercion and duress from the Controller of Insurance and all the suggestions came from him. I cannot believe and there is not a tittle of evidence on the record to show that the Controller of Insurance was a party to the fraud as the fraud was committed in order to delude him and to tell him that the irregularities pointed out by him had been removed and the affairs of the Company had been regularised.

There does not appear to be any element of coercion or duress in the sense in which these expressions are understood in law. The Controller of Insurance could initiate proceedings u/s 52-A of the Insurance Act which contemplates an appointment by the Central Government of an Administrator to manage the affairs of the insurer where the Controller has reason to believe that an insurer is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies. If this Company was acting in a manner which would have called for the appointment of an Administrator to manage its affairs, by being required by the Controller of Insurance to regularise its affairs under pain of proceedings u/s 52-A. In these proceedings this Court is not required to

determine whether a fraud had been perpetrated by the respondent and other Directors by making fictitious entries and in what manner, and what action, therefore, should be taken against them for perpetration of fraud. It is not the purpose of these proceedings to consider what penalties can be visited upon the respondent and others for having made the fictitious entries. The purpose of these proceedings is the realisation of the monies, property or documents of the Company in the hands of the respondent to which the Company is prima facie entitled. If the entries mentioning making of large gifts to the Company are, in fact, fictitious, and nothing, in fact, had been paid, then the corresponding entries mentioning withdrawals of monies which, in fact, had not been paid, would not attract the provisions of section 185 as neither there was actual payment nor withdrawal. No property of the Company was given and none received. For purposes of these proceedings this Court has to examine whether any amounts which were the property of the Company had been wrongly taken possession of and removed by the respondent.

(After discussion of oral evidence His Lordship proceeded).

(28) Arguments have been addressed by the respondent's counsel as to the scope of Section 185 and also as to the applicability of the rule of estoppel. Section 185 corresponds to section 468 of the present Act and to Section 258 of the English Act of 1948. This provision confers summary power upon the Court to take steps to preserve, pendente lite, the property which prima facie appears to it to belong to the company and protect it from misappropriation or waste by person who stand now or who have stood in the past in a fiduciary capacity towards the company, (vide *Haribans Parsad v. National Sugar Mills, Delhi* ILR Lah 68 : (AIR 1933 Lah 437)) and in *re Eastern Tavoy Minerals Corporation Ltd.*, 41 Cal WN 975. Under this provision it is with the discretion, of the Court to require any person mentioned therein, e.g., trustee, or officer of the company to pay, deliver, surrender or transfer to the official liquidator any money, property or documents in his hands to which the company is prima facie entitled. This provision indicates, to my mind, tangible properties in the hands of the fiduciary but belonging to the company, and not enforceable claims in the nature of compensatory damages ostensibly on account of tortious or contractual obligations of such a person. In other words, resort cannot be had to this provision for enforcing payments on account of promises or executory undertakings or for breach of a contract. Claims of such a kind are not at part with "money, property or documents in his hands." The object of Section 185 is protection and preservation of money, property or documents and not the enforcement of any claims or obligations. If an officer of the company or a director were to cause loss to the company on account of his acts misfeasance, power is given to the Court to assess damages against delinquent directors u/s 235 of the Indian Companies Act, 1913, which corresponds to Section 543 of the present Act. Where there had been a breach of trust resulting in a pecuniary loss to the company, the Court has the discretion to proceed against the delinquent directors and others on the ground that the relationship between the directors

etc., and the company is that of trustee and cestui que trust. A trustee guilty of fraud or of misfeasance can be proceeded against under this provision. u/s 235 of the former Act and section 543 of the present Act, compensation is claimed for the wrongful acts against persons mentioned in this section as they occupied a fiduciary position vis-a-vis the company. Compensation is granted against a director or other officer of the company who has been guilty of misfeasance by way of damages for the loss caused to the company. The scope of proceeding u/s 185 is restricted. In this case, apart from the item of Rs. 42,075/-, there is no money, property or documents to which the company may be prima facie entitled, in the possession of the respondent. The petitioner's own case is that the transactions were fictitious and had no existence in the realm of reality, and payments and withdrawals were shown merely on paper.

In the petition itself, it is stated in so many words that the creation of the "free gift account" was nothing but a well calculated fraud played both upon the public and on the Government with a view to avoid threatened action of the Controller of Insurance u/s 52-A of the Insurance Act and to regain the lost confidence of the public and the shareholder. In this case, it has been admitted on behalf of the company that no account in fact was opened in the branch of the Punjab National Bank Ltd., at Queensway, New Delhi, and no such account even existed. This fact was known to all concerned. The sum of Rs. 3,25,000/- purporting to have been paid by the respondent never reached the company and never became the company's property. S. Sardul Singh stated that he had no money to pay. If no money was ever paid by the respondent to the company and none was withdrawn from the company by the respondent, the provisions of Section 185 cannot be invoked, for the simple reason, that there was nothing which existed which requires to be preserved or protected by recourse to section 185. Entries in the books of the company relating to the various amounts were false and had been fraudulently made in order to hoodwink the Controller of Insurance in connivance with all the directors and some of the officers of the company. Payments and withdrawals shown in the books were fictitious. In reality nothing was given and nothing withdrawn. This is a case of *ex nihilo nihil fit* from nothing, nothing ensues. There is no substance in the contention that the respondent having made a representation that he would make a free gift to the company, this Court should enforce that undertaking on the assumption that there was a contractual obligation-of which there does not appear to be any proof. Proceedings u/s 185 seem to be entirely misconceived and cannot be resorted to for such a purpose. For purposes of Section 185 it has to be shown that there is in existence a property or money or document actually in the hands of the respondent against whom an order is to be made.

(29) It has next been urged that as the respondent had perpetrated a colossal fraud upon the company, the rule of estoppel should apply and be should be pinned to the false averments made by him. I do not think that the principles of estoppel can be successfully invoked in a case like the present. The law of estoppel which is embedded in section 115 of the Indian Evidence Act was

epitomised by Lord Denman in *Pickard v. Sears* (1873) 6 A E. 469 at p. 474, in the following words-

"The law is clear, that where one by words or conduct willfully causes another to believe in a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existed at the same time."

Lord Blackburn In *Burkinshaw v. Nicollas* (1878) 3 AC 1004 (1026) said,--

"When one says to another, "I take upon myself to say such and such things exist and you may act upon the basis that they do exist" and the other man does really act upon that basis, it is of the very essence of justice that between these two parties their rights should be regulated, not by the real estate of facts, but by that conventional state of facts which the two parties agree to make the basis of their action, and that is what is meant by estoppel."

One essential feature of the doctrine of estoppel is that the person relying on the estoppel must have acted on the representation made to him to his detriment. He cannot be deemed to rely on the statement where he knew it to be false. He must have reasonably believed the statement to be true and, therefore, acted on it. The case of estoppel would fail also where the statement is not sufficiently clear and unqualified, (vide *Canadian and Dominion Sugar Co. Ltd. v. Candain National (West Indies) Steamships Ltd.* (1947) AC 46 (56)). The essence of estoppel is that a person who by his acts has induced a man to believe the existence of a particular fact and to think that the representation was intended to be acted on, will not be allowed to derogate from the resultant to be acted on, will not be allowed to derogate from the resultant facts of his representation where interests of rights have been created or acquired on the faith of such a statement and it cannot be shown that the truth lay otherwise. In all such cases, it has to be shown that a person ignorant of the real truths, and believing the representation made to him to be true, acted upon it and to his detriment. In other words, he was aggrieved by fraudulent or false statement. (see *Bell v. Marsh* 1903 1 Ch. 528). Both in the case of estoppel and of fraud, the common feature is the damage to the party defrauded, the common feature is the damage to the party deceived. There must co-exist a false representation and consequential damage. Proof of fraud without damages, or of damages without fraud, will not suffice. Unless a person is misled to his prejudice by a misrepresentation, falsity by itself, will not support an action. Law, therefore, entitled the party defrauded to recover damages to the extend of the loss actually sustained without including the anticipated profit. The doctrine of estoppel is not of unlimited application, and it is invokable within a narrow and restricted ambit. There can be no estoppel where the parties have equal means of knowledge. The doctrine of estoppel is not attracted where the party invoking it has not changed its position to its disadvantage. A change of one's position for the worse in consequence of reliance on another's act, is an important element in estoppel. If there is no change of position to one's hurt or harm, no estoppel

arises. Where the parties are equally cognizant of the fact, the declaration or representation of one cannot conduce to any change for the worse in consequence of such a representation and a party invoking the doctrine cannot be said to have been misled as a result of wrongful conduct of, or inducement on the part of, the other. Thus the indispensable elements of estoppel are ignorance of the parties who invoke the estoppel, a representation by the party sought to be estopped which misleads and an innocent and deleterious change of position is consequence of reliance upon the representation made. Such a representation is in the nature of trap known to one and unknown to the other. Another concomitant of estoppel is loss, injury, damage or prejudice to the party claiming it following an act on the inducement of it. Estoppel is a preclusion in law, the resultant prejudice being the basis. Fraud and estoppel have a number of features in common though the doctrine of estoppel is more broad-based.

(30) The essential elements of actionable fraud are; (1) that the person alleged to have committed fraud has made a material representation to his victim; (2) that the representation made is false to the knowledge of the maker or was made recklessly without knowledge of its truth and as a positive assertion; (3) the representation had been made with the intention that it be acted upon by the party to be defrauded; (4) that that party acted in reliance upon such a representation, and that (5) he there, by suffered injury. The absence of any one of these elements is fatal to an action based on fraud. In this case, the representation had been made to the Inspector of Insurance and the company which now stands as the aggrieved party could not be said to be unaware of the falsity of the assertion made by the Directors. Moreover, the representation was not intended to be acted upon and this fact was known to the company which, despite entries in its account books, never received the moneys. The company could not be said to have suffered an injury by cancellation of the credit entries as no amount in fact was intended to be credited to the company and none in fact was credited.

(31) Similarly, to constitute an estoppel, the following elements must be present; (1) either a representation of concealment of material facts, (2) such a representation must have been made with the knowledge of real facts, (3) the party to whom it was made must have been ignorant of the matter, (4) the intention of the person making the representation was that the other party should act upon it, (5) the other party was thereby induced to act upon it, and (6) did so to its detriment.

(32) The essential links in this case are missing, as the company was neither in the dark as to the real facts nor was induced to act upon the representation to its detriment. The common feature of both estoppel and fraud is that law will not come to the rescue of a person who had not suffered deception, as, where he has not been led to believe in the truth of the representation. Where a person knows that the representation is false, he cannot be truthfully said to have been deceived thereby. Courts will not grant any redress where the person to whom

representation had been made, is cognizant of its falsity. Similarly, omission to disclose facts which are known to exist, cannot furnish a ground for an action on the basis of fraud. No redress is available to a person who, with full knowledge of the falsity of the representation, acts to his detriment as the injury in such a case will be of one's own inviting. In this case, the important qualification which has got a bearing is that however false and dishonest an artifice or contrivance may be to which resort to had, no fraud will be constituted if the other person knows the reality and sees through the device. This principle is illustrated by the maxim *haud enim decipitur qui scit se decipi* for none can be said to be deceived who knows that he is being deceived. The important aspect of this case is that the person sought to be defrauded was not the company but the Inspector of Insurance. With a view to satisfy the Insurance administration, false entries had been made in the books of the company as to the receipt of certain money by way of free gifts and false credits were shown which had no factual existence. The company had not really received the seeming benefit which the Directors had represented to the Inspector of Insurance as having been given to it. Once the Inspector of Insurance had been hoodwinked by the Directors as a result of false entries on the company's credit side, later on by making debit entries in order to cancel the credit entries the company cannot be said to have been deprived of the benefit which it had never really received in the first instance.

(33) After giving the matter my anxious thoughts, I am not satisfied that the official liquidator can successfully invoke the provisions of Section 185 of the Indian Companies Act. It cannot be said that on account of fraud perpetrated by the respondent, the latter has in his hands moneys, property, or documents to which the company is *prima facie* entitled, with the exception of a sum of Rs. 42,075/- which was actually credited to the account of S. Sardul Singh Caveeshar. He had operated upon this account and he is liable to refund a sum of Rs. 33,848-4-6, that is, Rs. 42,075/- less Rs. 8,226-11-6. I would, therefore, allow the petition to this extent that I would hold the respondent, S. Sardul Singh Caveeshar, liable to refund a sum of Rs. 33,848-4-6 as against the item of Rs. 42,075/-. The company is *prima facie* entitled to this amount which the respondent is ordered to pay to the official liquidator.

(34) Petition partly allowed.