
(1958) 08 MAD CK 0039

In the Madras High Court

Case No : Second Appeal No. 56 of 1956

Perumalsamy Naicker

APPELLANT

Vs

Srinivasier

RESPONDENT

Date of Decision : 26-08-1958

Acts Referred:

Citation : (1958) 08 MAD CK 0039

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : T.R. Srinivasa Ayyar, for the Appellant; M. Natesan, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is an appeal against the decree and judgment of the learned District Judge, Madurai, in A.S. No. 40 of 1955 confirming the decree and judgment of the learned District Munsif, Madurai Town in O. S. No. 34 of 1954. There was a limited liability company registered under the Companies Act under the name and style of Vyavasaya Urpathiyalar Varthaga Union Ltd., which went, into liquidation. The Official Liquidator reported to the Court that there was nothing to manage and asked for direction to sell the book debts. This permission was accorded. The plaintiff became the highest bidder for Rs. 15/-. The defendant was also the unsuccessful bidder at that auction. The defendant was one of the promoters of the society. He had purchased 101 shares but in this case what happened was that he had not remitted even a sum of Rs. 5/- which according to the Articles of Association was to be paid towards every share at the time of the application, the balance being payable after allotment. In fact there is a mere statement of memorandum that 101 shares had been allotted to the defendant. Subsequently it would appear that the affairs of the company reached a crisis and there was a meeting of the promoters at which the defendant undertook upon himself the liability of paying off this sum of Rs. 1000/- to one Dharmaraja Iyer who was a creditor of the society. It is in these circumstances

that the plaintiff has filed the suit for recovery of a sum of Rs. 1192-12-7 in regard to the unpaid share money by this contributory defendant on the 101 shares which he had applied for.

2. Both the Courts below came to the conclusion that first of all a suit of this nature for all money does not lie since it cannot be construed to be a book debt and secondly, if we construe this as a book debt the debit of this 101 shares has been made on 14th August 1950 and the suit has been filed on 28th November 1953, namely, beyond three years and so barred by limitation and thirdly that as a matter of fact this defendant has paid Rs. 1000/- to Dharmaraja Iyer in order to honour the liability which he undertook upon himself by a resolution of the society namely, that he was to wipe off the amount due from him by paying off Dharmaraja Iyer though as a matter of fact by reason of a valid notice not having been sent to him in accordance with the Articles of Association and provisions of the Companies Act and liability to pay arose: *Pabna Dhanabhandar Co. Ltd. Vs. Foyezuddin Mia and Others*, . In this view both the Courts dismissed the suit and the appeal respectively.

3. In this second appeal I am of the same opinion as both the Courts below. Firstly I am bound by the findings of fact of both the Courts below. Secondly turning to the question whether this amount for which the suit has been laid is call money or not there cannot be any slightest doubt that it is call money from a contributory who had applied for 100 shares. On that conclusion it follows that no suit will lie because it is now concluded by authority that call money does not constitute a book debt. A Bench of this Court in *The Pabna Dhanabhandar Co. Ltd. Vs. Foyezuddin Mia and Others*, , held that the right which the Liquidator in the winding up of a company has against a contributory is a statutory right created by the Companies Act and not a contractual one between the company and the shareholder. Where, therefore, a company goes into liquidation pending an appeal by it from a decree dismissing its suit for unpaid share money due by a shareholder who had defaulted to pay it after calls the cause of action on which the suit was based does not survive to the Liquidator so as to entitle the latter to come on record and prosecute the appeal filed by the erstwhile company. The liquidator cannot claim to come on record and continue the appeal as a legal representative of the appellant company and the appeal necessarily abates. The learned Judges relied on *In re, White House and Company* (1956) M.L.J. 486=69 L.W. 294, *Hansraj Gupta v. Official Liquidator Dhare Dun-Mussoorie etc. Company* L.R. (1878) 9 Ch. 595, *J.T. Syndicate Ltd. (in liquidation) v. Manak Chand Roshan Lal* (1932) 64 M.L.J. 403= L.R. 60 IndAp 13=37 L.W. 445.

4. In *re Narayanan Chettiar* 1935 ILR 16 Lah. 1055, Balakrishna Iyer, J. took a similar view and held that the reserve liability of a shareholder is a statutory liability and how it loses that character merely because an unsuccessful attempt has been made to enforce it is not quite easy to see. By describing it as a debt, the fact that it is payable in pursuance of a call cannot be eliminated. Therefore both the Courts below rightly held that the present suit will not be maintainable

since the unpaid call money is not a book debt.

5. Then turning to the second aspect of the case, namely, that it is a book debt the lower Courts have rightly pointed out that the debit entry giving rise to a cause of action is of the date 14th August 1950, while the suit was laid on 28th November 1953 for realisation of a contractual debt and therefore it was clearly barred by limitation.

6. The final point is the set off pleaded. It is no doubt true that in view of the decision on points 1 and 2 the plea of set off is not of any importance but at the same time it is a comforting thought to us that the defendant has not swindled the institution. On the other hand, he has met his obligation as one of the promoters of the company. The net result of this analysis is that the decision of the Court below is irreproachable. The second appeal has got to be dismissed and is hereby dismissed with costs.