(1934) 05 MAD CK 0003

In the Madras High Court

Shanmugam Sundaram Chettiar APPELLANT

Vs

A.A. Rangarama Naicker RESPONDENT

Date of Decision : 02-05-1934

Acts Referred:
Companies Act, 1913 — Section 100

Citation : 152 Ind. Cas. 703

Hon'ble Judges : Pakenham Walsh, J

Bench : Single Bench

Judgement

Pakenham Walsh, J.—The plaintiff is the appellant in the present appeal. The 1st defendant was the President of a Company called ''The

Dhanday udhapani Co., Ltd."" and the 2nd defendant was its Managing Director. The plaintiffs case was that the 2nd defendant represented to him

that the Company was working properly and that on the strength of this and of the prospectus Ex. A he induced him to take shares to the value of

Rs. 1,000. The share certificate, Ex. B has been signed by the President. It was found afterwards that the Company was not working and that the

representations with respect to it in Ex. A were fake. The plaintiff sued for the return of his money.

2. The 2nd defendant, who is said to have become bankrupt, remained ex parte. The trial Court stated that the plaintiff was proceeding against the

1st defendant on two grounds, (1) for his having, along with the 2nd defendant, received the money and for having made misrepresentations as to

the affairs of the Company and (ii) for his liability on account of the misrepresentation contained in the prospectus issued by the Company. On the

first point, the plaintiff examined himself and one other witness and the 1st defendant examined himself on the other side. The trial Court remarked that the evidence of the plaintiff''s witness was not at all satisfactory and did not deal with the evidence of the plaintiff. It did not find it proved that

the 1st defendant was present when the amount was paid and that he along with the 2nd defendant made any representations to the plaintiff. On

the second ground it was admitted that the representations in Ex. A that the Company had purchased the Star Mills for Rs. 25,000 as also the

wood saws in the Coimbatore Industrial School were false. The statement that the Company was now carrying on business was also false. As

regards the issue of prospectus the 1st defendant admitted that the 2nd defendant was appointed the Managing Director, that he was to look after

everything, that it was in his power as Managing Agent to issue the prospectus and that he himself took no steps to supervise him. On these

admissions and findings the trial Court held that the 1st defendant as a Director of the Company was liable u/s 100 of the Indian Companies Act of

1913.

3. On appeal the learned Subordinate Judge dismissed the suit. As regards the first ground, the learned Subordinate Judge set out the evidence of

the plaintiff and his witness and of the defendant and without further comment said

I therefore agree with the dower Court that there is no sufficient evidence of misrepresentation or fraud of the 1st defendant.

4. With regard to the 2nd point he held that Ex. A did not purport to be the prospectus of the Company, that the requirements of the prospectus

are mentioned in Section 93 of the Indian Companies Act, that a copy of the prospectus is required to be filed for registration, that Ex. A did not

comply with the requirements of Section 93, and it was not said that its copy had been filed for registration and, therefore, Section 100 was not

applicable to the case. Against this decision the present second appeal has been filed.

5. I do not think I need deal with the minor objection that the trial Court, having failed to discuss the evidence of the plaintiff with regard to the oral

representation of the 1st defendant, and the lower Appellate Court while setting out the evidence on both sides not having commented upon it, the

latter cannot be said to have dealt, properly with the evidence in accepting the view of the lower Court, because I am clear that the plaintiff must succeed on the 2nd point.

6. Exhibit A, the prospectus, is headed ""Dhandayuthapani Company, Ltd, Anamalai"". The Tamil words are ""companiyin churukkamana vivaram.

The prospectus is in these terms:

Dandayuthapani Company, Ltd., Anamall, Prospectus of the Company.

1. Each share at Rs. 10 for Rs. 30,000 shares capital 3 lacs.

2. Object of the Company--carrying on trade, agriculture, money lending.

3. The Company carried on now at Pollachi in the name of Star Mills has been purchased for Rs. 25,000. In this machines for hulling grams, paddy

have been fixed and were being worked and are in a condition to be worked. Further the (wood) saws which were being worked in the

Coimbatore Industrial School have been purchased. With these the work may be commenced in 2 weeks.

4. Those who wish to join the Company may sign in the application sent herewith (and; said to the address given in the application along with the

share amount and receive the share certificate.

5. For full particulars of the Company apply to the Managing Agent.

7. The learned Subordinate Judge has failed tonote the definition of ""prospectus"" in Section 2(14) of the Indian Companies Act which runs as

follows:-

Prospectus"" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares

or debentures of a Company.

8. There can be no question that Ex. A falls under that definition. The evidence of the 1st defendant shows that the 2nd defendant was authorised

to issue this prospectus. It is, therefore, immaterial whether the 1st defendant saw it or not because Section 100(1) says:

Where a prospectus invites persons to subscribe for shares in or debentures of a Company every person who is a Director of the Company at the

time of the issue of the prospectus, and every person who has authorised the naming of himself and is named in the prospectus as a Director as

having agreed to become a Director either immediately or after an interval of time, and every promoter of the Company, and every person who has

authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of

the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or

memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith,

except under certain exceptions which do not arise in this case. Turning to Section 92 we find Clause (1) says:

Every prospectus issued by or on behalf of a Company or in relation to any intended Company shall be dated, and that date shall, unless the

contrary be proved, be taken as the date of publication of the prospectus.

9. Clause (2) says:

A copy of every such prospectus, signed by, every person who is named therein as a Director or proposed ""Director of the Company, or by his

agent authorised in writing, shall be filed for registration with the Registrar on or before the date of its publication, and no such prospectus shall be

issued until a copy thereof has been so filed for registration.

10. Clause (3) says:

The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

11. Clause (4) says:

Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

12. Clause (5) says:

If a prospectus is issued without a copy thereof being so filed, the Company and every person who is knowingly a party to the issue of the

prospectus, shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the-prospectus until a copy thereof is so

filed.

13. It is quite clear that for the definition of ""prospectus"" in every part of this section we must go back to Section 2(14). To hold as the lower

Appellate Court has done that a prospectus is a prospectus only if it conforms to the terms of Section 93 would mean that in regard to Section 92

the penalty for failure to file the prospectus could be avoided by allowing it to lack any of the requisites laid down in Section 93. Moreover, Section 93 itself contains an express proviso, (Clause 5) showing that the interpretation of the lower Appellate Court is incorrect. It says:

Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

14. Therefore a person who has incurred a penalty u/s 100 is expressly debarred from saving himself from that penalty by anything occurring in

Section 93; otherwise he could take advantage of his own wrong. Section 93 of the Indian Companies Act corresponds to Section 81 of the

English Companies Act and Section 100 corresponds to Section 84 thereof. Halsbury''s Laws of England, Vol. V page 126 says:

The provisions of the Act of 1908 as to any proceedings do not limit or diminish any liability that any person may in our under the general law or

under the Act apart from such provisions.

15. Palmer on Company Law, 10th Edition says:

Paragraph 9 (which corresponds to Clause (5) of Section 93 of the Indian Companies Act) preserves the liability of Directors and others to be

sued for misrepresentation u/s 84 or in an action of deceit.

16. The case in Pramatha Nath Sanyal Vs. Kali Kumar Dutt, is an illustration of what is meant by ""prospectus"" and of the penalty incurred for

failure to file a copy of it with the Registrar. In that case part of the advertisement ran.

Some shares are still available for sale according to the terms of the prospectus of the Company, which may be obtained on application Rs. 10 per

share payable.

17. It was urged in that case that as the prospectus of the Company had already been filed with the Registrar, and as the advertisement referred to

the prospectus and stated it had been so filed, it was not necessary under the law to file a copy of the advertisement as there would be no object in

doing so and that even if it had been filed the Registrar would not have accepted it. But this contention was not accepted by the Court which

remarked.

It is clear that an advertisement in the shape in which it bas been published would not have been accepted by the Registrar as satisfying the

requirements of Section 93; but that only means that it should not have been issued.

18. This judgment shows that the liability u/s 92 cannot be avoided by issuing a prospectus to satisfy the requirements of Section 93 which would

not have been accepted by the Registrar had it been sought to be filed before him. It is a very much stronger case than the present where, if the

view of the lower Appellate Court is correct, a person may take advantage of his own deliberate wrong.

19. It was urged for the respondent that in the plaint the plaintiff did not mention the prospectus Ex. B nor did he do so even in the notice of suit. I

do not think that this is material. It was not denied that it was the prospectus of the Company issued by the Managing Director who was authorised

to issue it. Nor was it denied that it was shown to the plaintiff who swore that he acted on the faith of it. In fact, it does not seem to have been

taken as a point in either of the lower Courts that it was not on the strength of this prospectus that the plaintiff took shares in the Company. No

doubt, there was said to be also an oral inducement which was not found to be proved. That the prospectus was also one of the things which

induced him to invest his Rs. 1,000 in the Company is clear beyond doubt. As I said the liability u/s 100 being to my mind quite clear it is not

necessary to discuss the question as to whether the lower Appellate Court dealt in proper legal fashion with the evidence of the oral representation.

20. The second appeal is allowed. The decree of the lower Appellate Court is set aside and the decree of the District Munsif is restored with costs

throughout.

