

(1935) 08 BOM CK 0014

In the Bombay High Court

Case No : Second Appeal No. 259 of 1934

Shamrao Krishnaji Honnali

APPELLANT

Vs

The United House Building and Engineering Society (India)
Ltd.

RESPONDENT

Date of Decision : 23-08-1935

Acts Referred:

Companies Act, 1956 — Section 277

Citation : (1936) 38 BOMLR 1092 : 166 Ind. Cas. 294

Hon'ble Judges : Divatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Divatia, J.—All these appeals have been preferred by the defendants in suits brought by a company called the United House Building and Engineering Society (India) Ltd., of Bangalore, which had its headquarters in the Mysore State, and as such it is a foreign company. That company filed suits against the defendants to recover certain amounts for the work done by that company for them. The principal defence of the defendants was that this company had no right to file suits in British India, inasmuch as it was not a legal body, because it has not complied with the requirements of Section 277 of the Indian Companies Act. That section says that every company incorporated outside British India, which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business within British India, shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the Registrar a certified copy of the charter, statutes or memorandum and articles of the company, etc., and the full address of the registered or principal office of the company, etc., etc. It is further laid down in this section that if a company fails to comply with any of the requirements of this section, it shall be liable to a fine not exceeding Rs. 500 or, in the case of a continuing offence, Rs. 50 for every day during which the default

continues.

2. It is urged for the defendants that as the requirements of this section were not complied with by the company, it was liable to a prosecution, and that although the section does not speak specifically of a company being disabled from maintaining- any action, still that is the meaning of that section, because when it makes a default in complying with the requirements of this section, then it ceases to be a legal body, and it cannot be permitted to sue in British India.

3. Now, it is admitted, and I think it must be admitted, that a company which is registered in a foreign State is entitled to file suits and maintain actions in British India, and it is not required that a company must register itself in British India if it wants to carry on some business there. It is no doubt required in Section 277 that its charter and other papers should be filed before the Registrar, but the only penalty that is sanctioned by the Legislature for not complying with the requirements of this section, is only a fine which may extend to Rs. 500, or a continuing fine of Rs. 50 per day, as long as the requirements are not fulfilled. But the section nowhere says that if it does not comply with its requirements it ceases to be a legal body in British India, with the result that it loses its right of maintaining any action in British India. To my mind, that would be reading into this section something which is not there. It may be a good ground for the legislature to impose the penalty of not being able to file a suit if its requirements are not fulfilled. But in the absence of any such specific provision in this section or elsewhere in the Indian Companies Act, I do not think the defendants are right in going to the length that it loses its right of maintaining any action. Therefore, I think the lower appellate Court was right in holding that the default made by the company in fulfilling the requirements of Section 277 does not disable it from maintaining the present action.

4. I do not agree with the reasoning of the trial Court which applied the analogy of a suit based on a promissory note or a prosecution under the Abkari Act. These analogies would not apply to the present case, because here it is clear that ordinarily a company regularly established in a foreign State would be entitled to file a suit in British India. The default that is committed under the section is penalized by a fine and nothing more, and the result, therefore, is that the company can maintain this action.

5. That being so, it is not necessary to go into the other question that has been dealt with by the lower Court and also argued here, namely, that this company had an established place of business in British India, and that therefore it came within the scope of Section 277. Even assuming that it had an established place of business in British India, and therefore, it came within the scope of Section 277, I think the section does not apply so far as a suit is concerned, and it does not disable the company from maintaining the present suits.

6. The appeals are, therefore, dismissed with costs.