(1956) 03 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 28 of 19155

S. Bikramjit Singh — APPELLANT

Vs

Patiala Banaspati and Allied Products Co. Ltd. and Others — RESPONDENT

Date of Decision : 15-03-1956

Acts Referred:
Companies Act, 1956 — Section 162, 184, 38

Citation : AIR 1956 P&H 98

Hon'ble Judges : Chopra, J

Bench : Single Bench

Advocate : Dalip Chand, for the Appellant; Atma Ram, for the Respondent

Judgement

Chopra, J.—This is an application under Sections 38 and 184, Companies Act, for rectification of the register of members of the Patiala Banaspati & Allied Products Co. Ltd. (in liquidation) by deleting Bikramjit Singh''s name as the holder of 1200 fully paid-up shares of Rs. 25/- each.

The applicant alleges that long before the company was floated and registered he advanced Rs. 30,000/- as promotion-money to S. Santokh Singh (Respondent 3) on the understanding that the applicant would be entitled to buy as many shares as he liked and in the name of person or persons he preferred; that on 12-2-1949, the company without authority and without getting any share application from him allotted in his name 1200 fully paid-up shares worth Rs. 30,000/- and that he repudiated the allotment as soon as he came to know about it.

2. S. Santokh Singh, in his affidavit, admitted the allegations and further stated that even at the time of allotment he took objection to the legality of the allotment and got his vote of dissent noted in the minutes. The application was, however opposed by the company through his voluntary liquidators, and they stuck to the majority decision with respect to the allotment. Thereafter, the company having been compulsorily wound up the official liquidator was made a

party to the application. The official liquidator, without filing any further reply or affidavit, takes up the very same position and chooses to contest the application.

3. It is an admitted fact that the applicant advanced Rs. 30,000/- to S. Santokh Singh on 27-5-1947. S. Sewa Singh and S. Santokh Singh (Respondents 2 and 3) were then contemplating to float a limited concern in the name of the Patiala Banaspati and Allied Products Co. Ltd. With that end in view, they made their relations and friends contribute to the required funds. Besides the applicant, one S. Dalip Singh also contributed Rs. 19,000/- on the same understanding to S. Santokh Singh''s promotion account.

The Articles of Association of the company were prepared and printed on 22-5-1947 and the company was incorporated sometime thereafter. However, prospectus of the company was not issued until 20-4-1948. It was then that applications for shares were invited. Without any further reference to the applicant, 1200 fully paid up shares worth Rs. 30,000/- were allotted to him by the Board in its meeting of 12-2-1949. S. Santokh Singh did not agree to the allotment and his dissent was noted in the minutes.

4. Intimation of this allotment was sent to Bikramjit Singh on 15th February, but it came back as undelivered on account of incomplete ad dress. Bikramjit Singh came to know of the al lotment from the notice of a general meeting is sued to the shareholders. This notice is dated 23rd February. On receipt of the notice, the ap plicant, in his letter dated 11-3-1949, repudiated the allotment saying that it was made without any application from him and without his consent.

The company did not accept the contention and wrote back to say that the amount of Rs. 30.000/- was advanced by Bikramjit Singh for the purchase of shares and consequently the allotment was valid and binding on him. The letter is dated 31-3-1949. Communication of allotment, dated 15-2-1949, was again sent along with this letter, and it was required to be returned with the applicant''s signature on its reverse in token of his acceptance After some further correspondence in which the parties stuck to their respective contentions, the board in its meeting of 7-5-1949, decided to purchase the shares allotted to S. Santokh Singh and his friends and relations including the applicant. This, however, did never materialise.

5. In 1951, S. Sewa Singh presented an app lication u/s 162, Companies Act, for winding up the Company. The application was dismissed on technical grounds on 13-10-1952. Thereafter, the company decided to go into voluntary liquidation and Respondents 2 and 4 were appointed its voluntary liquidators. On the applications of S. Santokh Singh and several other shareholders the company has now been compulsorily wound up and the Bank of Patiala is appointed its Official Liquidator.

6. A similar application of S. Dilip Singh, Singh upon almost identical facts, was accepted by me on 5-2-1954. In view of the fact that Dilip Singh had not submitted any share-application on otherwise consented to the allotment, the

allotment was held to be invalid and it was directed that his name be deleted from the register of members. The company''s appeal against this order was dismissed by a Division Bench of this Court.

7. It is admitted that no formal share-application was ever presented by Bikramjit Singh and also that ho consent of his was obtained when the allotment was made. The Respondents'' case is that the money was advanced with the sole object of purchasing shares and on the understanding that the money would not be paid back in cash only shares were to be allotted in exchange thereof.

Reliance in this connection is mainly placed on the receipt issued to the applicant in respect of the money. The receipt is dated 27-5-1947, and it states that the amount of Rs. 30,000/- was received as price of 300 shares of Rs. 100/- each to be issued in the name of S. Bikramjit Singh, and that the share certificates would be issued when the company was registered and the Scripts printed.

Mr. Atma Ram learned Counsel for the Respondents contends that the law nowhere requires that an application for shares must always be in writing, and that in this case Bikramjit Singh must be deemed to have made an oral application for allottment of shares. There was an offer from his side and it could be accepted by the company at any time before it was withdrawn. Since the offer was never withdrawn the contract became complete on its acceptance by the company. Counsel, therefore, concludes that the subsequent repudiation was of no avail and Bikramjit Singh was bound by the allotment.

8. It is correct that the law nowhere pro vides that there must be a written application for allotment of shares; an oral application can no doubt be made for the purpose. There are also strong reasons to believe that Bikramjit Singh did once intend to purchase shares in the com pany and that he advanced the money with that intention. But that by itself would hardly amount to an application for allotment of shares. Even if it does, the application should have been ac cepted within a reasonable time to give rise to a valid and binding allotment.

It shall be remembered that the application, if any, was made on or before 27-5-1947, and the shares were allotted on 12-2-1949. It is now well'' recognised that an allotment must be made within a reasonable time of the application and also that the applicant is not bound to accept the allotment if it is not so made. There is always an Implied term in an application for shares that the offer must be accepted within a reasonable time, and if it is not, the applicant is entitled to repudiate the allotment.

9. In ''Ramsgate Victoria Hotel Co. Ltd. v. Montefiore'' (1866) 35 L.J. Ex. 90 (A), it was held that where shares in a joint stock company are applied for, they must be allotted by the directors, within a reasonable time, otherwise the applicant may refuse to receive them, and may recover back the deposit paid on application. Shares were applied for on 8th June and allotment made on 23-11-1864. Even the period of 5-1/2 months that elapsed between application

and allotment was not regarded as reasonable and the Court gave judgment against the company on the ground that the applicant had the right to repudiate.

10. In The Indian Co-operative Navigation and Trading Co. Limited Vs. Padamsey Premji, the application was dated 23-8-1919 but the allotment was made on 3-8-1920, The allotment was held to be too late and the person not be bound by the allotment.

11. In Karachi Oil Products Ltd. Vs. Kumar Shree Narendrasinghji, it was held that a period of eighteen months having elapsed between the application and the allotment it could not possibly be argued that the time was not unreasonable.

12. Here, in the case before me, the allotment was made more than twenty months after Bik Ramjit Singh expressed his desire to purchase the shares and his alleged oral application for the purpose. It is not even alleged that there was any communication between him and the company as to the delay in the allotment during all this period.

The company was in the initial stage of its formation when the application is said to have been made. Even the prospectus had not been issued or applications for shares invited. No reference to the applicant was made when the time for actual allotment did arrive. He was nut asked if he was still willing to accept the shares for the amount advanced by him. I am, therefore, definitely of opinion that Bikramjit Singh was within his rights to repudiate the shares.

13. There is yet another ground which clearly conferred that right; on him. The Respondents'' own case is that Bikramjit Singh expressed his willingness to accept; 300 shares of Rs. joo/- each. That is made clear by the receipt issued to the applicant, which states that while the money advanced by Bikramjit Singh was in respect of 300 shares of Rs. 100/- each. In its place, the company decided to allot 1,200 ordinary shares of Rs. 25/- each.

The change in value of ordinary shares was for the first time incorporated in the prospectus issued on 20-4-1948. Bikramjit Singh was never consulted about this change, nor was he ever asked if he was willing to accept shares different from those applied for by him. The allotment could not have been different from what was applied for. Unilaterally, the company was not entitled to introduce anything which was not in strict conformity with the application. The new term introduced in the allotment cannot be regarded as an acceptance; it was only a new offer which should have been accepted by the other party to form a contract.

14. Repudiation in such cases in order to be effective must have been made without any delay. The person should not have gained time to find out if the company makes profits or runs at a loss and then to decide to accept or refuse the shares. This is necessary to safeguard the interests of third persons who may have in the meantime intervened. In Shiromani Sugar Mills Ltd. Vs. Debi Prasad, Desai J. at page 513 observes:

The reason why a shareholder must be prompt in rescinding the contract is that the register of shareholder is to be the creditors'' guarantee, showing them to whom and to what they have to trust. A shareholder knowing that he was induced by fraud to enter into the contract of purchase of shares, cannot lie by, let his name remain in the register and let third parties enter into contracts with the company on the faith of the register.

15. In the present case, Bikramjit Singh did not lose any time whatsoever to exercise his right of repudiation. Sardar Santokh Singh to whom the money was advanced and who was therefore aware of actual facts, took exception on his behalf even when the allotment was made.

Bikramjit Singh himself repudiated the shares even before he was formally informed about the allotment. He did so in his letter dated 11-3-1940, on receiving .a notice for the general meeting. Communication of the allotment having been made had not reached him by then. The communication had reached back the company as undelivered and it was re-sent to Bikramjit Singh on 31-3-1949, along with the company''s reply to his letter of 11th March. The repudiation must, therefore, be held to have been immediately made.

16. Some stress is laid on the inordinate delay in presenting this application. It is correct that the application is very much delayed. The applicant has tried to explain it by saying that the company in fact did never start working. It failed at the very initial stage and applied for being wound up. When that application was dismissed, the company decided to go into voluntary liquidation and finally the company was directed to be compulsorily wound-up.

17. The applicant repudiated the allotment, at the proper time and ever since then he had been pressing for the return of his money but was being put oil for one reason or the other, v. (17) Now, no limitation is provided by law for an application u/s 38, Companies Act. The delay in this case, even if it be not properly explained is not shown to have resulted in any detriment to the interests of the company or its members or creditors. There is no allegation of waiver or acquiescence on the part of the applicant. Held that the delay by itself, particularly in the circumstances of this case, would not be a sufficient ground for refusing the prayer.

18. In the result the application is accepted and it is directed that the company shall rectify its register of members by deleting the name of Bikramjit Singh as the holder of 1,200 ordinary shares of Rs. 25/-'' each. The parties shall bear their own costs. Notice of the said rectification shall be filed with the Registrar within a fortnight.