(1943) 10 PAT CK 0003

In the Patna High Court

Yamuna Das Kanoujia APPELLANT

Vs

Behar Engineers and Contractors, Ltd. RESPONDENT

Date of Decision : 19-10-1943

Acts Referred:
Stamp Act, 1899 — Article 62, 35

Citation : AIR 1944 Patna 226

Hon'ble Judges : Fazl Ali, C.J;Chatterji, J

Bench : Full Bench

Judgement

Fazl Ali, C.J.—This is a Letters Patent appeal from an order of a single Judge of this Court which was pronounced in the following circumstances. On 5th May 1937 the appellant, who was one of the directors of the Behar Engineers and Contractors, Ltd., purported to transfer 501 shares of the company which were held by him to one Lachmi Debi for a sum of Rs. 2505. The deed of transfer was stamped with two one-anna revenue stamps only and therefore clearly it was not "duly stamped." On the strength of this document, however, Lachmi Debi made an application to the directors of the company for the registration of her name in place of the appellant and her name was eventually registered. This registration took place by reason of a resolution which was passed at a meeting of the directors held on 30th May 1937. At this meeting the directors present were the transferor himself and two others and it was resolved that the transferee be registered in respect of 501 shares.

2. On 4th January 1939, an application was made for winding up the company and after the commencement of the winding up proceedings the Official Liquidator filed a petition on 31st March 1941 before the learned Judge who was in seisin of the proceedings for the settlement of the list of contributories and in that petition sought the direction of the Court as to whether the appellant or Lachmi Debi was to be included in the list as a contributory. The learned Judge after hearing the parties came to the conclusion that inasmuch as the instrument of transfer was not properly stamped in accordance with Article 62 of the

Schedule to the Stamp Act, the directors of the company should have ignored the transfer and should not have registered the name of the transferee. The learned Judge upon this view directed that the name of the transferee should be removed from the register of share-holders and that of the appellant placed on the register in respect of the shares in question. The learned Judge did not say in so many words who was to be included as a contributory, but the inevitable consequence of his order is that the appellant and not Lachmi Debi is to be treated as a contributory so far as the shares in question are concerned.

3. The appellant has attacked the order of the learned Judge on a number of grounds but two of these grounds appear to me to require serious consideration. The first ground is based on Section 35, Stamp Act, which after providing that no instrument chargeable with duty shall be admitted in evidence or shall be acted upon unless such instrument is duly stamped proceeds to state as follows:

Provided that any such instrument not being an instrument chargeable with a duty of one anna or half an anna only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the ease of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of Rs. 5, or, when ten times the amount of the proper duty or deficient portion thereof exceeds Rs. 5, of a sum equal to ten times such duty or portion.

4. In the present case the learned Judge has directed the document to be impounded and the Registrar to realise the penalty payable u/s 35 of the Act. The appellant is prepared to pay the amount which is payable under the above proviso to Section 35 and contends that upon such payment the document should be admitted in evidence. It seems to me that in view of the mandatory provision to which reference has been made the document cannot be ruled out of consideration when the appellant is willing to pay the requisite amount chargeable.

5. Another ground of attack is provided by the decision of the Privy Council in AIR 1932 240 (Privy Council) . That decision has reference to Section 156, Companies Act, which while providing that in the event of a company being wound up every present and past member shall be liable to contribute to the assets of the company, subjects that rule to the following exception among others:

a past member shall not be made liable to contribute if he has ceased to be a member for one year or upwards before I he commencement of the winding up.

6. u/s 40 of the Act a register of members is to be regarded as prima facie evidence of his membership. As the name of Lachmi Debi is entered in the register therefore prima facie she is a member. The question, however, arises whether we can take into account at this stage, when more than a year has elapsed since her name was registered, the fact that she became a member

under an instrument of transfer which being improperly stamped cannot be admitted in evidence or acted upon. The decision of the Privy Council to which I have referred had to deal with a case in which the name of a person was placed on the register in respect of certain shares by reason of a contract which was impugned as being illegal. Their Lordships of the Privy Council held that even assuming that the agreement was illegal, the person whose name was registered had to be regarded as a contributory. The observation which they made on this subject were as follows:

Whatever may have, been the rights and liabilities of the testator before winding up intervened, the position was altered by the happening of that event. At the commencement of the winding up he was and had for over three years been entered on the register of share-holders as the holder of the shares now in question with his full knowledge and assent. On the winding up Section 156, Companies Act, came into play. His liability under that section in respect of the shares was absolute and flowed from the fact of his being on the register in respect of those shares. The original contract may supply the reason for his name having been placed on the register in respect of the shares, but after the winding up his liability in respect of the shares arose ex lege and not ex contractu.

7. This case in my opinion is sufficient authority for the view that whatever the position might have been before the winding up proceedings commenced, after the commencement of those proceedings when Section 156 comes into play, it is too late to fall back upon the illegality of the transfer and to urge that the person whose name stands in the register is not to be treated as a contributory.

8. In these circumstances I would allow the appeal and set aside the order of the learned Judge. The learned Advocate for the Official Liquidator tried to contend that the transfer in favour of Lachmi Debi was a fraudulent one and also that her name had been fraudulently registered in the company''s books. It was suggested that the transferee was a person of no means and status, that she had paid no consideration for the transfer and that the transfer had been made by the appellant merely to avoid his liability in the event of the company being wound up which he anticipated as he had fall knowledge of the affairs of the company. It was also suggested that e the transfer had been made without the full knowledge and assent of the transferee as was indicated by the fact that the instrument of transfer does not bear her thumb impression or any other mark in token of her having assented to the transfer but merely purported to have been signed by her husband. Unfortunately, however, these matters are not to be found in the original petition filed on behalf of the Official Liquidator before the learned single Judge. If the Official Liquidator is in possession of any reliable materials to enable him to establish his allegations, they can be properly gone into only by the learned j Judge and not in this Court. They have to be stated clearly in a regular petition and will have to be established before the learned Judge.

9. As at present advised I am not prepared to commit myself to the view that the learned Judge has no jurisdiction to direct the removal of the name of the transferee from the register even though it is established that the transfer was fraudulent; but, as I have already said, that is a matter which should be properly pleaded and proved by the Official Liquidator. Having regard to all the circumstances of the case I will make no order as to costs.

Chatterji J.

10. I agree.

