(1918) 07 MAD CK 0008

In the Madras High Court

Ripon Press and Sugar Mill Company, Ltd. APPELLANT

Vs

Nama Venkatarama Chetty RESPONDENT

Date of Decision : 29-07-1918

Acts Referred:

Companies Act, 1882 — Section 39

Citation : (1919) ILR (Mad) 33 : (1918) 8 LW 354 : (1918) 35 MLJ 256

Judgement

1. This appeal raised an interesting question of 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 shareholder against a registered company to recover dividends. In England it is well settled that a

dividend is a specialty debt for which a period of 20 years is allowed by 3 and 4 William 4, C 42, Section 3. This was first pointed out by Lord

Justice Christian in Smith v. The Cork and Bandon Ry. Co. (1870) Ir. Rep. 5 Eq 65 which has been followed in later cases and in England in In re

Artisan''s Land and Mortgage Corporation (1904) 1 Ch. 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 be 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 the 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 must 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 or the appellant that the aw 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 provide 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.

