
(1958) 12 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 86 of 1954

S. Bhagat Singh and Another

APPELLANT

Vs

The Piar Bus Service Ltd., Amritsar and Others

RESPONDENT

Date of Decision : 12-12-1958

Acts Referred:

Companies (Amendment) Act, 1956 — Section 155
Companies Act, 1913 — Section 38

Citation : AIR 1959 P&H 352 : (1960) 30 CompCas 300

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : H.S. Doabia, for the Appellant; H.R. Sodhi, for the Respondent

Final Decision : Dismissed

Judgement

Tek Chand, J.—This is a petition u/s 38 of the Indian Companies Act, 1913, which is analogous to Section 155 of the Companies Act of 1956. There are two petitioners. The first petitioner Bhagat Singh claimed to have 41 shares of Rs. 100/- each in the "Piar Bus Service Limited, Amritsar. This amount, he claimed to have paid by giving to the Company two motor lorries of the value of Rs. 4,100/- and he claims himself to be a holder of fully paid up shares.

2. The second petitioner is Hardev Singh who had acquired 100 shares of the Company of the value of Rs. 100/- each and had paid the entire amount of Rs. 10,000/- on these shares. The grievance of the two petitioners is that their respective shares were illegally forfeited by the Company and they were transferred to respondents Nos. 2 to 4 and their names have been scored out from the register of members of the Company. They have prayed that this Court should pass an order directing the respondent-Company to enter the names of the petitioners in the register of members and to remove the names of respondents Nos. 2 to 4.

3. On behalf of the Company it is denied that the first petitioner Bhagat Singh

was a holder of 41 shares. According to the Company he owned only 24 shares of Rs. 100/- each and these shares were fully paid up. As regards petitioner No. 2 the extent of his holding has been admitted and it is stated that he joined the service of the Company as a cashier and was entrusted from time to time with large sums of money. On checking his account it was found that on 19-4-1941 according to the books of the Company there was a sum of Rs. 23,994/10/9 as cash in hand.

The next day the cash in hand was found to be Rs. 4/4/9. Hardev Singh stopped working after 19-4-1941, and the above mentioned amount was due from him to the Company as also shown in the balance sheet. The Company had a lien on the shares of Hardev Singh for the amount due from him. As he did not pay this amount his shares were forfeited by a resolution of the Directors passed at a Board meeting held on 22-9-1953 (vide Exhibit R. 4) and this resolution was later confirmed on 20-10-1953, at a general meeting of the share-holders of the Company. He was present at the meeting of the share-holders.

4. The allegation against Bhagat Singh is that he owed to the Company a sum of Rs. 3,615/4/3 and his shares were forfeited by a resolution of the Board of Directors. It is claimed on behalf of the Company that the forfeiture was lawful and within the power of the Company as conferred by Article 15 of the Articles of Association as amended; and it runs as under :

"15. If a member fails to pay any call or instalment of a call on the day appointed by the Board for payment thereof, the Directors shall send a notice fixing a day for payment and if the requirements of any such notice are not complied with, any share in respect of which the notice has been given, may any time thereafter before the payment required by the notice, be forfeited by a resolution of the Directors to that effect.

(a) The Company shall have a lien on every share (on fully paid shares as well) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share and the Company shall also have lien on all shares (on fully paid shares as well) standing registered in the name of single person for all moneys presently payable by him or his estate to the Company but the Directors may at any time declare any share to be wholly or in part exempt from the provisions of the clause. The Company's lien, if any, on a share shall extend to all dividends payable thereon.

(b) The Company may sell in such manner as the Directors think fit any shares on which the Company has a lien but no sale shall be made unless some sum in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable has been given to the registered holder, for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

(c) The proceeds of the sale shall be applied In payment or such part of the

amount in respect of which the lien exists as is presently payable and the residue shall (subject to a like lien for sale) be paid to the persons entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares and he shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceeding in reference to the sale."

5. Prior to the amendment of the Articles of Association only the first para, stood, and parts (a), (b) and (c) were added subsequent to the amendment. My predecessor framed the following issues:

1. Whether the Company was entitled to confiscate the shares of Bhagat Singh petitioner.

2. Whether the Company was entitled to confiscate the shares of Hardev Singh petitioner.

6. On behalf of the Company R.W. 1 Ishar Singh Majhel. Chairman of the Company, has stated that according to the books of the Company Rs. 23, 994/10/9 was due from Hardev Singh and Rs. 3,615/4/3 from Bhagat Singh. Both the petitioners were served with notices calling upon them to pay the amounts due from them by 20-9-1953, failing which their shares would be forfeited. A registered notice with acknowledgment due was sent to Hardev Singh and also to Bhagat Singh, The letter sent to Hardev Singh was received back with the remark "refused." Bhagat Singh had received the letter.

In accordance with the resolution passed at the meeting of the Board of Directors on 29-8-1953, 241 shares of Bhagat Singh for Rs. 2,400/- were forfeited at the next meeting of the Board held on 22-9-1953. Regarding the claim of the Company as to the balance of Rs. 1,215/4/3 left as due from Bhagat Singh, the matter was kept under consideration. The case of Hardev Singh also was considered at the meeting of the Board held on 20-10-1953. After forfeiture of shares and after making certain adjustments a sum of Rs. 5, 942/2/3 was still due to the Company.

A general meeting of the share-holders confirmed the Board resolution on 20-10-1953. It was stated that Hardev Singh who was present at the meeting did not object to the forfeiture of the shares. A resolution for amending the Memorandum and Articles of Association of the Company was passed on 5-10-1952, and the amendment dates from 16-11-1952. R.W. 2 Som Nath, Accountant of the Company, supports R.W. 1 and has been examined to prove the liability of the petitioners with respect to the respective sums claimed from them as due to the Company.

7. On behalf of the petitioners, P.W.1 Dar-shan Singh stated that Hardev Singh had never made any entries in the account books and no inquiry was made when the shares of the petitioners were forfeited. Bhagat Singh petitioner has appeared as P.W. 2 and stated that he owned 41 shares. 24 shares were allotted

at one time and 17 shares were also allotted to him in lieu of transfer of a bus. He did not deny that a sum of Rs. 3,615/4/3 was shown as due from him according to the books of the Company but stated that the entries did not bear his signatures. Hardev Singh petitioner as P.W. 3 denied ever having made any entries in the books of the Company or ever having handled cash. According to him entries were made by R.W. 2 Som Nath who alone used to handle cash and no money was entrusted to the petitioner. He did not deny that in the balance sheet, Exhibit R. 9, there was an entry that he was indebted to the Company as cashier to the extent of Rs. 23,000/-.

8. Mr. Hans Raj Sodhi, learned counsel for the Company, has argued that Section 38 of the Indian Companies Act of 1913 is intended for dealing in a summary manner with non-controversial matters. In this case there is a controversy, and the several allegations made by the petitioners are being questioned and in order to arrive at a correct conclusion, a regular and detailed investigation is desirable. In such a case the petitioner should be directed to proceed by a regular suit. I think there is force in this contention.

The dispute between the parties raises a mini-her of controversial questions of fact and calls for a thorough investigation into the accounts maintained during the time when Hardev Singh, was the cashier. It has also to be inquired into whether he had been handling cash and what was his responsibility to the Company, personal or vicarious, and whether the same had been discharged. There were serious allegations made on behalf of the Company regarding misappropriation of large funds. In order to determine which party's contention is well founded and to what extent, the dispute, requires a sifting and thorough scrutiny.

As between Bhagat Singh, the other petitioner, and the Company there is also a sharp conflict between the two versions. The Company has denied the assertion of Bhagat Singh that he was owner of 41 fully paid up shares. The extent of his debt to the Company has also to be determined. The record before me suffers from insufficiency of material and I do not consider it safe to adjudicate upon the conflicting contentions of the parties in proceedings u/s 38 of the Indian Companies Act, 1913, which are essentially of a summary character.

9. The object of enacting Section 38 of the Indian Companies Act of 1913, which is analogous to Section 155 of the Companies Act of 1956, was to provide a summary remedy in non-controversial matters or in matters where a quick decision was necessary in order to obviate an irreparable injury to a party. This provision was not intended for settling controversies under several heads necessitating a regular investigation. When serious disputes are involved as in this case the proper forum for their adjudication is a civil Court.

It no longer admits of controversy that the jurisdiction of a Court in matters of rectification of register u/s 38 of the Indian Companies Act 1913, now u/s 155 of the new Act, is unrestricted though the petitioner is not entitled to relief ex

debito justitiae. This remedy is not available to the litigant as of right without the Court having discretion to refuse it.

10. In *Re Ruby Consolidated Mining Co., Re Askew's Case* (1874) 9 Ch. 664, Mellish, LJ said-

"I think it clear, that u/s 35 of the Act of 1862 (Companies Act, 1862, 25 and 25 Victoria C. 89) the Court has a discretion, if the case cannot properly be tried on a motion like this, to refuse to determine it until an action or suit has been brought."

11. In *re Greater Britain Products Development Corporation*, ILR (1924) 488 Swift J. observed :

"Where it was clear that there was something to be answered and something to be investigated, the ordinary course, as far back as the Court had been able to trace, had been for the Judge to dismiss the summons or motion, but to leave it open to the party to bring his action,"

12. Courts in England have been of the view that if the case be one of difficulty and complication the Court should refuse the motion without prejudice to an action being brought, vide *Re Heaton Steel and Iron Co., Simpson's Case* (1869) 9 Eq 91; *Re National and Provincial Marine Insurance Co., Ex parte Parker* (1867) 2 Ch. A. 685; *Beller by v. Rowland and Marwood's Steamship Co. Ltd.*, (1901) 2 Ch. 265; and *In re Sussex Brick Co.* (1904) 1 Ch. 598.

13. As stated in *Halshury's Laws of England*, Third Edition, Volume 6, at p. 218 :

"It (the application) may be by motion or summons or by action commenced by writ., If the court thinks that the case, by reason of its complexity or on the ground that there are matters requiring investigation or otherwise, could more satisfactorily be dealt with by an action, the court will decline to make an order on a motion, without prejudice to the right of the applicant to institute an action for rectification. An action may, without any direction by the court, be instituted for rectification of the register, a course which should be followed where there is much complexity, or where other relief is required."

14. The principles of law as enunciated in the English cases referred to above have been followed by Courts in India, vide *Ramesh Chandra Mitter v. Jogini Mohan Chatterji* AIR 1920 Cal. 789 ; In the Matter of *Delakhat Tea Co. Ltd.*, AIR 1957 Cal 476; *T.A.K. Mohideen Pichai Taraganar Vs. Tinnevelly Mills Co. Ltd. and Others*, and *Devakumar Mishra Vs. Rupak Ltd.*,

14A. Some evidence has been led in this case and the Company has also produced some documents in support of its plea. I must not prejudice either party by expressing any views on the merits of the dispute. The petitioners in this case should, if so advised, get their cause adjudicated in a civil Court by instituting a regular, suit. This is not a fit case in which the discretionary powers of this Court for rectification of the register can suitably be invoked. The petition

is dismissed but there will be no order, as to costs.