(1910) 12 AHC CK 0018

In the Allahabad High Court

Ram Kishen APPELLANT

Vs

Pandit Baij Nath and Another RESPONDENT

Date of Decision : 07-12-1910

Acts Referred:
Companies Act, 1956 — Section 4

Citation : 9 Ind. Cas. 25(1)

Hon'ble Judges : Griffin, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Griffin, J.—This is an application for revision of the order of the learned Judge of the Court of Small Causes of Allahabad, dismissing the plaintiff''s suit for recovery of the sum of Rs. 87-8-0. The plaintiff alleged that he and some two hundred others combined together and contributed money in shares of Rs. 20 each for the purchase and sale of Railway sleepers and wire, the agreement being that the share-holders were to share in the profits or loss of the business. The management of the business was in the hands of the defendants. They announced to the share-holders that the business had resulted in a loss. They paid off certain share-holders the sum of Rs. 13-12-0 per share deducting Rs. 6-4-0 per share for loss. The plaintiff, however, was not paid anything and he sued to recover the sum of Rs. 87-8-0 which includes the sum of Rs. 5 as interests The lower Court has held that the association of which the plaintiff was a member was one the registration of which was obligatory under the provisions of Section 4 of the Indian Companies Act and that as the company was not registered, the plaintiff could not succeed. On behalf of the applicant, I have been referred to a Full Bench ruling of the Madras High Court reported in Neelamega Sastri v. Apprab Sastri 29 M. 477 : 1 M.L.T. 237 : 16 M.L.J. 385 where it was held--"To constitute an association within the meaning of Section 4 of the Indian Companies Act, the existence of the legal relation between more than twenty persons giving rise to joint rights or obligations or mutual rights and duties is absolutely necessary." To apply this test to the present case, it is desirable to ascertain as far as possible the exact terms of the association of which plaintiff was a member. The plaintiff was examined in the Court below and he then stated: There were 250 or 200 or more share-holders. Each share-holder paid Rs. 20. It was entered into with the object of purchasing Railway sleepers and wires and two persons out of the share-holders were appointed managing members to purchase and sell and to divide the loss or profits among the share-holders." I presume that the two persons mentioned in the deposition were the two defendants in this case. It appears to the on the plaintiff''s own showing that he was a member of an association of more than twenty persons which was formed for the purpose of carrying on a business and had for its object the acquisition of gain for the association. Applying the test laid down in the decision of the Madras High Court quoted above, it would appear that the agreement between the members of that association gave rise to the right of each share-holder to share in the profits and to the obligation of bearing loss according to the result of the business. I think the decision of the Court below is right. I dismiss the application with costs.

