(1918) 07 MAD CK 0036

In the Madras High Court

Ripon Press and Sugar Mill Company, Limited — APPELLANT

Vs

Nama Venkatarama Chetty — RESPONDENT

Date of Decision : 29-07-1918

Acts Referred:

Citation : 48 Ind. Cas. 903

Hon'ble Judges : John Wallis, C.J;Seshagiri Aiyar, J

Bench : Division Bench

Judgement

1. This appeal raised an interesting question on the law of limitation as to which; so far as we are aware, there is as yet no authority in India, namely, as to the period of limitation for a suit by a share-holder against a registered company to recover dividends. In England, it is well settled that a dividend is a speciality debt for which a period of 20 years is allowed by 3 & 4 William 4, Ch. 42, Section 3. This was first pointed out by Lord Justice Christian in Smith v. Cork & Bandon Railway Co. (1870) Ir. Rep. 5 Eq. 65, which has been followed in later oases and in England in In Re: Artisans Land & Mortgage Corporation (1904) 1 Ch.D. 796.

2. In India, we have to look to the provisions of our Limitation Act. The right to receive a dividend which has been duly declared is one of the rights of every share-holder by virtue of the contract which he is deemed to have entered into with all the members of the Company u/s 39 of the Indian Companies Act, 1882. The terms of that contract are to he found in the memorandum of association and in the special articles of association, if any, and if there are no special articles of association and in so far as they are not inconsistent with them, then in table A which is appended to the Act. Prima facie, the provisions of Articles 72 to 76 in table A, which deal with the declaration and payment of dividends, are applicable and form the contract under which the dividends are payable. Now, the memorandum of association is required'' by law to be registered, and the articles in table A, in so far as they are applicable are by Section 38 of the Companies Act to be deemed to be the regulations of the Company, in the same manner and to the same extent as if they had been inserted in the articles of

association, so that by virtue of Section 38 the debt here mast be deemed to have arisen from a memorandum and articles of association duly registered under the Companies Act. "

3. Now, Article 115 of the Limitation Act is for compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.'' There is no special article for the recovery of dividends, and, therefore, Article 115 will apply, unless Article 116 is applicable. Article 116 is ''for compensation for the breach of a contract in writing registered,'' and it is now settled that that means for breach of any contract in writing registered. ''Registered'' in the Limitation Act must be read as defined in the General Clauses Act of 1897. Section 3, clause 45, of that Act says registered'' used with reference to a document, shall mean "registered in British India under the law for the time being in force for the registration of documents " It has been contended for the appellant that the law for the time being in force for the registration of documents must mean the Indian Registration Act for the time being. That, however, appears to us to be unduly restricting the meaning of that clause. The Companies Act provides for the registration of the memorandum and the articles of association, which are documents, and there may be other Statutes such as the Copyright Acts, which provides for the registration of other documents. There is, we think, no reason why the term registered'' within the meaning of the General Clauses Act should not include documents registered under any special law of that kind as well as registration under the Indian Registration Act. We are, therefore, of opinion that the present suit is for compensation for the breach of a contract in writing registered and that the period of limitation, therefore, under Article 116 is six years and the suit is not barred. The other contentions of the appellant also fail.

4. In the result, the appeal fails and is dismissed with costs.

