

## ORIGINAL CIVIL.

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*Before Panckridge J.*

SURAJMALL MOHTA

v.

BALLABHDAS MOHTA.\*

1935

March 4.

*Company—Articles of Association—Forfeiture of shares, Provision for, if enforceable.*

Where the articles of association of a limited company provide for the forfeiture of a shareholder's share on certain events happening, a shareholder on the happening of such events loses all rights in respect of his share.

Such a provision in the articles is enforceable as a contract and does not constitute a penalty.

Articles authorising forfeiture of shares must be distinguished from those providing for a lien on them.

In re *Bolton*. Ex parte *North British Artificial Silk, Limited* (1) relied upon.

APPLICATION by the judgment-creditor of a deceased shareholder.

The material facts of the case and arguments of counsel appear sufficiently from the judgment.

*S. N. Banerjee (Sr.)* and *K. B. Basu* for the applicant.

*S. M. Bose*, Standing Counsel, and *K. P. Khaitan* for the Secretary, Calcutta Stock Exchange Association, Limited.

PANCKRIDGE J. This application raises a question as to the construction and legality of certain of the articles of association of the Calcutta Stock Exchange Association, Limited. One Gokuldas Mohta was a member of the association, and he, as such member, was the registered holder of one paid up share of Rs. 1,000 in the capital of the company. The present suit was instituted against his heirs and legal

\* Application in Original Suit No. 598 of 1931.

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representatives, and a decree was obtained on February 24, 1933. Prior to that date, Gokuldas Mohta and the firm of which he was a member had incurred liabilities to other members of the Calcutta Stock Exchange Association, Limited, and he had failed to meet them within six months of being declared a defaulter in terms of article 22 of the articles of association. By reason of the provisions of that article he automatically ceased to be a member. By article 24 it is provided :—

Upon any member ceasing to be a member under the provisions of article 22 hereof and upon any resolution being passed by the committee expelling any member under the provisions of article 21 hereof or upon any member being adjudicated insolvent the share held by such member shall *ipso facto* be forfeited.

This article is carelessly drawn, because, on its literal application, before his share could be forfeited, a member would both have to be expelled by the committee under article 21 and automatically cease to be a member under article 22. Clearly this cannot be the intention of the article and it is obvious that by a slip, "and" has been substituted for "or".

It has not been contended that the shares have not been legally forfeited under the articles. Under article 27—

Any share so forfeited shall be deemed to be the property of the Association, and the committee shall sell, re-allot, and otherwise dispose of the same in such manner to the best advantage for the satisfaction of all debts which may then be due and owing either to the Association or any of its members arising out of transactions or dealings in stocks and shares.

It is in evidence that this share has been sold and part of the price realised by the sale has been applied in satisfying the claims of those members to whom Gokuldas was under a liability in respect of share transactions.

The decree-holder has now served a garnishee notice upon the president and secretary of the Stock Exchange Association requiring them to pay to the Sheriff of Calcutta the surplus of the sale proceeds

of Gokuldas' share after deducting therefrom the dues of the members of the association from him or to show cause to the contrary. The president and secretary resist the plaintiff's application on the ground that by reason of article 29 the judgment-debtors have lost all rights in respect of the share and its sale proceeds. The article runs as follows:—

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The forfeiture of a share shall involve the extinction of all interest in and also of all claims and demands against the Association in respect of the share, and all other rights incidental to the share, except only such of those rights as are by these Articles expressly saved.

By article 31 the association is given *inter alia* :

a first and paramount lien upon the share registered in the name of each member and upon the proceeds of sale thereof for his debts, liabilities and engagements, solely or jointly with any other person to or with the Association.

Article 32 gives the association power to sell the share for the purpose of enforcing the lien, and article 33 provides that—

The nett proceeds of any such sale shall be applied in or towards satisfaction of the debts, liabilities or engagements, and the residue (if any) paid to such member, his executors, administrators, committee, curator, or other representatives.

I do not understand Mr. Banerjee to argue that article 33 expressly saves the rights of the member and his representatives within the meaning of article 29. He relies on the judgment of Eve J. in *Hopkinson v. Mortimer, Harley & Co., Ltd.* (1). There it was held that a lien held by the company on the shares of a member being an equitable charge in the nature of a mortgage, the power to forfeit the member's shares on his failure to redeem on a seven days' notice was a clog on the equity of redemption and as such invalid and *ultra vires*.

In my opinion, in this case these considerations do not arise, because the association did not attempt to enforce their lien by sale, but purported to act under quite different powers, which came into operation on certain events happening which had nothing

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to do with the registered share held by the shareholder. If the association had been purporting to exercise the lien given them under article 31 then the legality and extent of article 33 would become matters for consideration. But as things stand, in my opinion, the question does not arise. The distinction between articles authorising forfeiture and articles providing for a lien is recognised in *In re Bolton*. Ex parte *North British Artificial Silk, Limited* (1). Mr. Banerjee maintains that that case, properly applied, is of assistance to him, because it was there held that in the circumstances the company could claim no more than the difference between the amount received on the reallocation of the forfeited shares and the amount due at the date of forfeiture. The answer, I think, to this is that the language of the articles in that case was quite different from the language which is before me, and there was nothing so drastic in those articles as a provision for the extinction of all interest incidental to the shares.

Mr. Banerjee finally argues that this provision is unenforceable because it constitutes a penalty. I do not agree with this, because the article is a contract between the company and its members whereby each member agrees to abandon his rights in the assets of the company if he offends against the rules of the company in one way or another, and the considerations which arise when a claim is made on the basis of damages for a breach of contract are not applicable here. Accordingly I dismiss the judgment-creditor's application with costs.

*Application dismissed.*

Attorneys for applicant: *B. N. Basu & Co.*

Attorneys for respondent: *Khaitan & Co.*

P.K.D.