

decree could not be satisfied till the expiration of sixty-one months, i.e., over five years. The discretion given to the courts to grant instalments should not be so exercised as to practically nullify a claim for money". The learned Judge returned the case to the court of small causes for rehearing and disposal. While agreeing with the learned Judge in the remarks I have quoted, I think that this Court could well dispose of the matter and save further expense. Neither counsel suggests that any further material is available or could properly be allowed now to be put before the court. To decide it here will be to the interest of both parties.

I set aside the decree of the court of small causes, and, in lieu thereof, decree the plaintiff's claim for Rs. 884 with costs and future interest at the usual rate of 6 per cent., and allow the defendant to pay in half-yearly instalments of Rs. 120 each, commencing from July 28th next. The applicant here will have his costs.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice King.

BISHAMBHAR NATH (DEFENDANT) *v.* THE AGRA
ELECTRIC STORES (PLAINTIFF).*

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February, 10.

Companies Act (VII of 1913), section 207—Powers of liquidator in voluntary winding up—Suits for unpaid calls—Companies Act (VII of 1913), Table A, articles 14 and 28—Forfeiture of shares—Liability for interest—Limitation for suit for money remaining unpaid on forfeited share—Limitation Act (IX of 1908), articles 112, 115.

When a share has been forfeited for non-payment of calls, the starting point of limitation for a suit to recover the money remaining unpaid on the forfeited share is, according to article 28 of Table A annexed to the Companies Act, the date of the forfeiture. Such a suit is within time if brought within three

*Second Appeal No. 258 of 1930, from a decree of J. N. Dikshit, Additional Subordinate Judge of Agra, dated the 9th of November, 1929, modifying a decree of Kishori Lal, Munsif of Agra, dated the 13th of May, 1929.

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years from the date of forfeiture, though more than three years after the last call became due; and article 115 of the Limitation Act applies, and not article 112.

When a share has been forfeited for non-payment of calls, no interest upon the amount remaining unpaid is claimable after the date of forfeiture, in the absence of any provision of law or of contract. Article 14 of Table A annexed to the Companies Act provides for the liability to pay interest on unpaid calls, but that relates to interest payable by a shareholder and does not apply to a person who ceased to be a shareholder on the date on which his share was forfeited.

Upon a voluntary winding up the liquidator has power, under the provisions of section 207 of the Companies Act, to institute a suit for recovery of the amount remaining due upon a forfeited share. Power to institute suits need not be expressly conferred upon him by the resolution appointing him liquidator.

Directors are not bound to sell forfeited shares in order to reduce the liabilities of the persons whose shares have been forfeited.

Dr. K. N. Katju and Messrs. B. Malik and G. Agarwala, for the appellant.

Messrs. S. K. Dar and Gopi Nath Kunzru, for the respondent.

BANERJI and KING, JJ. :—This is a defendant's appeal in a suit by a liquidator of a private limited liability company for recovery of money for certain calls on shares which were not fully paid up.

The Agra Electric Stores, Limited, was a private limited liability company and the defendant was a signatory to the memorandum of association and he was a subscriber of one share of Rs. 2,000. On the 10th of November, 1924, he paid a sum of Rs. 500. The balance of Rs. 1,500 he was called on to pay on allotment and on two calls made by the company; that is, by the 2nd of March, 1925, Rs. 1,500 ought to have been paid by the defendant-appellant on his share.

On the 22nd of March, 1926, the Directors of the company forfeited the appellant's share. Eventually, on the 9th of May, 1928, Parshotam Das Agarwal was appointed a voluntary liquidator of the

company by a resolution of the company and on the 3rd of November, 1928, certain powers are alleged to have been given to the liquidator. The defendant not having paid the money due, the liquidator instituted the present suit on the 16th of March, 1929, for recovery of the sum of Rs. 1,500 and interest.

Various pleas were raised in defence, but the learned Munsif repelled the contention of the defendant and decreed the suit for a sum of Rs. 1,500 with interest at 5 per cent. per annum up to the date of forfeiture.

The defendant thereupon appealed to the lower appellate court and the plaintiff filed cross-objections. The appeal was dismissed but the cross-objection was allowed. Hence the present appeal by the defendant before us. The learned advocate for the appellant has argued before us five points. In our opinion there is no force in any of them except the fifth, which was that the cross-objection of the plaintiff in the court below should not have been allowed.

The first point taken is that the suit is barred by article 112 of the second schedule of the Limitation Act. It was contended by the learned advocate that as on the 2nd of March, 1925, the money on all the calls had become due, the suit ought to have been instituted within three years from the date when the amount became due. The courts below have held that the forfeiture of the share having been made on the 22nd of March, 1926, the suit of the plaintiff was within time. The court below repelled the contention of the defendant, following the case of *Habib Rowji v. Standard Aluminium and Brass Works* (1).

The learned advocate for the appellant has submitted that the articles of association in the Bombay case were different from the articles of association in the present case. We have therefore to see whether article 28 of Table A of the Indian Companies Act,

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which is applicable to this case, gives the liquidator of a company the right to sue within three years from the date of the forfeiture. We have examined the articles of association in the Bombay case and we find that there is really no difference between the provisions of article 28 of Table A attached to the Indian Companies Act and the articles in the Bombay case. We are of opinion that the point raised by the appellant has no force, as the present suit was instituted within three years from the date of the forfeiture and article 115 of the second schedule of the Limitation Act applies.

The next point that is raised here is that the liquidator had no right to sue inasmuch as in the resolutions of the 3rd of November, 1928, no power was given to the liquidator to institute suits. It was urged that all the liquidator could do was to sell the assets of the company within one month. It seems to us that this point raised by the learned advocate does not take into account the provisions of the Indian Companies Act. Section 207 of the Indian Companies Act lays down the consequences of voluntary winding up of a company and the powers of a liquidator appointed. We find that in the resolution referred to by the learned advocate for the appellant there is no express prohibition laid down against instituting suits. It is true there is no express power given to bring suits, but we do not think that it was necessary for the liquidator to have express powers in order to exercise powers which the law gives him under the Indian Companies Act. We are therefore of opinion that the liquidator was not restricted from instituting the present suit and there is no force in the plea.

The third point taken is that one of the Directors of the company having written a letter to the liquidator on the 21st of March, 1929, the liquidator could not institute the suit, it being necessary for him to obtain the consent of the Directors before he could institute the suit. We find that on the 6th of March, 1929,

the liquidator wrote a letter to one of the Directors. He waited for ten days for an answer. He instituted the present suit on the 16th of March, 1929, and it was not till the 21st of March, 1929, that one of the Directors wrote the letter referred to by the defendant. In our opinion, the effect of the letter cannot be to take away the statutory rights of the liquidator to institute the present suit.

The fourth ground taken is that it was the duty of the Directors to take steps to sell the forfeited share and reduce the liabilities of the defendant and that as the company was working at a profit in 1926 the Directors should have sold the shares. In our opinion, there is no force in this contention and we cannot allow it to be raised for the first time in second appeal.

Lastly it is urged that the court below should not have allowed interest from the date of forfeiture to the date of suit. We are of opinion that there is substance in this plea. There was no contract or claim upon which the claim for interest is based. In our opinion the court of first instance was right in holding that no interest was claimable after the date of forfeiture and before the suit, in the absence of any provision of law or contract. The lower appellate court has held that under article 14, Table A, interest was payable, but in our opinion interest that is payable under article 14 is interest as a shareholder and the defendant ceased to be a shareholder of the company on the date when the share was forfeited. See also the case of *In re Blakely Ordnance Company*, *Stocken's case* (1).

We therefore modify the decree of the lower appellate court and restore the decree of the court of first instance. Parties will pay and receive costs in proportion to failure and success in this Court and the lower appellate court.

(1) (1868) L.R., 3 Ch.A., 412.