

holder as the salary of the man or men whom the decree-holder may appoint for the purpose of protecting the trees in the jungle. This order is passed on the condition agreed to by the judgment-debtors that they will not cut any more trees in the jungle pending the execution proceedings. This order shall have effect subject to any order which may be passed by the Special Judge or by the Collector under the Encumbered Estates Act. We discharge the receiver. The parties will bear their own costs in this Court.

1935

THAKUR
GOBAR-
DHAN
SINGH
v.
LALA
HAZARI
LAL

King, C.J.
and Ziaul
Hasan, J.

MISCELLANEOUS CIVIL

*Before Sir C. M. King, Knight, Chief Judge and Mr. Justice
Ziaul Hasan*

RAGHUNATH PRASAD, R. B. (APPLICANT-APPELLANT) v. THE
LUCKNOW SUGAR WORKS, LTD., (IN LIQUIDATION) AND
OTHERS (OPPOSITE-PARTY-RESPONDENTS)*

1935
September 26

Civil Procedure Code (Act V of 1908), section 148—Lease by Court's order on condition that lease money be deposited within certain time—Court's power to extend time under section 148, C. P. C.—Construction of lease—Right of first refusal given to lessee in a lease, meaning of.

Where a Court sanctions the grant of a lease to a person on certain conditions, including the condition that the lease money shall be deposited within a week, and it is further laid down that if the lessee fails to deposit the money within a week the case should be laid before the Court for orders, the provisions of section 148 of the Code of Civil Procedure are applicable, and the Court has jurisdiction to extend time.

Where a lessee is given a right of first refusal, at the expiry of the term of his lease, for the ensuing year, it means that he is given a preferential right to take the lease for the ensuing year if he is prepared to pay as much as any other *bona fide* applicants are prepared to give, he has, so to speak, a right of pre-emption but he is not entitled to take the lease at a lower

*Miscellaneous Appeal No. 58 of 1935, against the order of the Hon'ble Mr. Justice Bisheshwar Nath Srivastava, Judge of the Chief Court, sitting on the original side, dated the 12th of August, 1935.

1935

RAGHUNATH
PRASAD,
R. B.
v.
THE
LUCKNOW
SUGAR
WORKS,
LIMITED

figure. *Manchester Ship Canal Co. v. Manchester Racecourse Co., Ltd.* (1), distinguished.

Messrs. *J. Jackson, R. B. Ram Prasad Varma, D. P. Khare*, and *Sitla Sahai*, for the appellant.

Dr. Qutab Uddin and *Mr. J. K. Tandon* (Official Liquidator), for the respondents.

KING, C. J., and ZIAUL HASAN, J.:—This is an appeal against an order passed by the learned Company Judge on the 12th of August, 1935, in connection with the winding up of the Lucknow Sugar Works Company.

On the 22nd of September, 1933, this company went into voluntary liquidation but subsequently an order was passed for a compulsory winding up. For the year October, 1933, to September, 1934, a lease was given to certain persons for running the Sugar Mills for a total sum of Rs.2,20,000. They actually paid in Rs.80,000 and managed the business up to about March, 1934, when they retired from the business. The liquidator had certain claims against them for breach of contract, and they on their part had certain counter-claims against the liquidator. For the year 1934-35 a lease was given to Rai Bahadur Raghunath Prasad for running the mills for a total sum of Rs.1,00,000 to be paid in cash before entering into possession. The lessee paid this amount and executed a lease according to the terms sanctioned. One of the conditions was that he was to be given first refusal of a lease for running the mills for the ensuing year, if he managed them satisfactorily during the year ending in September, 1935.

It appears that the lessee suffered considerable loss. This was partly due to the fact that he had to spend much more money in repairing and renewing the machinery than was anticipated. He has stated that he has spent Rs.75,000 on the machinery and has had to cope with great difficulties in running the mills, owing to previous mismanagement.

1935

 RAGHUNATH
 PRASAD,
 R. E.
 v.
 THE
 LUCKNOW
 SUGAR
 WORKS,
 LIMITED

*King, C.J.
 and Zivvi
 Hasan. J.*

When the question came up for giving the lease for the following year the learned Company Judge ordered the liquidator to advertise for offers for the lease of the Sugar Works for the year 1935-36. Advertisements were issued in the papers calling for tenders which were to be submitted on or before the 15th of June, 1935. Rai Bahadur B. Raghunath Prasad himself made an offer for the lease for the ensuing year but he made an offer of Rs.10,000 only, asking to be informed if any better offers were made, so that he might be given preference, according to the condition contained in his lease. On the 15th of June, 1935 (that is, within the time specified in the advertisements), the Cawnpore Flour Mills made an offer of Rs.1,20,000 by telegram for the lease for the season 1935-36 and this telegram was confirmed by a letter. On the 19th of July various offers were considered by the learned Company Judge and subsequently draft proposals for the terms of the lease were sent to all the applicants including the lessee Rai Bahadur B. Raghunath Prasad. On the 12th of August, 1935, the order which forms the subject-matter of this appeal was passed. The learned Judge stated that Rai Bahadur B. Raghunath Prasad was not prepared to offer more than Rs 75,000 for the lease for the ensuing year. It appears that this offer was made orally in the presence of the Court and no written tender was made for this amount. The learned Judge states that he had agreed to give Rai Bahadur B. Raghunath Prasad first refusal for the next year on condition that the working of the mills was satisfactory, and he had nothing to complain about the working of the mills, but he found it impossible to give him the lease for the next year for the sum of Rs.75,000 in the face of the offer of Rs.1,20,000. Therefore he accepted the offer of the Cawnpore Flour Mills and Bharat Insurance Co. (respondents Nos. 3 and 2) for Rs.1,20,000 and sanctioned the lease being given to them subject to certain conditions. The principal condition was that the

1935

RAGHUNATH
PRASAD,
R. B.
v.
THE
LUCKNOW
SUGAR
WORKS,
LIMITED

King, C.J.
and Ziaul
Hasan, J.

sum of Rs.1,20,000 must be deposited in the Central Bank, Lucknow, to the credit of the Company within a week.

It appears that the condition of payment within a week was not fully satisfied although some attempt was made to fulfil the condition. However this may be, the learned Judge passed a further order on the 27th of August extending the time for depositing the amount up till the 30th of August. The companies concerned, who are the respondents Nos. 2 and 3 before us, made their deposit within the extended time.

It has been argued on behalf of the appellant, Rai Bahadur B. Raghunath Prasad, that the learned Judge had no jurisdiction to extend the time for making the deposit of Rs.1,20,000. In support of this contention he has cited certain rulings, but we think it unnecessary to refer to them because they all relate to extending time for depositing money when the time has actually been fixed in the terms of a decree. We think that such cases are distinguishable from the facts of the case before us. Strictly speaking the question of the extension of time does not arise out of the order which is the subject-matter of this appeal. The order in question only sanctioned the grant of a lease to the respondents on certain conditions, including the condition that the lease money shall be deposited within a week, and it was further laid down that if the respondents failed to deposit the money within a week the case would be laid before the Court at once for orders. We think that in such a case the provisions of section 148 of the Code of Civil Procedure are applicable, and the Court had jurisdiction to extend time.

The next point taken is that the offer made by the respondents 2 and 3 is not a *bona fide* offer made by an outsider but is practically an offer made by the proprietors of the company itself, and to accept such an

offer is inconsistent with the condition in the appellant's lease that the first refusal should be given to him.

The point about the offer made by the respondents not being *bona fide* is not clearly taken in the memorandum of appeal, and it is only included very indirectly in ground No. 5 which alleged that the offer was "invalid." The appellant's contention is that the Cawnpore Flour Mills and the Bharat Insurance Company hold debentures of the Lucknow Sugar Works to the value of about Rs.12,00,000 and as the total assets of the company do not amount to more than about Rs.6,00,000 that means that the debenture-holders are in the position of owning the company. If they pay Rs.1,20,000 to the company they will benefit themselves as debenture-holders and it would simply amount to taking money out of one pocket and putting it into another.

In reply to this argument it has been pointed out for the respondents that the validity of the debentures has not yet been decided. Nor has it been decided whether the respondents Nos. 2 and 3 are entitled to hold the debentures. Even if it be accepted for the sake of argument that they are the holders of valid debentures, even so, we do not think that the argument of the learned Advocate for the appellant is sound. We are informed that the debentures create a charge upon the immovable property of the company, including the machinery. But so far as movable property and cash is concerned the debenture-holders are in no better position than unsecured creditors. If the respondents 2 and 3, as debenture-holders, pay in a large sum of money for the lease they will not be entitled to the benefit of that money exclusively but will only have to share rateably with all the other unsecured creditors. We do not think that the offer made by respondents 2 and 3 can be held invalid or made in bad faith on the ground that they are themselves debenture-holders.

So far as the right of first refusal is concerned, the appellant was given a preferential right to take a lease

1935

RAGHUNATH
PRASAD,
R. B.
v.
THE
LUCKNOW
SUGAR
WORKS,
LIMITED

King, C. J.
and Ziaul
Hasan, J.

1935

**BAGHUNATH
PRASAD,
R. B.
v.
THE
LUCKNOW
SUGAR
WORKS,
LIMITED**

*King, C.J.
and Ziaul
Hasan, J.*

of the Sugar Works for the ensuing year if he was prepared to pay as much as any other *bona fide* applicants were prepared to give. The appellant had so to speak a right of pre-emption and if the offer made by the respondents 2 and 3 is *bona fide* and valid he was not entitled to take a lease at a lower figure, although he would be entitled to take it if he were prepared to offer the same figure. This is what is meant by giving him the right of first refusal. Reference has been made to the case of *Manchester Ship Canal Co. v. Manchester Racecourse Co., Ltd.* (1), but we think that that case is clearly distinguishable upon the facts.

It has been further argued that Lala Har Kishan Lal who is the managing director of the Cawnpore Flour Mills, and is the chairman of the Directors of the Bharat Insurance Company, has been reported by Mr. Khanna, a co-liquidator, to have been guilty of misfeasance and fraud in relation to the company and notice has been given to him to appear before the Court to be examined. It is argued therefore that he is clearly an undesirable person to be entrusted with the management of the company's property. Against this it is argued that, however untrustworthy Lala Har Kishan Lal may be, the company does not stand to lose because the lease money has been actually paid in cash in advance.

If he manages the business badly and incurs loss the loss will not fall upon the company but only upon the respondents to whom lease has been given. It is also pointed out that the question whether Lala Har Kishan Lal has been guilty of misfeasance and fraud is a question which is still *sub judice* and we cannot assume that he has been guilty of such malpractices.

Another argument is that the respondents 2 and 3, namely the Cawnpore Flour Mills and the Bharat Insurance Company are associations of more than

(1) 48 L.T.R., 436.

twenty persons and that they cannot lawfully join together for the purpose of carrying on business for gain without being registered as a company under section 4, sub-section 2 of the Companies Act. The case of *Akola Gin Combination v. Northcote Ginning Factory* (1), has been relied upon for the proposition that the word "persons" in section 4 of the Indian Companies Act denotes individuals and does not include bodies of individuals, whether corporate or not, since any such extended definition would be repugnant to the subject and context of the section.

In that case an association was formed of several firms and two registered companies with the object of acquiring commercial gain and the association consisted of more than twenty persons. It was held that it was essentially within the purview of section 4 of the Act and required registration. This ruling does no doubt support the contention of the appellant. This ruling has also been cited with approval in the case of *Senaji Kapur Chand v. Pannaji Devi Chand* (2). In that case however the association in question consisted of four unregistered firms. It was held that those firms could not be considered to be separate "persons" for the purposes of section 4 and as the number of individuals in the four firms exceeded twenty it was held that the association must be registered under section 4. The judgment of the learned CHIEF JUSTICE of Madras was approved by their Lordships of the Judicial Committee who merely stated that they agreed with the judgment and with the reasons given. That case can hardly be considered a clear authority for the view that registered companies cannot be taken to be units for the purpose of section 4 of the Companies Act as only unregistered firms were under consideration in that case. We are doubtful whether registered companies cannot be held to be "persons" within the meaning of section 4 as a

1935

RAGHUNATH
PRASAD.
R. B.
2.
THE
LUCKNOW
SUGAR
WORKS,
LIMITED

King, C. J.
and Ziaul
Hasan, J.

(1) (1914) 26 I.C., 613.

(2) (1930) P.C., 300.

1935

RAGHUNATH
PRASAD,
R. B.
v.
THE
LUCKNOW
SUGAR
WORKS,
LIMITED

King, C.J.
and Ziaul
Hasan, J.

registered company is a corporation and for most legal purposes can be held to be a person. Section 80 of the Companies Act shows that a registered company can be a member of another company.

It is not necessary to decide that point for the purpose of disposing of this appeal because it has been pointed out for the respondents that there is no proof that the share-holders of the Cawnpore Flour Mills and the Bharat Insurance Co. exceed twenty individuals. We have not got any evidence before us from which we can ascertain how many share-holders there are in these two companies and we do not think we can be expected to *presume* that the number of share-holders exceeds twenty persons. We think there is therefore no legal defect on the grounds suggested.

It has been further argued that it is unlawful for the two companies to carry on the business of running the Sugar Mills because such business must be outside the scope of the object of the companies.

The answer to this is that without seeing the memorandum of association of each company we cannot tell what the objects of the companies are declared to be, and therefore we cannot definitely hold that the running of the Sugar Mills is outside the scope of the objects set forth in the memoranda of association. We do know that the Cawnpore Flour Mills have been the managing agents of the Lucknow Sugar Works for some years and it has never been suggested that they were in any way acting in contravention of their memorandum of association or that their activities were unlawful.

It has further been argued that no tender was made by the respondents 2 and 3 within the time specified in the advertisements calling for tenders. We have already mentioned that the Cawnpore Flour Mills made an offer by telegram on the 15th of June, which was within time. This telegraphic tender was subsequently confirmed and the Bharat Insurance Co. joined with the

Cawnpore Flour Mills in making a joint tender on the 3rd of August, 1935. It is argued that the joint tender by the two companies was not made until after the time prescribed and therefore should not be taken into consideration. We are not prepared to accept this contention. We do not think that it was beyond the powers of the Company Judge to take into consideration a tender even though it might have been made after the 15th of June. Supposing that no adequate tenders were received within that time we think that it would have been quite open to him to issue fresh advertisements calling for fresh tenders. In our opinion the learned Company Judge was acting within his authority in taking into consideration the tender although the joint tender was not made until after the 15th of June.

It has been suggested that no appeal lies against the order in question but this point has not been seriously argued and we assume for the purpose of this appeal that an appeal does lie under section 302 of the Indian Companies Act.

The result is that we dismiss the appeal with costs

Appeal dismissed.

APPELLATE CIVIL

*Before Sir C. M. King, Knight, Chief Judge and
Mr. Justice Ziaul Hasan*

1935
October 10

PARSHADI LAL AND OTHERS (DEFENDANTS-APPELLANTS) *v.*
BRIJ MOHAN LAL AND OTHERS, PLAINTIFFS, AND OTHERS
DEFENDANTS (RESPONDENTS)*

*Charge—Will—Endowment—Bequest by Hindu that portion of
income of his property be devoted to expenses of a temple—
Will, whether creates charge in favour of temple—Liability of
persons holding property charged, whether joint—Persons*

*Second Civil Appeal No. 159 of 1934, against the decree of Pandit Tika Ram Misra, District Judge of Lucknow, dated the 15th of May, 1934, reversing the decree of Babu Bhagwat Prasad, Subordinate Judge of Malihabad at Lucknow, dated the 31st of May, 1932.