
(1967) 03 MAD CK 0041

In the Madras High Court

Case No : Company Application No's. 289 of 1965 and 178 of 1966

T.V. Somasundaram Pillai

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 03-03-1967

Acts Referred:

Companies Act, 1913 — Section 184, 186
Madras Company Rules, 1940 — Rule 96, 97, 98

Citation : (1967) 37 CompCas 440 : (1967) 80 LW 367

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : N.C. Raghavachari and N.S. Varadachari, for the Appellant; Party in person, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—Company Application No. 289 of 1965 is an application for setting aside the ex parte decree dated April 22, 1960, made in Company Application No. 78 of 1960 in O. P. No. 374 of 1953 and Company Application No. 178 of 1966 is an application for rectification of the register of members of Cuddalore Construction Company Limited, in liquidation, and also for the deletion of the applicant as a contributory of the company.

2. The relevant facts are as follows : After due compliance with the requirements of Sections 184 and 186 of the Companies Act, 1913, with which we are concerned in this case, and Rules 96, 97 and 98 of the Indian Company Rules (Madras), 1940, the official liquidator obtained a decree on April 22, 1960, whereby the applicant, as a contributory, was directed to pay a sum of Rs. 910 with interest thereon at 6 per cent, per annum from March 3, 1959. In fact, even at the stage when the list of contributories was sought to be settled, notices as required under law were attempted to be served on the applicant. At one time, the notice was returned with the endorsement "no such addressee ". When the official liquidator made a call for the payment of the unpaid call money after

obtaining orders of court in Application No. 280 of 1958, a second notice was sought to be served on the applicant, which again was returned with the postal endorsement "left without instructions". Subsequently, in Application No. 78 of 1960, the official liquidator applied for a payment order against the applicant, since he had failed to pay the call amount. This notice was again sought to be served in the usual manner. The ordinary service on the applicant having failed, substituted service by publication in "The Mail" was ordered. Another copy of the notice was also affixed on the court notice board. After adopting such processes, this court, by its order dated April 22, 1960, directed the applicant to pay a sum of Rs. 910 with interest thereon at 6 per cent. per annum from March 3, 1959, till date of payment. This order is conclusive, u/s 190 of the Act, of the fact that such monies is due by the applicant.

3. On obtaining such a decree, the official liquidator was anxious to secure the amount from the applicant. He even attempted to personally contact the applicant which he did on March 9, 1965. On March 10, 1965, the applicant came to the office of the official liquidator, perused the records and promised to settle the matter. He having failed to keep up to his undertaking, a final notice was sent by the official liquidator on April 23, 1965, intimating the applicant that execution proceedings would be taken in case of further default in the payment of the decree amount. Thereafter, and for the first time, by his letter dated July 27, 1965, the applicant denied liability on the basis of certain court proceedings and prayed that his name may be removed from the list of contributories. The official liquidator explained the correct position in his letter dated August 2, 1965, and granted him some more time to pay the amount. A reminder was also sent on October 12, 1965. It is at this stage that both the applications referred to above have been filed. The allegation of the applicant is that he became aware of the passing of the decree only on August 2, 1965, and that the shares which stood in his name were only shares nominally recorded therein by one of the directors of the company who owed him money and that, therefore, there was no relationship of a member to a company subsisting at any time and the applicant, therefore, requests in both the applications to set aside the decree passed against him on the foot that he was a contributory and to rectify the register by removing his name as a member.

4. The present contention of the applicant that he became aware of the decree only on August 2, 1965, cannot stand scrutiny at all for the reason that he knew about it even on March 10, 1965, when he inspected the records and promised to settle the matter. Whether a contributory against whom a balance order, as is commonly known, has been passed can seek to set aside a decree which has become final in the eye of law depends upon the main question whether the application for rectification of the register prayed for by the applicant by removing his name as a member thereto is plausible and possible in the circumstances. If the applicant is not entitled to the relief for rectification of the register, then his application for setting aside the decree dated April 22, 1960, has to fail automatically, since it has become conclusive in the eye of law and

there are no grounds or sufficient cause shown in the affidavit in support thereof to set aside the same.

5. The expression " rectification " of a company's register is a purposeful expression. It has a special signification of its own. The word implies that there is a prior error, mistake or defect which is apparent on the face of the record of the register, which, after rectification, is made good and corrected by removing such a mistake or error. As was pointed out in *Pulbrook v. Richmond Consolidated Mining Co.*, (1878) 9 Ch. D. 610 :

" The effect of rectification is exactly the same as if the name struck off had never been put in. That is the meaning of " rectification "."

6. Unless the applicant establishes a just cause or an equity in him to strike off his name in the register, the company court would not exercise its discretion to rectify the register. As was pointed out in *Bellerby v. Rowland and Marwood's Steamship Co. Ltd*, [1901] 2 Ch. 265.:

"In considering an application for rectification, the court has always had regard to the lapse of time, and to any facts and circumstances indicating acquiescence in the existing state of things by those on whose behalf the application is made to disturb it."

7. The power to correct a register of court has to be exercised with caution. It has to be remembered that in such a summary adjudication a roving enquiry is not contemplated. The applicant is seeking in the main to rest his contention on certain proceedings in court, and particularly the judgment of this court in C.C.C.A. No. 95 of 1952. That was a case in which there were certain disputes between the applicant and a director of the South Arcot Oil and Refineries Limited. The case of the applicant was that the director of the above company borrowed certain moneys from the applicant and as security thereto, the said director gave out that he would secure shares nominally in the name of the applicant in the South Arcot Oil and Refineries Limited and also in the Cuddalore Construction Company Limited which is now in liquidation and whose register is sought to be amended in the first petition. It is clear from the judgment of Govinda Menon and Ramaswami JJ. that the applicant knew at all material times, ever since he started the suit in 1950, that his name was in the register of members in the Cuddalore Construction Company Limited now in liquidation. In fact, the applicant is reported to have signed certain transfer forms for transfer of the shares by the applicant in favour of the director abovenamed. The learned judges, after considering the probabilities of the case, came to the conclusion that the applicant's version that he lent money as a debt pure and simple was more reliable and probable. But this observation of the learned judges in the said judgment cannot relieve the statutory responsibility which at all times vested with the applicant to correct the register of members in the company under consideration with alacrity and promptitude. It might be that the applicant might have taken the precaution of claiming damages against the director for having

improperly included his name in the register of members and ought to have also taken the precaution of claiming the damages that might reasonably and naturally flow from the fact that the name of the applicant indisputably appeared in the register of members. This has not been done. The applicant cannot take advantage of his own laches and avoid a claim in *legi* which is undoubtedly not a claim in *contractu*. Once a balance order is passed by court against a contributory on the foot that his name appeared in the register of members and that his liability as a contributory has become indubitable, then a remedy to rectify the register on the ground that his name was incorrectly remaining in the register of members is not available to such a person. A claim to rectify the register cannot be asked for *ex debito justitiae*. It must be based on certain accepted principle, particular care being taken to find whether the applicant who is seeking such a discretionary and equitable relief is guilty or not guilty of laches.

8. This doctrine of laches has a very great significance as a member in any event should repudiate the contract in unequivocal terms and without undue delay as otherwise such delay would be fatal to his application for rectification. If the name of a person appears in the register of members, he cannot at his whims and fancies ask for rescission of such a contract to take shares as it would be lost because of inaction or lack of prompt action on his part. This rests on the wholesome and salient principle that such a person has allowed the company to obtain credit on the strength of it and in case the company goes into liquidation the rights of creditors are deemed to have been crystallised on such a date. A member therefore cannot stand by and acquiesce in his name remaining in the register of members and wake up at a late stage and particularly after the winding up of the company and ask for rectification. Lord Romilly M. R. in Walker's case : *In re Anglo-Danubian Steam Navigation and Colliery Co.*, (1868) 6 Eq. 30 observed :

"Where there has been no fault on either side, the register remains as it was--where the fault is on both sides, the register also remains as it was. "

9. Therefore the onus is heavily on the shareholder to set right the mistake, if any, in the register without any delay. The above decision has been quoted with approval by a Division Bench of the Bombay High Court in *Mahomed Akbar Abdulla Fazalbhooy v. Official Liquidator*, [1950] 20 Comp. Cas. 26 Division Bench of this court also in *Lakshmi Narasa Reddi v. Official Receiver, Sree Films Ltd.*, [1951] 21 Comp cas 201 observed that where a person allows his name to remain on the register without having it removed promptly he will be liable on the doctrine of holding over.

10. The position becomes more complicated if the company is wound up. The House of Lords categorically is of the view in *Oakes v. Turquand*, [1867] L.R. 2 H.L. 325 that unless a member has taken steps to get his name removed from the register or taken some other unequivocal action before liquidation, he will be too late. In fact, in *Bank of Hindustan Ltd. and Another Vs. Kowtha Suryanarayana Rao and Others*, a Bench of this court held :

"A petition for rectification will lie normally after the filing of a winding up petition and before the winding up order is passed, provided that the court will normally reject the petition if the company is already in a notorious state of bankruptcy by the time the petition for rectification is filed."

11. Where the winding up order had intervened whereby the rights of creditors were made paramount, application for rectification must be refused even if there is a proper case for such rectification on the ground of repudiation of the shares. In fact, it is accepted law that it would be too late for a shareholder to repudiate the share after winding up even if a proper case for repudiation had been made earlier. The essential principle to be remembered is that after winding up, the rights of creditors are crystallised and the hope held out to the creditors ought not to be dislodged at that time by rectifying the register on an application by a member who contends that his name is wrongly remaining on the register. Having held out that he is a shareholder and thereby a contributory also, if he fails to pay the share amount, he cannot approbate and reprobate and ask for an equitable discretionary remedy from the court to rectify the register.

12. In this case the member knew that his name was in the register ; he also knew that a balance order was passed against him as early as March 10, 1965. The delay in filing this application has not been explained. The decision in C.C.C.A. No. 95 of 1952 cannot help the applicant in any manner whatsoever. He cannot, therefore, at this belated stage set at naught the rights which have become vested and crystallised in the creditors. The balance order passed against him on April 22, 1960, is final, conclusive and binding on him. No substantial ground has been made out before me to set aside the decree dated April 22, 1960, and much less there is any substance in the contentions raised at this stage for the rectification of the register. Both the applications are therefore dismissed. But in the peculiar circumstances of this case, there will be no order as to costs.