The Public Passenger Service Limited

Vs

M. A. Khader and two Others

Civil Appeal Nos. 202 and 203 of 1965

(K. Subba Rao, R. S. Bachawat, J. R. Mudholkar JJ)

30.08.1965

JUDGEMENT

BACHAWAT, J. –

The appellant is a limited Company carrying on transport business in South Arcot District. M. A. Khadar, the contesting respondent in Civil Appeal No. 202 of 1965, holds 13 shares and his brother M. J. Jabbar, the contesting respondent in Civil Appeal No. 203 of 1965, holds 163 shares in the company. Articles 29 and 30 of the articles of association of the Company read :

> "29. The notice shall name a future day, not being less than seven days from the service of the notice, on or before which such call or other money and all interest and expenses that may have accrued by reason such non-payment are to be paid and the place where payment is to be made, the place so named being either the registered office of the company..... are usually made payable and shall state that in the event of non-payment at or before the time and at the place appointed the share in respect of which such payment is due, will be liable to be forfeited.
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> 30. If the requisitions of any such notice as aforesaid be not complied with, any share in respect of which such notice has been given may, at any time thereafter before payment of all money due thereon with interest and expenses, be forfeited by a resolution of the directors to that effect."

On January 2, 1957, the board of director of the Company passed a resolution calling the unpaid amount of Rs. 25/- on each share. On January 3, 1957, a call notice was issued to the shareholders requesting payment on or before January 19, 1957. The call notices were duly served on the contesting respondents. As the call monies remained unpaid, the company issued the following notice dated January 20, 1957, to the respondents under Article 29 :

> "Sir,
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> As the call amount of the balance of Rs. 25/- for every share held by you remains unpaid in respect of the notice dated 3rd January, 1957, issued in pursuance of the resolution of the Board, I hereby issue this notice calling upon you to pay the called amount at the registered office of the company on or before Wednesday the 30th January, 1957, together with interest at six per cent. and any expenses that might have accrued by reason of such non-payment.

> Take further notice that in the event of non-payment as mentioned above, the shares registered in your name will be liable to be, once for all, forfeited without further notice and without prejudice to any legal action that may be taken against you for recovering the balance amount due from you treating the same as a debt due to and recoverable as such by the company under Article 14.
>
> By order of the Board
>
> (Signed) A. R. Hassain Khan
>
> Managing Director."

In spite of this notice, the respondents did not pay the call monies, and on February 11, 1957, the board of directors passed a resolution under article 30 forfeiting the shares held by them. On November 8, 1957, the respondents filed two separate applications under section 155 of the Companies Act, 1956, in the High Court of Madras praying that the forfeitures be set aside and the necessary rectifications be made in the share register of the company. Ramachandra Iyer J. allowed the applications, and passed conditional orders for rectification of the register, and his decision was affirmed by the appellate court. The courts below held that, in the absence of particulars of interest and expenses, the notice dated January 20, 1957, was defective and the forfeiture was invalid. The Company now appeals to this court on a certificate granted by the High Court.

In all standard articles of a company, the regulations relating to calls provide for payment of interest on the unpaid call money at a certain rate from the date appointed for its payment up to the time of actual payment, see regulation 14 of Table A in the First Schedule to the Indian Companies Act, 1913, regulation 16 of Table a in the First Schedule to the Companies Act, 1956, and Palmer's Company Precedents, 17th edn., Part I, page 437 and the regulations relating to calls are followed by regulations relating to forfeiture like articles 29 and 30 of the appellant Company. In the light of article 29 read with similar regulations relating to calls, we would have no difficulty in holding that the notice dated January 20, 1957, required payment of interest on the call money from the date appointed for the payment thereof, that is to say, January 19, 1957, up to the time of the actual payment. Unfortunately, all the regulations of the company relating to payment of calls have not been printed in the paper boo

But we agree with the High Court that the notice is defective in respect of the demand for expenses. The amount of expenses incurred by the company by reason of the non-payment was not disclosed. The respondents were not informed how much they should pay on account of the expenses. The object of the notice under article 29 is to give the shareholders an opportunity for payment of the call money, interest and expenses. The notice under article 30 must disclose to the shareholder presumably conversant with the articles sufficient information from which the may know with certainly the amount which he should pay in order to avoid the forfeiture. In the absence of particulars of the expenses, the respondents were not in a position to know the precise amount which they were required to pay on account of the expenses. A proper notice under article 29 is a condition precedent to forfeiture under article 30. Here, the notice under article 29 is defective, and the condition precedent is not complied with. The slight d

Section 155(1) (a) (ii) of the Indian Companies Act allows rectification of the share register if the name of any person after having been entered in the register is, without sufficient cause, omitted therefrom. There is no sufficient cause for the omission of the name of the shareholder from the

register, where the omission is due to an invalid forfeiture of his shares, and no finding that the forfeiture is invalid, the court has ample jurisdiction under section 155 to order rectification of the register. The High Court said that the shareholder may approach the court under section 155 if he has sufficient. This mode of expression was rightly criticised by counsel for the appellant. This issue under section 155(1)(a)(ii) is not whether the shareholder has sufficient cause but whether his name has been omitted from the register without sufficient cause. As the forfeiture is invalid, the names of the respondents were omitted from the share register without sufficient cause, and the jurisdiction of the Court u

Counsel for the appellant contended that the point as to the invalidity of the notice dated January 20, 1957, was not open to the respondent in the absence of any pleading on this point. In the affidavit in support of the application, the respondents pleaded that the steps prescribed before there can be a forfeiture have not been complied with. Nor further particulars were given, but the contention as to the invalidity of the notice dated January 20, 1957, was pointedly raised in the argument in the first court. The contention was allowed to be raised without any objection. Had the objection been then raised, the court might have allowed the respondents to file another affidavit. The appellant cannot now complain that the pleading were vague.

We may now conveniently refer to certain events which happened after January 2, 1957, when the directors resolved to make the call and February 11, 1957, when the shares were forfeited. On January 18, 1957, M. A. Jabbar, M. A. Khadar and other shareholders filed Application No. 119 of 1957, in the Madras High Court praying for reliefs under sections 402 and 237 of the Companies Act, 1956, and obtained an interim order directing stay of collection of monies pursuant to the notice dated January 3, 1957. The stay order was communicated to the directors on January 21, 1957, after the notice of the intended forfeiture dated January 20, 1957, was issued. On January 30, 1957, the court passed a modified interim order restraining the forfeiture of the shares, and directed M. A. Jabbar to pay the call money into court within one week. The call money was not paid into court and on February 8, 1957, the court vacated the stay order. Application No. 119 of 1957 was eventually dismissed on April 10, 1957. Counsel for the

Counsel for the appellant contended that the relief under section 155 is discretionary, and the court should have refused relief in the exercise of its discretion. Now, where by reason of its complexity or otherwise the matter can more conveniently be decided in a suit, the court may refuse relief under section 155 and relegate the parties to a suit. But the point as to the invalidity of the notice dated January 20, 1957, could well be decided summarily, and the courts below rightly decided to give relief in the exercise of the discretionary jurisdiction under section 155. Having found that the notice was defective and the forfeiture was invalid, the court could not arbitrarily refuse relief to the respondents.

Counsel for the appellant points out that the respondents are the trade rivals of the appellant and are anxious to cripple its affairs, and the appellate court recorded the finding that the respondents were acting mala fide and prejudicially to the interests of the appellant and their conduct in taking various proceedings against the appellant is reprehensible. Counsel then relied upon the well-known maxim of equity that "he who comes into equity must come with clean hands", and contended that the courts below should have dismissed the applications as the respondents did not come with clean hands. This contention must be rejected for several reasons. The respondents are not seeking equitable relief against forfeiture. They are asserting their legal right to the shares on the ground that the forfeiture is invalid, and they continue to be the legal owners of the shares. Secondly, the maxim does not mean that every improper conduct of the applicant disentitles him to equitable relief. The

maxim may be invoked w

In the result, the appeals are dismissed. There will be no order as to costs.

Appeals dismissed.

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