

(1960) 04 MP CK 0019
In the Madhya Pradesh High Court
Case No : First Appeal No. 133 of 1956

S. Chatterjee

APPELLANT

Vs

Dr. K.L. Bhawe and Others

RESPONDENT

Date of Decision : 16-04-1960

Acts Referred:

Companies Act, 1913 — Section 171
Limitation Act, 1908 — Article 95

Citation : AIR 1960 MP 323 : (1962) 32 CompCas 830 : (1960) ILR (MP) 265 :
(1960) JLJ 965 : (1960) 5 MPLJ 865

Hon'ble Judges : T.P. Naik, J;T.C. Shrivastava, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; B.L. Seth, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Naik, J.

The plaintiff-respondents Nos. 1 and 2 obtained a decree for damages in an action for the tort of deceit against defendants Nos. 1 to 10, the directors of the National Nutriments Ltd., a public limited company, and defendant No. 11, its agent. Defendant No. 1, S. Chatterjee, who besides being a director of the Company, was also the Managing Director of the Managing Agents of the Company, has come up in appeal.

The case of the plaintiffs, in brief, so far as relevant for our purpose, was as follows. In the latter part of 1947, the defendants Nos. 1 to 10 "got printed an alluring booklet styled "Report" on the progress of National Nutriments Ltd.". The booklet was profusely illustrated, bore testimonials from eminent persons and contained statements as regards dividends and other matters which conveyed to the reader an impression that the Company was in a very flourishing and prosperous condition and that it had immense promise for the future. In the beginning of October 1948, they sent out their agent, defendant No- 11, to

Jabalpur, armed with the booklet aforesaid to sell to the public the shares of the Company. On or about 2-10-1948 the said agent, defendant No. 11, at Jabalpur, made to the plaintiff No. 1 the following representations :

(i) that the Company was a very flourishing concern and that it had from its very inception declared very high dividends.

(ii) that the Company had declared dividends on deferred shares at 100 per cent in 1946 and at 60 per cent in 1947 and had paid dividends at 7 1/2 per cent on preference shares every year up to date;

(iii) that the shares of the Company were ordinarily not available in the market owing to their high demand but that the Company had purchased back a large number of deferred shares, at Rs. 3/8/- per share, the face value of which was Re. 1/- from persons who had migrated to Pakistan and that defendant No. 2, the Chairman had instructed that these should be offered to medical men in the up-country so that the sale of the Company's products may be pushed up; and

(iv) that as a special favour, the shares, if purchased, would be antedated to September 1948, to enable the plaintiffs to participate in the dividends to be declared for the year ending 31-3-1949.

The said agent, defendant No. 11, in support of his assertions aforesaid showed to the plaintiff No. 1, and strongly relied on, the aforesaid printed booklet. The said representations of fact were false to the knowledge of the agent as well as the directors of the Company and were made with intent to deceitfully induce the plaintiffs to act on them. The plaintiff No. 1 believing the said re-presentations to be true was induced to purchase, some in his and some in his and his wife's (plaintiff No. 2's) joint names (a) 2650 deferred shares of the face value of Re. 1/- at Rs. 3/8 each for which he paid Rs. 9,300/- including registration fees, (b) 100 preference shares of the face value of Rs. 10/- each at Rs. 11/- valued at Rs. 1101/- including admission fees; and (c) 100 ordinary shares of the face value of Rs. 10/- each at Rs. 21/- each for which he paid Rs. 2101/- including admission fees.

The defendant No. 11 issued to the plaintiffs printed receipts for the amounts paid to him by them for the purchase of the shares and that later on they also received share scrips purporting to have been issued by the Company. On 15-5-1950, the plaintiffs discovered that the Company i.e. the National Nutriment Ltd., had ceased to declare any dividends on any class of its shares, ordinary, preference or deferred, from the year ending March, 1945 onwards, that the Company was financially in a very sorry state of affairs for some years past, immediately preceding the publication of the printed booklet referred to above, and that the assets of the Company had been mortgaged for Rs. 15,000/- as far back as the beginning of the year 1948.

The defendants Nos. 1 to 11 fully aware of the Company's unsound financial condition, had by deceit palmed off their or their relations' or friends' unyielding

and unprofitable deferred shares and other kinds of shares of the Company to the plaintiffs in order to profit themselves, their relations and friends at the expense of the plaintiffs. Under the circumstances, the aforesaid transaction of sale and purchase of shares was vitiated by fraud and was, therefore, void. They claimed that the defendants Nos. 1 to 11 were jointly and severally liable to refund to them the original amount of Rs. 12,502/- obtained by them from plaintiff, No. 1 by fraud and that they were further liable to pay to the plaintiffs interest by way of damages at Re. 1/- per cent per mensem from 15-5-1950 to the date of suit amounting to Rs. 4,625/-, and a further sum of Rs. 30/- being the costs of a notice served by the plaintiffs on them. They thus claimed from the defendants Nos. 1 to 11) jointly and severally Rs. 17,157/-.

The defendants Nos. 2 to 11 did not contest the suit and remained ex parte. The defendant No. 1 alone contested the suit and filed his written statement denying the claim of the plaintiffs alleging, inter alia, that all the adverse allegations of the plaint were false except that the Company had mortgaged its assets for Rs. 15,000. He further contended that the Company was a necessary party to the suit; that the Company had gone into liquidation with defendant No. 14 as its liquidator and hence, the suit was barred u/s 171 of the Indian Companies Act, 1913. He also alleged that the suit was barred by limitation.

The trial Court decreed the suit inter alia holding --

(a) That the financial condition of the Company in the beginning of October 1948 was very unsound and that defendants Nos. 1 to 11 were aware of it;

(b) that the defendants Nos. 1 to 10 in order to dispose of their, their relations and friends" unyielding and unprofitable shares at a profit conspired to play a fraud on the public and to that end got the booklet "Report on the progress of the National Nutriments Ltd.," printed and published in 1947, which contained false, misleading and unwarranted statements to their knowledge with a view to give an erroneous and deceitful impression to the public that the Company was in a sound financial condition when in fact it was not.

(c) that they (defendants 1 to 10) in the beginning of October 1948 sent defendant No. 11 as their agent to Jabalpur to canvass and sell the shares of the Company as well as the shares of some of them and their relations;

(d) that the defendant No. 11, the agent of the Company, wilfully made false representations of facts to the plaintiff No. 1 and induced him to buy the shares of the Company;

(e) that the plaintiff was induced to buy the said shares by deceit, which he discovered on 15-5-1950;

(f) that the plaintiffs were entitled to a re-Fund of Rs. 12,502/- which they had paid for buying the said shares on account of the fraud practised on them;

(g) that the plaintiffs were also entitled to interest as damages at Rs. 6 per cent

per annum;

(h) that the suit was not barred by time as it was governed by Article 95 of the Indian Limitation Act; and

(i) that Section 171. of the Indian Companies Act had no application to the facts of the case and the suit was maintainable.

The learned counsel for the appellant contests all the aforesaid findings on behalf of defendant No. 1, who alone has come up in appeal.

The principles on which damages for the form of tort known as "deceit" are awarded, are thus stated by Lord Herschell L. C. in *Derry v. Peek* (1889) AC 337:

"I think the authorities establish the following propositions: First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And, this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made."

The principle, thus stated, applied to "actual" fraud as opposed to constructive fraud, and, in the instant case, we are concerned with actual fraud, a conscious misrepresentation, as understood in (1889) AC 337 (*supra*), as we shall presently show.

The evidence of Bhawe (P. W. 1) is that the defendant No. 11, Chakravarti came to him and was introduced to him as the Chief Organiser and the agent of the National Nutriment Ltd., that the said Chakravarti gave him a very flourishing account of the Company, that amongst other things, he represented to him that in 1946 the Company had given dividends on its deferred shares at the rate of Rs. 100 p.c. and that in 1947 at the rate of Rs. 60 p.c. and that the dividend on preference shares had been given all through the years at the rate of Rs. 71/2 p.c., that he was further told by the said agent that the Company had purchased shares of those persons who had migrated to Pakistan and that the Company wanted to sell those shares especially to doctors and that it had purchased Re. 1/- share for Rs. 3/8/- which it wanted to sell, and that in order to impress upon him the prosperity of the Company he was shown a printed booklet Ex. P. 1.

When cross-examined by the counsel for defendant No. 1 --appellant, the witness stated that defendant No. 11, Chakravarti, did not tell him that any particular director of the Company had sent him but only that he was an agent of

the Company. This evidence is amply corroborated by Sarwate (P. W. 2) and their evidence on the point remains uncontradicted, and, in our opinion, it can safely be accepted. Their evidence is not only uncontradicted, but the evidence led On behalf of the defendant No, 1 appellant amply corroborates the testimony.

In answer to interrogatories filed by Banerjee (1 D. W. 1) the authorised agent and constituted attorney of the appellant defendant No. 1, it was admitted on his behalf that Chakravarti (defendant No. 11) was an agent of the National Nutriments Ltd., in 1948, on commission basis, and that he also worked as agent for sale of shares on behalf of the shareholders on commission. He also admitted the publication of the booklet (Ex. P. 1) in May or June 1946, but claimed that the appellant, defendant No. 1, Chatterjee was then in England. Banerjee (1 D. W. 1), the mukhtyar of the defendant No. 1, appellant, further admitted in his evidence that though the mention of the appellant, Chatterjee, as the Managing Director in Ex. P. 1, was incorrect, he was the director of Bengal Share Dealers Syndicate which was the managing agent of the Company.

He has further stated that only the Board of Directors appointed agents of the Company and only the agents so appointed and not any outsider could do the work of the Company which they were authorised to do on commission basis. It is thus not disputed that the defendant No. 11 Chakravarti was an agent of the Company as well as of a director of its managing agents who also could work on behalf of any share holder for the sale of his shares on commission basis.

There is also ample evidence to show that the financial condition of the Company had been progressively deteriorating and that it was in a far from flourishing condition in 1948 when representations were made to the plaintiffs at Jabalpur regarding the prosperous condition of the Company. In answer to interrogatories, the mukhtyar's affidavit discloses that the Company declared and paid the following dividends in 1943, 1944 and 1945:

Ordinary shares.

Prof. shares.

Deferred shares.

(a)

Period ending March 1943.

20%

7?%

100%

(b)

Period ending March 1944.

10%

7?%

25%

(c)

Period ending March 1945.

6%

7?%

nil

Preference shares had fixed dividend of 7?% every year.

For the period thereafter, Banerjee (1 D. W. 1) in paragraph 12 of his deposition states:

"The financial condition of our company had already become bad from the month of March, 1945 and it had stopped giving dividends from the same time. After that the company's condition began to get worse day by day. In the very beginning of 1948, the assets of the company were mortgaged for fifteen thousand rupees. This happened in the month of January."

It is also an admitted fact that not only the assets of the Company were mortgaged for Rs. 15,000/- in January 1960 but that it went into liquidation in 1951.

In this context, we may also note the statements contained in the printed booklet Ex. P. 1. This booklet was, according to Banerji (1 D. W. 1), (See paragraph 3 of his reply to the plaintiffs' interrogatories) published in May or June 1946 when the defendant, appellant Chatterjee was in England. But this is not a fact. The booklet itself gives 15-8-1946 as the date of its publication and it also contains certificates bearing dates 1-5-1947 and 5-4-1947 showing that it must have been reprinted and published sometime after those dates again. Banerjee (1 D. W. 1) therefore, in his cross-examination was constrained to admit that the booklet (Ex. P. 1) was printed in 1946 and 1947 and that it had been printed three or four times.

This repeated publication is of great significance as the sequel will show, At present, it is sufficient to realise that the defendant, appellant cannot escape his responsibility for the publication of the booklet on the ground that he was in England in 1946 when it was first published, because there is no suggestion that he was not in India or unaware of its publication in August 1946 and sometime in 1947 when it was admittedly printed and published. Now, examining its contents we find that it contained the statement,

Dividend Paid (free of income tax)

Ordinary shares

..

..

Highest

20%

Lowest

6%

Preference shares

..

..

..

7?%

Deferred shares

..

..

Highest

100%

Lowest

25%

which even as a general statement did not represent the correct or true state of affairs as existing on the date of its publication. It may be that it is possible to demonstrate that every particular statement in that booklet was factually true, but it certainly gave a very misleading picture of the financial condition of the Company on that date. If it was meant to give a correct picture of the situation even for 1946 and 1947 it ought to have disclosed that the dividends on shares other than preference which carried a fixed rate of interest at 7 1/2 p.c. per annum had been progressively becoming less and less since 1943 and that no dividend had been paid since 1945 and if it was intended to use that, document (Ex. P. 1) for 1948, the person using it was bound to further disclose the fact that the assets of the company had been mortgaged in the beginning of 1948 for Rs. 15,000, In our opinion, the instant case was thus a case of "suppressio veri suggestio falsi." A particular statement verbally accurate may be a false statement in effect as if the fact had been misstated altogether (Peek v. Gurney (1873) 6 HL 377). As observed by Lord Halsbury, L. C. in Aaron's Reefs v. Twiss (1896) AC 273 , if by a number of statements you intentionally give a false

impression and induce a person to act upon it, it is not the less false although if one takes each statement by itself there may be a difficulty in showing that any specific statement is untrue. Equally, a misrepresentation may be implied from a party's conduct; if one conducts himself in a particular way with the object of fraudulently inducing another to believe in the existence of a certain state of things contrary to the true fact and to act upon the basis of its existence, and damage results therefrom to the party misled, he who misled him will be just as much liable as if he had misrepresented the facts in express terms, (*Marnham v. Weaver* (1899) 80 LT 412). (Clerk and Lindsell on Torts, paragraph 1183, p. 700). The object of the agent Chakravarti in using the booklet Ex. P. 1 was clearly to induce the plaintiff No. 1 to believe that the fragmentary or partial details contained in it existed in October 1948 which was contrary to facts and was consequently fraudulent.

The question then is whether the agent made the aforesaid representations, which we find were all false, knowingly or without belief in their truth or recklessly.

Defendant No. 11 has not cared to deny that he had no knowledge that the representation that he was making was false nor has he stated that he honestly believed in its truth. Under the circumstances of the case, it also appears improbable that he, its recognised agent, could have been ignorant of the true financial position of the Company in 1948 especially when its condition was deteriorating year after year over since 1943. In our opinion, it was his duty as the agent of the Company to be in the know of the true facts and in the absence of his denial on oath that he was genuinely though mistakenly ignorant of the true financial position, we are entitled to presume that he was fully aware of it and that that was the reason why he was afraid to deny it on oath. "If a man, having no knowledge whatever on the subject, takes upon himself to represent a certain state of facts to exist, he does so at his peril: and, if it be done either with a view to secure some benefit to himself, or to deceive a third person, he is in law guilty of a fraud, for, he takes, upon himself to warrant his own belief of the truth of that which he so asserts." : Per Maule J., in *Evans v. Edmonds* (1853) 13 CB 777 : 138 ALL ER 1407 . In the instant case, however, the plaintiff No. 1, Dr. Bhave was reasonably entitled to presume, if not that the agent, defendant No. 11, knew the facts he stated to be true, yet at least that he believed them to be true and if he (the agent) had no such belief in what he stated, he was as much guilty of fraud as if he had made any representation which he knew to be false or did not believe to be true. Said Lord Cairns in *Reese River Silver Mining Co. v. Smith* (1869) 4 HL 64 : ".....I apprehend it to be the rule of law, that if persons take upon themselves to make assertions as to which they are ignorant whether they are true or untrue, they must, in a civil point of view, be held as responsible as if they had asserted that which they knew to be untrue." In *R. v. Mawby* (1796) 6 TR 619 : 101 ALL ER 736 , Lawrence J., said:

"Where a man swears to a particular fact without knowing at the time whether

the fact be true or false, it is as much perjury as if he knew the fact to be false."

At any rate, therefore, under the circumstances of the case, there can be no doubt that the agent, defendant No. 11, made the representation recklessly not caring whether it was true or false. We also note that he has not filed an appeal against the decree against him and consequently we need not pursue the matter further.

As regards the directors, there is ample evidence of the fact that they were aware of the deteriorating financial position of the Company; 1 D. W. 1 Banerjee in his evidence says:

"One factory was being constructed in the village Lahali Mohanpur in Pabana district. Machinery was also purchased for the same. But as Pakistan was formed and this district went to Pakistan, it was stopped. On account of the formation of Pakistan, the Company suffered a great loss. On account of the formation of Pakistan, a considerable business of the Company was also reduced. Due to this all the financial condition of the company became bad from 1948-49. The Directors of the Company tried very much to improve the condition of the company. In order to increase its business the company was advertising its business by sending agents. And, the company was advertising in the daily and weekly papers.

The company tried to increase its business by getting its booklet, or book, Ex. P. 1 printed. This book was printed in 1946. Such booklets were printed 3 or 4 times. Similar booklets were printed in 1947 and 1946."

(Vide paragraphs 2 and 3). Then again, he says:

"The company's booklet or book (Ex. P. 1) used to be written by the Secretary of the company on behalf of the Company. ."

(Vide paragraph 7). And further:

"The book Ex. P. 1 had been circulated in the market and the company did not try to withdraw the same. No agent was ordered to return the above book which was given to him by the Company. "

(Vide paragraph 15). He also admits that:

"Regarding such shares which were sold in 1948 the defendant No. 1 did not make any special enquiry as to why those shares were being sold even when the condition of the company was bad."

(Vide paragraph 19).

Consequently, there can be no doubt that defendant No. 1 appellant was cognisant of the bad financial condition of the Company and yet, he along with the other directors authorised the publication of the booklet (Ex. P. 1) which gave a misleading picture, advertised the business by sending agents, permitted them to use the booklet with knowledge of its misleading character and did not even

enquire why and how the shares were being sold when the condition of the Company was known to him as bad. It is significant in this connection that the other directors have neither filed written statements challenging the allegations of the plaintiff in this behalf nor have they cared to enter the witness-box to deny the adverse allegations.

"Reports of joint stock companies, even though nominally addressed only to the shareholders, if in fact intended to be acted on by any persons who are likely to have dealings with the company, are sufficiently addressed to the persons so dealing, to entitle them to sue the persons issuing the reports if they are false. Thus, where directors of a bank made a false report to the shareholders as to the financial position of the bank and copies of the report could be bought by any persons who applied for them, whether shareholders or not, it was held that the directors were liable in damages to a member of the public who, having procured a copy of the report, upon the faith of it bought shares in the bank which shortly afterwards stopped payment.""

(Clerk and Lindsell on Torts, 11th Edn., Paragraph 1205).

"Where false statements are incorporated in a document such as a deed, bill of lading or ware house receipt, the person making such fraudulent misrepresentations is held to have intended such action by any person who, in the ordinary course of business, relies on the truth of such statements. The rule was well stated in a federal case: "The true test is as to whether, the defendants, with full knowledge of the facts, procured the bills of lading in question knowing the statements contained therein ...were false and fraudulent and with further knowledge that the same were to pass through the channels of commerce and would, in all probability, fall into the hands of a third party."

National Bank v. Kershaw Oil Co., 202 Fed. 90 (96) (4th Cir. 1912). (The Law of Torts, p. 532, by Harper and James, Vol.. 1). The issue of the booklet (Ex. P 1) by the directors of the company in 1946 and 1947 when the financial condition of the Company had considerably deteriorated with a view to its being used by its agents for inducing persons to buy shares of the Company on its strength was fraudulent even though the booklet was meant for shareholders only. In the instant case, however, we, not only have the booklet which gave a misleading picture but also the oral representations of the agent Chakravarti which were false to the knowledge of the agent and the directors.

There is also one further fact so far as the defendant No. 1-appellant is concerned. It is admitted that one Bani Chatterji was a minor daughter of this defendant and that there were a number of deferred shares in her name for which she had not paid up fully and some of these shares have been purported to be transferred to the plaintiffs. According to plaintiff No. 1, the misrepresentation to him was that the Company had purchased some of the deferred shares of persons who had migrated to Pakistan, at the rate of Rs. 3-8-0 and that these shares were to be sold to the up-country doctors like the

plaintiff. There is evidence to show that the deferred shares that were transferred to him and his wife were those which were once held by Bani Chatterji, who had never gone to Pakistan and which shares were never purchased by the Company. (See Exs. P.11, P.15 and P. 16) and, the National Nutriment Company's deferred Share Register (Ex. P. 31), p. 69, itself.

There is also no evidence that these shares were worth Rs. 3/8/- in October, 1948. On the contrary, looking to the bad financial condition, they could not have been worth anything. Bani Chatterji in whose name they stood in the Company's Register of deferred shares had not paid for them fully and there is no evidence to show why she was in such a desperate hurry to dispose of them through the agent, defendant No. 11. As the person to be most benefited by this trial action was defendant No. 1, appellant or his daughter, it was not unreasonable for the trial Court to infer that this defendant No. 1, appellant was primarily responsible for sending Chakravarti to Jabalpur so that he or his daughter may be able to dispose of the unyielding and unprofitable shares held by him or his daughter at as great profit as possible before they became mere scraps of paper. The defendant No. 1, appellant, therefore, can in no case escape liability for the damage suffered by the plaintiffs because of the fraud practised on them by the directors through the agent.

The directors 1 to 10 would also be liable on the principal's vicarious liability for the tort of his agent. Where an agent makes a false statement in the course of his employment, the principal will be liable under the normal rules of vicarious responsibility for the torts of his agent, (See *Lloyd v. Grace Smith and Co.* 1912 AC 716). But here the representations were false both to the knowledge of the principal viz., the directors and the agent viz., defendant No. 11 Chakravarti and were made in the course of his employment as agent and consequently, the directors and the agent all are liable as joint tort-feasors. In any case, the liability of the defendant No. 1, appellant who was fully conscious of the fraud and who had expressly sent the agent for the purpose of inducing the plaintiff to buy the worthless shares of the Company cannot be disputed.

The tort of deceit is not complete till the false report is acted upon, and in the instant case the plaintiff No. 1 acted on the inducement furnished by the false representation and purchased shares of the Company which but for the aforesaid misrepresentation he would not have purchased. The shares purchased by him in his and his wife's name are:

(a) (i) 500 deferred shares issued at rupee one per share which were sold to the plaintiffs at Rs. 3/8/- per share on 25-9-1948. Ext. P. 2 is the receipt given by the agent, defendant No. 11, for having received Rs. 1700/- from the plaintiffs as their price. Exhibit P. 11 is their share certificate No. 88/57 issued on 15-10-1948. The shares are numbered 166189 to 166688 inclusive and are entered in the name of Bani Chatterjee, the minor daughter of defendant No. 1, appellant in the Share Register (Ex. P. 31).

(ii) 1000 deferred shares similarly purchased on 27-10-1948. Exhibit P. 5 is the agent's receipt for Rs. 3520/- towards their price and Ex. P. 14 is their certificate (share certificate No. 88/ 73). The shares are numbered 169790 to 170789.

(iii) 1150 deferred shares of Re. 1/- each Exhibit P. 15 is the share certificate No. 88/103. The shares are numbered 174455 to 175604.

(b) 100 preference shares issued at Rs. 10/-per share but purchased by the plaintiffs at Rs. 11/-per share on 25-9-1948. Exhibit P. 3 is the agent's receipt of Rs. 550/- towards a part pay ment of their price. Exhibits P. 7 and P. 9 are the pucca receipts issued by the Company under the signature of the defendant-appellant for Rs. 201/-and 900/- on 16-10-1948 and 18-11-1948 respectively, Ex. P. 12 is their share certificate No. 557/248 dated 30-11-48. These are numbered 64633 to 64732 inclusive.

(c) 100 ordinary shares issued at Rs. 20/- per share and sold to the plaintiffs at Rs. 21/- per share. Exhibit P. 4 is the agent's receipt for Rs. 1100/-paid by the plaintiffs on 25-9-1948 towards their price. Exhibit P. 6 dated 16-10-1948 and Ex. P. 8 dated 18-11-1948 are the receipts issued by the Company for Rs. 1101/- (for application premium, admission fee and first call money) and Rs. 1200/-(for 2nd to 4th call moneys) respectively, Exhibit P. 13 is their, share certificate No. 565 dated 13-11-1948. The shares are numbered 60791 to 60890.

Various remedies are available to a person who has been the victim of fraud, deceit or other unconscionable conduct. Rescission, restitution, damages or constructive trust are some of the usual remedies for fraudulent misrepresentation. A plaintiff may sue to rescind a contract to which his assent was procured by fraud or deceit in an action for breach of such contract or for specific performance (Ramaswamy Iyer, Law of Torts, 5th Edn., p. 353); But the plaintiff in all cases of rescission must do equity which means that he must return any consideration which he may have received in the transaction (Harper and James, Vol. 1, p. 603).

If the suit were for rescission of the contract, allotting shares to the plaintiffs, the Company would be a necessary party, but the plaintiffs have purposely not made it (the Company) a party defendant nor have they claimed a rescission in terms. What they claim is a relief in torts e.g., damages suffered by them due to the defendant's deceit in inducing them to purchase shares by wilful false representation.

In an action for damages based on deceit, fraud and injury must concur. There must be proof of fraud and proof of the fact that the fraud has resulted in actual damages. The measure of damages is the actual loss suffered which ordinarily means the difference between the price paid by the plaintiffs and the actual market value of the shares purchased by them. But in computing the market value of the shares of a company it is realised that there can be no market value of the same security minus the defect because in such cases market value if any was itself the result of the fraudulent misrepresentation complained of.

The Courts therefore in such cases speak of "intrinsic value" of a stock or share as the measure of its value. But such a determination of its intrinsic value could only be possible by an appraisal of the Company's assets by an independent audit, which in most cases would entail prohibitory costs and in any case it would only be speculative as regards their value on the date when the transaction occurred or when the fraud was discovered.

It is again a matter of some debate as to the time in relation to which the loss should be measured. In the instant case, in our opinion, the time of the purchase would be hardly adequate. The plaintiffs who admittedly had bought the shares for investment are not expected to dispose them of before they actually discover the fraud. So far as they are concerned, due to their ignorance of the true facts, fraud continued to operate on them till they" discovered the fraud. If any independent forces operated in the intermediate period, the loss must yet fall on the wrongdoer and in our opinion, the causal connection between the fraudulent misrepresentation and the resulting damage cannot be said to be too remote or so broken or obscured as to disentitle the plaintiffs damages on that basis.

In *Hotaling v. Leach* 57 ALR 1136, the Court allowed the plaintiff to recover his loss on a bond purchased and held for investment in reliance of the defendant's fraudulent representations as to the financial ability of the company. Failure of the company later accompanied depressed conditions in the oil industry. Nevertheless, the Court granted recovery of the difference between the purchase price and the value of the bonds at a date subsequent to the transaction when the bonds were practically worthless. In *Twycross v. Grant* (1877) 2 CPD 469 , Cockburn C. J. discussing the principle on which damages can be awarded in an action for deceit said:

"If a man is induced by misrepresentation to buy an article, and while it is still in his possession, it becomes destroyed or damaged, he can only recover the difference between the value as represented and the real value at the time he bought. He cannot add to it any further deterioration which has arisen from some other supervening cause. If a man buys a horse, as a racehorse, on the false representation that it has won some great race, while in reality it is a horse of very inferior speed, and he pays ten Or twenty times as much as the horse is worth, and after the buyer has got the animal home it dies of some latent disease inherent in its system at the time he bought it, he may claim the entire price he gave; the horse was by reason of the latent mischief worthless when he bought; but if it catches some disease and dies, the buyer cannot claim the entire value of the horse, which he is no longer in a condition to restore, but only the difference between the price he gave and the real value at the time he bought.

**** ** *** The shares may have had for a time some factitious value in the share-market; but the plaintiff, having invested, was not bound to sell, but was fully entitled to wait till the lines were actually worked. When practically tested the enterprise failed, and the shares proved worthless. The measure of damages is,

consequently, the price the plaintiff was induced to give for them by the statutory fraud on which the action is founded."

In the instant case also the Company had stopped paying dividends and mortgaged its assets for a paltry sum of Rs. 15,000/-, when the shares were purchased by the plaintiffs. The condition had become much worse when the fraud was discovered by them, and when the suit was filed, the Company had already gone into liquidation. It is thus apparent that the shares were worthless from the time they were fraudulently palmed off to the plaintiffs because of the inherent defect in the project itself.

The measure of damages is thus the price the plaintiffs were induced to give for such worthless shares by the fraud of the defendants. The trial Court has also awarded interest at 6 p.c. per annum on the amounts claimed as from 15-5-1950. In our opinion, the award of interest as damages was quite justified in this case and calls for no interference.

It may also be noted that the learned counsel for the defendant-appellant did not advance any serious arguments as to the quantum of damages awarded and having examined the question for ourselves we are of opinion that no fault can be found with the trial Court's assessment of it.

It is then contended that the suit was barred by limitation, as it was filed more than three years from the date of their allotment. We do not agree. This is a suit for damages for a specie of tort known as deceit. There is no uniform period of limitation for all kinds of torts --it differs in the case of different torts. A period of one year is prescribed for actions for personal injuries and two years for malfeasance, misfeasance or non-feasance not specially provided for, etc. This is a suit for damages caused by the fraud of the defendants. The relief of damages is thus primarily claimed on the ground of fraud.

Under Article 95 of the Indian Limitation Act, for a "relief on the ground of fraud" the limitation for a suit is three years from the date "when the fraud becomes known to the party wronged." The plaintiffs discovered the fraud on or about 15-5-1950. and the suit for compensation for damages caused to them by the fraud or deceit of the defendants Nos. 1 to 11 was filed on 15-6-1953 when the Court reopened after the summer vacation. We are therefore of opinion that the suit is governed by Article 95 of the Indian Limitation Act and is within time.

The contention that the suit was not maintainable u/s 171 of the Indian Companies Act, 1913, is equally untenable. The plaintiffs are not seeking any relief against the Company, under the contract of allotment of shares or otherwise. They are content to sue the defendants Nos. 1 to 11 On the ground that they have suffered damage on account of the fraud practised by them on plaintiff No. 1, Dr. Bhawe. In our opinion, such a suit against the directors and the agent of the Company, defendant No. 11, who actually practised the fraud, was not barred u/s 171 of the Indian Companies Act, 1913.

For the reasons aforesaid, we are of opinion that the appeal should be dismissed. It is accordingly dismissed with costs.