

The Life Insurance Corporation of India

Vs

Rajmata Saheb Chowhanji and Others

Civil Appeal No. 2371 of 1968

(Syed M. Fazal Ali P. N. Shinghal, A. D. Koshal JJ)

02.08.1978

JUDGMENT

FAZAL ALI, J. -

1. This appeal by certificate is directed against the judgment of the High Court of Madhya Pradesh dated April 20, 1967 affirming the decree passed by the Additional District Judge, Indore decreeing the plaintiff's suit.
2. The facts of the case are detailed in the judgment of the High Court and that of the District Judge and it is not necessary for us to repeat the same all over again.
3. Briefly, the present action was brought by the plaintiff for recovery of a sum of Rs. 2,00,000 invested by the plaintiff in the Adarsh Bima Company being defendant 1 and the predecessor of the appellant, who is defendant 3 (Life Insurance Corporation of India). The action was brought on the basis that the Managing Director of the Adarsh Bima Company by practising fraud and misrepresentation on the plaintiff induced him to part with a sum of Rs. 2,00,000 by purchasing 2000 shares of Rs. 100 each. The courts below have recorded clear findings of fact that the fraud alleged by the plaintiff has been clearly proved and that the plaintiff had parted with a sum of Rs. 2,00,000 by investing the same in purchase of 2000 shares as a result of which the shares scrips were handed over to the plaintiff and he was assured of a dividend of 4 per cent. It has also been found as a fact that such a resolution was contrary to the statute of the company.
4. The suit was contested by the appellant who is defendant 3 in the courts below mainly on the ground that after the appellant took over the Adarsh Bima Company, he was not liable for any act of the company which was ultra vires the statutes of the company.
5. In support of the appeal the Solicitor General submitted two points before us. In the first place, it was contended that on the finding that the fraud was committed on the plaintiff and the act of the Managing Director being ultra vires the statutes of the company, the company would not be liable although the Managing Director may be personally liable. Secondly, it was argued that assuming that the company was liable but in view of the provisions of Section 7(2) of the Life Insurance Corporation Act, 1956 (hereinafter called the Act), the liability of the appellant would extend only to matters appertaining to the controlled business as defined in the Act.
6. As regards the first contention we find absolutely no substance in the same. There was absolutely no pleading by the defendants that the monies were received by the Managing Director personally and that the same did not go to the coffers of the company. On the other hand, the plaintiff clearly

pleaded in paragraphs 3(b), 8(b) and 8(b) of the plaint that the money as paid to defendant 1 company which after receiving the amount issued share scrips to the plaintiff. The relevant portions of the aforesaid statements may be extracted thus :

3(b) Relying upon the said guarantee and promise given by the defendant 2 on the company's behalf Plaintiff 1 on June 11, 1947 gave at Jhabua to defendant 1 company through defendant 2, Government of India 3 per cent Loan Bonds of 1953-55 of the value of Rs. 1,00,000 duly endorsed in favour of defendant 1 company The company addressed a letter acknowledging receipt of the application for 1000 shares and the full consideration of the said shares at the rate of Rs. 100 per share and agreed to allot the said 1000 shares to plaintiff 4.

8(a) The plaintiffs submit that the transaction of selling the said 2000 shares of defendant 1 company and registering the same as aforesaid in the names of plaintiffs 2 to 4 with a guarantee of minimum return is ultra vires the defendant 1 company and is found to be void and inoperative in law.

8(b) The said 2000 shares of defendant 1 company are as aforesaid applied for and registered in the names of plaintiffs 2 to 4. At all materials times when the said shares were registered in the name of plaintiffs 2 to 4, the plaintiffs 2 to 4 were minors. The plaintiffs submit that the transaction of issuing the said 2000 shares to plaintiffs 2 to 4 who were then minors and registering them as share-holders in the Register of defendant 1 company is void in law.

Thus, the plaintiff has clearly alleged that the monies were paid to the defendant company and not to the Managing Director personally. If the share scrips were issued, to the plaintiff then it must be presumed that the money was received by the company. This fact has not been denied by the defendant-appellant. In these circumstances, therefore, it is absolutely clear that there is nothing to show that the money was paid to the Managing Director personally and not to the company. Moreover, this is essentially a question of fact and it does not appear to have been raised before any of the courts below. For these reasons, therefore, the first contention put forward by the Solicitor General is hereby over-ruled.

7. Coming to the next contention the same undoubtedly merits serious consideration. Before however examining this contention the following admitted facts may be stated thus :

1. That the Bima Company was doing merely the business of life insurance and no other;

(2) That on the coming into force of the Act the entire interest of the company vested in the Government :

Section 7(2) of the Act runs thus :

7. (2) The assets appertaining to the controlled business of an insurer shall be deemed to include all rights and powers and all property, whether movable and immovable, appertaining to his controlled business, including, in particular, cash balances, reserve funds, investments, deposits and all other interest and rights in or arising out of such property as may be in the possession of the insurer and all books of account or documents relating to the controlled business of the insurer; and liabilities shall be

deemed to include all debts, liabilities and obligations of whatever kind then existing and appertaining to the controlled business of the insurer.

Explanation - The expression, 'assets appertaining to the controlled business of an insurer' -

(a) in relation to a composite insurer, includes that part of the paid-up capital of the insurer or assets representing such part which has or have been allocated to the controlled business of the insurer in accordance with the rules made in this behalf;

(b) in relation to a Government, means the amount lying to the credit of that business on the appointed day.

8. It is contended by the Solicitor General that the appellant was liable to discharge only those liabilities which pertained to the controlled business of the insurer. Sub-clause (3) of Section 2 of the Act defines 'controlled business' thus :

"controlled business" means -

(i) in the case of any insurer specified in sub-clause (a)(ii) or sub-clause (b) of clause (9) of Section 2 of the Insurance Act and carrying of life insurance business

As we have already pointed out that defendant 1 Adarsh Bima Company was carrying on the business of life insurance only. Thus the moment the Act was passed, the business of the Adarsh Bima Company vested in the Corporation. *Pari passu* this contention it was submitted that under Section 7(2) of the Act the liability of the appellant would not extend to any acts which are fraudulent or *ultra vires* the statutes of the company. We are, however, unable to agree with this contention. The words of Section 7(2) of the Act appear to be of the widest amplitude and the section includes all debts, liabilities, obligations of whatever kind then existing and appertaining to the controlled business of the insurer. There can be no doubt that at the time when the appellant took over the Adarsh Bima Company the obligation to reconstitute the benefit received by the company from the plaintiff had been fastened and the appellant was appellant was legally bound to return the same to the plaintiff under Section 65 of the Contract Act in view of the finding of fact recorded by the court below that the contract was void. The question as to whether or not the transaction was *ultra vires* the statutes of the company was wholly irrelevant because that was the reason why the contract was void and not a ground for exempting the appellant from its liability to pay. The words "of whatever kind" are wide enough to take within their sweep all kinds of transactions entered into by the predecessor company. The present transaction was undoubtedly entered into by the predecessor company which had received the sum of Rs. 2,00,000 from the plaintiff and had issued share scrips. In these circumstances, therefore, we do not see how the defendant 3 can escape his liability even under Section 7(2) of the Act. As however the plaintiff will be entitled to restitution of the benefits under Section 65 of the Act, he can only get the amount which he had paid to the appellant company and not any interest thereon up to the date of the suit. For these reasons, we are of the opinion that the judgment of the High Court is correct and does not require any interference except a slight modification in the form of the decree.

9. We, therefore, direct that the plaintiff will be entitled to the decree of Rs. 2,00,000 passed by the courts below but not to the interest of Rs. 47,000 claimed by him and to that extent the decree is hereby modified. The plaintiff will however be entitled to interest at six per cent per annum from the date of the suit to the date of the payment. With this modification the appeal is dismissed, but in the circumstances without any order as to costs.

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