

MISCELLANEOUS CIVIL.

Before Mr. Justice Mukerji.

1926
April, 16.

IN THE MATTER OF J. H. CHANDLER AND Co. LTD., (IN LIQUIDATION).*

Act No VII of 1913 (Indian Companies Act), section 30—Liquidation—Contributory—Person agreeing to take shares and signing the memorandum of association though not entered in the register as a share holder—Limitation.

P agreed to purchase shares in a newly started company and subscribed to the memorandum of association before it was filed with the Registrar. Later, he asked the promoter of the company to cancel his "requirements" and as a matter of fact P's name was never entered in the register of members. Eventually the company went into liquidation. Held, that P was liable as a contributory to make good the value of the shares for which he had signed. *In re the Machine Exchange Company* (1), and *Union Bank, Allahabad, Ltd.*, (2), referred to.

Held, further, on a question of limitation, that the cause of action for a claim by the official liquidator to recover contributions from the contributories could not arise before the appointment of the official liquidator.

THE facts of this case are fully stated in the judgement of the Court.

Babu *Indu Bhushan Banerji*, for the Liquidator.

Mr. *F. Owen O'Neil*, for Mr. H. I. Phillips.

MUKERJI, J.—The official liquidator claims a sum of Rs. 1,000 from Mr. H. I. Phillips, Agent of the Allahabad Bank Ltd., at Patna, on the ground that he is a contributory inasmuch as he agreed to purchase 100 shares of Rs. 10 each by subscribing to the memorandum of association before it was filed with the Registrar.

* Miscellaneous Case No. 336 of 1925.

(1) (1887) I.L.R., 12 Bom., 311. (2) (1925) I.L.R., 47 All., 669.

Mr. Phillips denies his liability and has filed an affidavit to state the facts. The affidavit is really the basis on which the case is to be decided, because there is no counter affidavit.

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The facts appear from the affidavit to be these. Mr. Chandler, who was anxious to float the company, approached Mr. Phillips, and at his request Mr. Phillips signed the memorandum to be attached to the Articles of Association, to be forwarded to the Registrar, Joint Stock Companies, for registration. Mr. Phillips admits that he put himself down for 100 shares. It also appears from the affidavit that in 1921, apparently after the registration of the company, Mr. Phillips received a letter from Mr. Chandler asking him if he was going to take the shares. Mr. Chandler made the inquiry because an allotment of shares was going to be made. Mr. Phillips replied that he was no longer in a position to subscribe for the shares and he asked Mr. Chandler to cancel his "requirements." Mr. Phillips says further that thereafter he never had any talk with Mr. Chandler about those shares and that he understood and believed that the whole incident about the purchasing of shares had closed for good.

On these facts it is contended on behalf of the official liquidator, that in view of the provisions of section 30 of the Indian Companies Act, Mr. Phillips became a member and therefore became liable as a contributory to make good the value of the entire number of shares for which he had signed. It is common ground that Mr. Phillips' name was never entered in the register of members. The question is whether, in the circumstances, Mr. Phillips is liable as a contributory.

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Before proceeding to deal with the subject it would be necessary to mention Mr. *O'Neil's* argument on behalf of Mr. Phillips. He argued that the object of obtaining Mr. Phillips' signature was really this, that the signature of Mr. Phillips should serve as an advertisement, *viz.*, a gentleman of Mr. Phillips' position was going to take so many shares and that it was believed by the promoter that the signature of Mr. Phillips would attract more subscribers. Supposing that this was the case, I should think that Mr. Phillips' responsibility would increase and not decrease. If he meant to allow his name to be used to attract other subscribers, I think he would be in duty bound to take all the shares for which he put down his name. The affidavit of Mr. Phillips, however, does not go so far as Mr. *O'Neil* would put it. Indeed, let it be said to his credit, that Mr. Phillips does not say that he allowed his name to be used as a lure or decoy for the purpose of attracting subscribers.

Coming to the question of law, it seems to me perfectly clear. In the language of section 30 of the Indian Companies' Act, the subscribers to the memorandum of a company *shall be deemed* to have agreed to become members of the company. It is true that the section lays down that on the registration of the company the names of the subscribers of the memorandum shall be entered as members in the register of members. But, from the mere omission of the entry of the names in the share register, it does not follow that the subscribers to the memorandum are not to be deemed to have agreed to become members. The first portion of the first paragraph of section 30 lays down a rule of substantive law and the second portion lays down a rule of procedure, *viz.*, what is to be done. The subsequent portion does not, in my opinion, govern the earlier portion.

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The law on the point in India is the same as the English law, and in Palmer's Company law, 12th edition, at page 105, it is clearly indicated that every subscriber to the memorandum of association becomes a member, *ipso facto*. Indian cases on this point are not also wanting and the case of *In re the Machine Exchange Company* (1) will be found to be in point. I hold that Mr. Phillips is liable as a contributory.

At the close of the reply by the counsel for the official liquidator, Mr. O'Neil drew my attention to the question of limitation. He contented himself with merely mentioning the point because it had not been raised in the pleadings. I have considered the point and I am of opinion that no bar of limitation exists in the present case.

The nature of the proceeding is this. The official liquidator, on his appointment, is seeking recovery of contributions from the contributories. The cause of action would arise only on the appointment of an official liquidator and not earlier. A somewhat similar point arose in the case of *Union Bank, Allahabad, Ltd.*, (2), and was considered by a Division Bench of this Court. The claim was based on an alleged misfeasance of certain directors and the question was when the cause of action arose in favour of the official liquidator. The court held that the cause of action could not have arisen before the appointment of the official liquidator. I would hold a similar view in this case and I am of opinion that no bar of limitation exists in this case.

I declare that Mr. Phillips is liable to pay a sum of Rs. 1,000 as a contributory. He will pay the liquidator's costs of his present application.

Application allowed.

(1) (1887) I.L.R., 12 Bom., 311.

(2) (1925) I.L.R., 47 All., 669.