

APPELLATE CIVIL

Before Mr. Justice Muhammad Raza and Mr. Justice
E. M. Nanavutty

SHRI MAHALAKSHMI SUGAR CORPORATION, LTD.
(PLAINTIFF-APPELLANT) v. SARDAR JASJIT SINGH (DE-
FENDANT-RESPONDENT)*

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March, 6

Limitation Act, IX of 1908, article 112—Suit by company for recovery of "call" money time-barred—Limitation, if can commence from the date of forfeiture of shares by company.

Forfeiture of shares of the defendant share-holder by the plaintiff company cannot revive debts which have become time-barred. Where, therefore, a suit by the company for recovery of "call" money has become time-barred under article 112 of the Limitation Act, IX of 1908, the company cannot claim limitation to run from the date of forfeiture of defendant's shares on the ground that the defendant's liability continues as long as his name remains as a share-holder in the register of the company.

Habib Rowji v. The Standard Aluminium and Brass Works, Ltd. (1), Manek Lal Mansukhbhai v. The Suryapur Mills Co., Ltd. (2), Jagannath Prasad v. The U. P. Flour and Oil Mills Company, Ltd. (3), Parayan Prasad v. The Gaya Bank and Trades Association, Ltd. (4), and In the matter of Dehra Dun-Mussoorie Electric Tramway Company, Ltd. (5), distinguished.

Mr. Akhtar Husain, for the appellant.

Messrs. Radha Krishna Srivastava, S. N. Srivastava and Saraswati Prasad, for the respondent.

RAZA and NANAVUTTY, JJ. :—This is a plaintiff's appeal from a judgment and decree of the learned Subordinate Judge of Kheri, dated the 21st of September, 1931, dismissing the plaintiff's suit with costs.

The facts out of which this appeal arises are briefly as follows :

The plaintiff corporation, Shri Mahalakshmi Sugar Corporation, Ltd., Lakhimpur, is a joint stock company registered under section 17 of Act No. VII of

*First Civil Appeal No. 2 of 1932, against the decree of Pandit Damodar Rao Kelkar, Subordinate Judge of Kheri, dated the 21st of September, 1931.

(1) (1925) I. L. R., 49 Bom., 715. (2) (1927) I. L. R., 52 Bom., 477.
(3) (1916) I. L. R., 38 All., 347. (4) (1930) I. L. R., 10 Pat., 249.
(5) (1927) I. L. R., 50 All., 476.

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1913, with its head office at Lakhimpur. It has sued the defendant, Sardar Jasjit Singh, through its late managing agent, Lala Har Kishun Lal. The defendant, Sardar Jasjit Singh, agreed to purchase one hundred shares in the plaintiff corporation each valued at Rs.100 on the 30th of September, 1922, and on the 28th of October, 1922, Rs.1,000 were deposited by him by means of a cheque in respect of 100 shares, and on the 26th of November, 1922, one hundred shares were entered in the register of the company in the name of the defendant, Sardar Jasjit Singh, and from that date the defendant became a share-holder in the plaintiff company. The plaintiff corporation later on demanded the remaining sum of Rs.9,000 which was the balance of the price due in respect of the said hundred shares, but the defendant paid nothing. Under article 30 of the Articles of Association, the plaintiff company alleges that it is entitled to get interest at Rs.9 per cent. per annum from the date of each of the five "calls" to the 8th of August, 1929, the date of forfeiture of the said shares. On the 8th of June, 1929, the plaintiff corporation gave notice to the defendant in respect of confiscation of his shares under article 34 of the Memorandum of Association, stating therein that if the defendant did not pay within 15 days the remaining amount due from him with interest to the plaintiff company at Lakhimpur, his shares would be forfeited, and accordingly on the 8th of August, 1929, the plaintiff corporation confiscated the shares of the defendant, and a notice to that effect was given to the defendant. The plaintiff company alleges that Rs.4,050 are due to it by way of interest at Rs.9 per cent. per annum from the date of each of the five "calls" up to the 8th of August, 1929, the date of forfeiture of the said shares, together with the balance of Rs.9,000 which makes the total of Rs.13,050, on which interest from the 8th of August, 1929, to the date of suit comes to Rs.1,574. In this way the plaintiff claims a decree against the defendant for a sum of Rs.14,624.

The facts set forth above are practically admitted by the defendant. Upon the pleas raised by the defendant, the following issues were framed by the learned Subordinate Judge :

(1) Is the claim in respect of the calls and the allotment money within limitation?

(2) Has the plaintiff a fresh cause of action from the date of the alleged forfeiture of the shares?

(3) Has the plaintiff no right to forfeit the shares?

(4) Is the stipulation as to forfeiture of shares as also for realization of the full amount of the shares with interest penal? If so, its effect?

(5) How does the fact that the plaintiff took no steps to enforce his claim by sale of the shares affect the present suit?

(6) Is the plaintiff entitled to any and what rate of interest?

(7) Is the plaintiff entitled to sue in respect of the money due under article 39 of the Articles of Association in spite of his having allowed the period of limitation to expire as alleged?

(8) Was there any valid forfeiture of the defendant's shares?

(9) Is the defendant not liable for the reasons given in paragraph 2 of his written statement?

(10) To what amount, if any, and on what terms is the plaintiff entitled?

The learned Subordinate Judge decided issues Nos. (1), (2), (4) and (7) in the negative. He decided issues (3) and (8) in favour of the plaintiff. His finding on issue (5) was that the fact that the plaintiff took no steps to enforce his claim by sale of the shares did not affect the present suit. His finding on the 6th issue was that the plaintiff was entitled to interest at 9 per cent. per annum. His finding on issue (9) was against the defendant. On issue (10), he held that the plaintiff was not entitled to any relief, and so he dismissed the suit with costs.

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The plaintiff has, therefore, filed the present appeal in which he challenges the findings of the lower court on issues (1), (2) and (7). The defendant's learned counsel, in the course of his arguments, has also challenged the finding of the lower court on issue No. (8).

The plaintiff's learned counsel, Mr. *Kampta Prasad*, in the trial court stated that the dates on which the five "calls" which the defendant failed to pay were as follows :

- (1) Rupees 1,500 due on the 28th of November, 1922, in respect of 15 per cent. allotment money.
- (2) Rupees 2,500 due on the 6th of March, 1923, on account of 25 per cent. first call.
- (3) Rupees 1,000 due on the 15th of July, 1924, on account of 10 per cent. second call.
- (4) Rupees 2,000 due on the 18th of December, 1924, on account of 20 per cent. third call.
- (5) Rupees 2,000 due on the 18th of March, 1925, on account of 20 per cent. final call.

Rupees 9,000

Thus it is clear from the statement of the plaintiff's own counsel that the forfeiture of the shares on the 8th of August, 1929, happened three years beyond the dates when the respective calls set forth above became due. In other words, the forfeiture of the defendant's shares took place when a suit by the plaintiff company for recovery of "call" money had become time-barred under section 112, Schedule I of the Indian Limitation Act. Section 112 of the Indian Limitation Act lays down that the period of limitation for a suit for recovery of "call" money by a company registered under any Statute or Act is three years from the date when the call is payable. The dates on which the calls became payable have been set forth above in the words of the plaintiff's own counsel, and on the date of the forfeiture of the shares of the defendant, the plaintiff's suit for recovery of any one of these sums due as "call money" from the defendant had become time-barred on the plaintiff's own showing.

It is, however, contended by the learned counsel on behalf of the plaintiff-appellant that the liability of the defendant to pay all surfs of money due to the plaintiff

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continued as long as his name remained as a share-holder in the register of the company, and it was contended that article 33, read with article 43 of the Articles of Association of the plaintiff corporation clearly sets forth that the liability of a share-holder continues as long as his name is on the register of the company, and reliance was also placed on section 38 of the Indian Companies Act (VII of 1913). It was further argued on behalf of the plaintiff company that the fact that the defendant's name continued to appear in the register of the company showed that the directors of the company had condoned the non-payment of the "call money" by the defendant within limitation and had extended the period for the payment of the money due, irrespective of the period of limitation prescribed for bringing a suit for recovery of call money under section 112 of the Indian Limitation Act. Reliance was also placed upon a ruling of their Lordships of the Bombay High Court reported in *Habib Rowji v. The Standard Aluminium and Brass Works, Ltd.* (1) in which it was held that although on the forfeiture of the shares, the defendant had ceased to be a member of the company and liable in that case to be sued for past calls, the foundation of the suit was the special contract contained in article 32 of the Articles of Association under which a fresh liability was created to pay all calls and other moneys owing in respect of the shares at the time of forfeiture, and inasmuch as the cause of action thereon had not arisen till the forfeiture, the suit was not barred.

We regret we are unable to accept the contentions advanced on behalf of the plaintiff company by their learned counsel, Mr. Akhtar Husain. In the case cited and relied upon by the learned counsel for the plaintiff, it was held by the learned trial Judge (KEMP, J.) that the suit was not barred by limitation, for, on the date when the shares were forfeited (3rd August, 1921), the claim for allotment money and calls was not barred. In

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the present case, it is admitted by the plaintiff's learned counsel himself that on the date when the shares were forfeited by the plaintiff company on the 8th of August, 1929, the plaintiff company's claim for allotment money and call money had become clearly time-barred. The ruling relied upon by the learned counsel for the plaintiff does not therefore help him in the present suit. The phrase "owing upon or in respect of such shares at the time of the forfeiture" which occurs in article 39 of the Articles of Association clearly refers to such sums of money as are legally due to, and legally recoverable by, the plaintiff company from the share-holder. The same interpretation was put by their Lordships of the Bombay High Court in the ruling cited above in respect of article 32 of the Articles of Association of the Standard Aluminium and Brass Works, Ltd. The words "owing upon or in respect of such shares" were held to mean moneys presently payable by the share-holder and legally due to the plaintiff company at the time of forfeiture. To accept the contention of the learned counsel for the plaintiff would lead to most absurd results as pointed out by the learned Subordinate Judge and would practically abrogate the rule of limitation prescribed under section 112 of the Indian Limitation Act. It is clear that the forfeiture of the shares of the defendant by the plaintiff company cannot revive debts which had become time-barred. Article 39 of the Articles of Association of the plaintiff company merely has the effect of keeping alive the claim of the plaintiff against the quondam share-holder whose shares have been forfeited in respect of moneys legally recoverable at the time of forfeiture. The learned counsel for the plaintiff-appellant has also relied upon a ruling of the Bombay High Court reported in *Manik Lal Mausukhbhai v. The Suryapur Mills Co. Ltd.*, (1). In this case the ruling reported in *Habib Rowji v. The Standard Aluminium and Brass Works, Ltd.* (2) was followed.

(1) (1927) I. L. R., 52 Bom., 477. (2) (1925) I. L. R., 49 Bom., 715.

This, however, was a suit filed by the liquidators of a company which had gone into liquidation, and section 156 of the Indian Companies Act clearly lays down that in the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and in such a case even the time-barred debts due from a share-holder can be recovered by the liquidator. In *Jagannath Prasad v. The U. P. Flour and Oil Mills Company, Limited* (1), Mr. Justice PIGGOTT and Mr. Justice WALSH made the following pronouncement :

“A question of principle has been raised apparently for the first time in this Court, namely as to whether an unpaid call, due from a share-holder of a company, which has become statute-barred under article 112 of the Limitation Act, and has therefore ceased to be recoverable debt by the company, may yet be recovered if at any date subsequent to its having become time-barred the company is wound up It is a statutory right of the creditors of a company to enforce against the contributaries of an insolvent company through the court the obligation which the share-holders took upon themselves when they originally subscribed in the event of insolvency subsequently overtaking the company.”

Thus the position of a liquidator of a company which has been wound up is different from a company which is a going concern and is solvent. The ruling of the Bombay High Court reported in *Maneklal Mansukhbhai v. The Suryapur Mills Company, Limited* (2), has therefore no applicability to the facts of the present case.

Similarly, in *Parayan Prasad v. The Gaya Bank and Trades Association, Limited* (3), it was held by their Lordships of the Patna High Court that the fact that

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the company could not realise the call money by reason of lapse of time was no answer to the claim made by the liquidator. In this case the rulings of the Bombay and Allahabad High Courts cited above were approved of and followed.

So too in the matter of *Dehra Dun-Mussoorie Electric Tramway Company, Limited* (1), it was held by a learned Judge of the Allahabad High Court that liquidation gave the official liquidators a cause of action which the company may not by itself have possessed, and it was further held that the member of a company in liquidation was hable in respect of unpaid calls even though as against the company the realisation of such calls would have become barred by limitation.

The plaintiff company cannot in the present suit claim the rights and privileges which the liquidator of a company which is being wound up has against the share-holders past and present of that company. In the present suit on the date of forfeiture, the demands which the plaintiff company had against the defendant were time-barred. We, therefore, have no hesitation in agreeing with the learned Subordinate Judge that the plaintiff's suit was clearly time-barred and we uphold the findings of the learned Subordinate Judge on issues (1), (2) and (7) which he decided against the plaintiff company.

In view of the fact that we have upheld the findings of the lower court on issues (1), (2) and (7), it seems unnecessary to discuss the correctness of the finding on issue No. (8), although the learned counsel for the defendant has pointed to various facts which go to throw doubt as to the validity of the order of forfeiture. We, however, think it unnecessary to discuss this matter at length, seeing that the plaintiff's suit fails on the plea of limitation. For the reasons given above, we uphold the judgment and decree of the lower court and dismiss the appeal with costs.

Appeal dismissed.