APPELLATE CIVIL

Before Mr. Justice A. H. deB. Hamilton, and Mr. Justice Radha Krishna Srivastava

THE EQUITY INSURANCE COMPANY, LIMITED (DEFENDANT-APPELLANT) *v.* MESSRS. DINSHAW & CO. (BANKERS), LIMITED (PLAINTIFF-RESPONDENT)* 1940 *February*, 22

Company Law (Act VII of 1913), section 103—Memorandum of Association—Managing Agents not given power of borrowing —Unauthorized borrowings by managing agents—Borrowings not bona fide *and not for benefit of company—Company whether liable for the borrowings.*

Where the managing agents of a company are not given the power of borrowing money under the memorandum and the articles of association, then the company is not liable for the unauthorized borrowings by the managing agents, where the borrowings are not *bona fide* and necessary for the company, but are an attempt to saddle the company with liablities without any benefit to it. *T. R. Pratt, Limited* v. *E. D. Sassoon, Ltd.* (1), and *Dehra Dun-Mussoorie Electric Tramway Company, Limited* v. *Jagmandar Das* (2), distinguished.

Mr. *M. Wasim*, for the appellant.

Mr. *Ram Prasad Varma*, Rai Bahadur, for the respondent.

HAMILTON and RADHA KRISHNA, JJ.:—This is an appeal against a decision of the Civil Judge, Mohanlalganj, decreeing a suit for Rs.17,267-2-3 with proportionate costs.

The plaintiff is Messrs. Dinshaw & Co. (Bankers) Ltd., through the Official Liquidator Mr. T. N. Srivastava and the defendant-appellant is the Equity Insurance Co., Ltd., through Mr. Balabh Das Rastogi, Director of the Company.

The case of the plaintiff is that the defendant company opened a current account which resulted in an over-draft of Rs.15,331-3, the account being operated

*First Civil Appeal No. 14 of 1938, against the order of Mr. P. Kaul, Civil Judge of Mohanlalganj, Lucknow, dated the 27th November, 1937.

(1) (1936) A.I.R., Bom., 62. (2) (1932) A.I.R., All., 141.

1940

THE EQUITY INSURANCE COMPANY, LIMITED v. MESSRS. DINSHAW & CO. (BANKERS), LIMITED

Hamilton and Radha Krishna, JJ.

upon by Mr. Dutto, Secretary of the defendant company. It is alleged that the amounts were taken by the defendant company for the purposes and benefit of the company and that the money has been utilised to pay up the amounts due from the defendant to others.

Exhibit A-1, a copy of summary of capital and list of shareholders made up to 30th December, 1933, of Dinshaw & Co. (Bankers), Ltd., shows the number of shares issued as 3,863 and it is also stated that Rs.10 per share have been called up. The Directors of the Company are given as Mr. D. C. H. Dinshaw and Pt. Ram Nath Dave and the Manager is given as Pt. Ram Nath Dave who is also stated to be the Secretary of the Bank. Of these 3,863 shares no less than 3,857 are in the name of Mr. Dinshaw while six other persons hold one share apiece. It is quite clear that the person who really managed this business was Mr. Dinshaw.

Mr. Dinshaw was also the moving spirit in the defendant company. Exhibit A-3 shows the Directors to be Raja Jagat Kumar of Sahaspur, T. C. Jaini, D. C. H. Dinshaw and Krishna Narain.

When we get to the shareholders, things are not so simple. According to a ledger which is Ex. A-10, on the 1st May, 1933, the following were the shareholders and the number of their shares:

D. C. H. Dinshaw	2,500
Mrs. Lilian Dinshaw	6,310
Tilok Chnnd Jaini	100
Chaudhry Mohammad Ismail ..	11
Shikhore Chand Jain	11
Hari Har Nath Kitchlu	5
Ram Nath Dave	5
Mr. B. B. Dutto	5
Goverdhan Prasad Bhargava ..	5

In this same book on the 31st December, 1934, there is an entry doing away with the shares of Mrs. Lilian

Dinshaw as per her letter, dated the 31st July, 1935, and the Board of Directors' resolution of the 9th August, 1935. We may here note that the 31st December, 1934, is the date when the accounts were audited—a very material date—and this entry in 1934 referring to an application of July, 1935 and the resolution of the Board of Directors of August, 1935, is itself significant. Exhibit A-2 is a return of allotment made on the 2nd October, 1934, showing that the number of shares allotted was 2,642, Rs.10 being paid on each share. This obviously does not agree with that ledger which is to the effect that at any rate up to the 31st December, 1934, Mrs. Lilian Dinshaw had 6,310 shares on which, according to the ledger, Rs.10 per share had been paid. This Ex. A-2 also contains the names, addresses and descriptions of the allottees corresponding with the entries in the ledger except that Mrs. Lilian Dinshaw and her shares do not appear.

Exhibit 428 is the balance sheet of 31st December, 1934, where the paid up capital entered is as 2,642 shares of Rs.10 each so that this agrees with Ex. A-2.

To manage the business of the defendant company there was the Dinshaw Trust Co., which was nothing more or less than Mr. Dinshaw himself. Mr. Dinshaw, therefore, could lend money for the Dinashaw Bank, could act as a Director of the defendant company and, as the Dinshaw Trust, manage the Equity Insurance Co., with the widest powers, for the powers and authorities expressly or impliedly vested in the Directors of the Insurance Co., were, by the memorandum and articles of association, to be taken as delegated to the Dinashaw Trust Co., with the single exception of the power of borrowing money, *vide* article 119.

Article 120 gave wide powers in financial matters to the Dinshaw Trust Co., as managing agents, i.e. to make and sign all such contracts and to draw, accept, endorse or negotiate on behalf of the company all such bills of

1940

THE EQUITY INSURANCE COMPANY, LIMITED v. MESSRS. DINSHAW & CO. (BANKERS), LIMITED

Hamilton and Radha Krishna, JJ.

exchange, promissory notes, hundies, cheques, drafts, Government promissory notes and other Government paper and other instruments as shall be necessary or expedient for the carrying on of the business of the company. This provision is, in our opinion, to be read subject to the limitation of article 119, that the power of borrowing money was not designated to the managing agents. In any case it is clear that the powers of the managing agents as regards promissory notes and so on were only so far as they were necessary or expedient for the carrying on of the business of the company.

What led to the over-draft which has given rise to this suit is as follows.

Although according to the ledger, the return of allotment and the balance sheet Rs.26,420 were in the hands of the managing agents and although large sums of money came in e.g. Rs.43,810 premia received from 19th April, 1933, to 1st December, 1934, there is no trace of any deposit having been made otherwise than in that current account with Dinshaw Bankers which eventually was so heavily overdrawn. Exhibit 3 is a letter addressed to the Agent, Dinshaw & Co., (Bankers), Ltd., referring to a discussion by the writer with the addressee and asking for the transfer of Rs.300 from the personal account of Mr. Dinshaw, Director of the Equity Insurance Co., to open an account in the name of the Equity Insurance Co. The writer is Mr. Dutto who signs himself as General Secretary of the Equity Insurance Co., and the power to appoint a Secretary as well as every one else on the staff was by the articles of association in the hands of the Dinshaw Trust Co., that is to say in the hands of Mr. Dinshaw himself. Exhibit 4 is a letter by Mr. Dinshaw that Rs.300 be transferred from his personal account as requested in Ex. 3. Exhibit 9 is a letter again from Mr. Dutto marked strictly private and confidential asking for a cheque for Rs.1,000 to be honoured and it is explained that the

1940

THE EQUITY INSURANCE COMPANY, LIMITED v. MESSRS. DINSHAW & CO. (BANKERS), LIMITED

Hamilton and Radha Krishna, JJ.

cheque is issued under the instructions of the Director, Mr. D. C. H. Dinshaw, and the Head Office Secretary of the addressee, Dinshaw Bankers, was mentioned as being aware of the facts. It was pointed out that this transaction is confidential. The Directors had really nothing to do with the management of the Insurance Company and though Mr. Dinshaw is referred to as a Director, this transaction was a purely private one or one which was on behalf of the Dinshaw Trust Co., which was really Mr. Dinshaw himself. By the 6th July, 1934, as is shown by Ex. 11, the over-draft on this account was Rs.6,069-14-6. To this letter of Dinshaw Bankers for payment the answer was a request for honouring cheques for Rs.150 more. It does not appear that the defendant company had any difficulty in increasing this over-draft till the 24th June, 1935, when by Ex. 17 Dinshaw Bankers asked for the over-draft to be paid.

The learned Judge found that the loan taken by Mr. Dutto was not a loan raised by the Equity Insurance Co., and with this we fully agree. He claimed to have no authority from the company or even from the Directors to raise a loan and he did not even ask for a loan but merely wrote cheques irrespective of the amount in the current account of the defendant company. In opening the account he referred to Mr. Dinshaw as a Director but he also had some private conversation with the Secretary of Dinshaw Bankers—a company managed by Mr. Dinshaw just as was the Equity Insurance Co. There was that confidential letter Ex. 9 which refers once more to instructions of Mr. Dinshaw as Director but Mr. Dinshaw would obviously have been acting, at most as the managing agent. The Secretary of Dinshaw Bankers was Ramnath Dave represented as shareholder in the Equity Insurance Co., just as Mr. Dutto was. The way in which the plaintiff company managed by Mr. Dinshaw was allowing the over-draft to grow, without taking practically any steps

1940

THE EQUITY INSURANCE COMPANY, LIMITED v. MESSRS. DINSHAW & CO. (BANKERS), LIMITED

Hamilton and Radha Krishna, JJ.

about it, is not an action which we would have expected the plaintiff company to take had it been acting independently, and in the interest of its depositors and shareholders. We think that the plaintiff company as represented by the persons who managed it, namely Mr. Dinshaw and those working under him, were perfectly well aware of the fact that Mr. Dutto, though he called himself a general agent, was not in this account about the over-draft in any way representing the Directors but only Mr. Dinshaw the managing agent, in so far as he represented any one at all. We agree, therefore, that this over-draft was not an over-draft taken by the company.

The learned Civil Judge, however, then considered the question whether nevertheless the company was liable to repay this money. He relied on *T. R. Pratt, Ltd.*, v. *E. D. Sassoon, Ltd.* (1), where it was held that the agents had borrowed money *ultra vires* for the benefit of the principal and it had been used for the legitimate business of the company and though the borrowing was not authorised the company could not repudiate its liability to repay the money. Applying the same principle to the facts of the present case the learned Civil Judge held that the money had been borrowed by Dutto, Secretary of the defendant company, without previous authority, from the plaintiff and as the money had been applied to carry on the legitimate business of the defendant company there was no reason why the defendant company which had had the benefit of the loan should not repay it.

This Bombay case involved three companies: T. R. Pratt, Ltd., in liquidation, M. T., Ltd., and Sassoon & Co., Ltd., Pratt Ltd., were a motor business and were financed by M. T., Ltd., who were financed by Sassoon. There was *utra vires* borrowing by the Directors of Pratt from M. T., Ltd., but the borrowing was *bona fide* and was necessary for the business of Pratt, Ltd. KANIA, J.,

(1) (1936) A.I.R., Bom., 62.

stated that the money had been borrowed and used for the benefit of the principal, either in paying its debts or for its legitimate business, and, therefore, the company could not repudiate its liability to repay on the ground that the agents had no authority from the company to borrow. The learned Judge referred to certain English cases, e.g. *Troup's case* (1), where it was held that when the Directors of a company have no power to borrow, a person lending money to the company cannot enforce payment of it against the company unless it had been *bona fide* applied for the purposes of the company. In *Hoare's case* (2), too it was held that money borrowed for the company and *bona fide* applied for its benefit could be recovered from the company although the Directors had no borrowing powers.

Hamilton and Radha Krishna, JJ.

In *Dehra Dun-Mussorie Electric Tramway, Co., Ltd.*, v. *Jagmandar Das* (3), it was held that the managing agent was not given unrestricted power of borrowing money on behalf of the company but there was no prohibition from incurring a temporary loan in an emergency for protesting the interest of the company.

We quote this decision because it draws a distinction between borrowing which was necessary for the company and borrowing which was not.

If we apply to the present case the principle enunciated in *Pratt, Ltd.*, v. *Sassoon, Ltd.* (4) and other cases can we say that it will really apply? An examination of the ledgers of the company show that considerable amounts were received in cash on behalf of the company by the managing agent, that is to say, by Mr. Dinshaw himself which he never deposited in any Bank for the benefit of the company except such deposits as appear in this current account with Dinshaw Bankers. This account started with a deposit of Rs.300 from a personal account of his. It was fed by odd cheques and occasionally by small sums in cash. It is not shown to us that it was in any way necessary for the company to run up an over-draft, that is to say, the money

(1) (1860) 29 Beav., 353. (2) (1861) 30 Beav., 225.
(3) (1932) A.I.R., All., 141. (4) (1936) A.I.R., Bom., 62.

1940

THE EQUITY INSURANCE COMPANY, LIMITED v. MESSRS. DINSHAW & CO. (BANKERS), LIMITED

Hamilton and Radha Krishna, JJ.

received by the managing agent, Mr. Dinshaw, according to the accounts, was much greater than this debit balance of Rs.15,000 odd. This system in so far as we are able to trace it was to take practically every sum which came in for the company and to debit to the company in this current account all payments which had to be made to the staff and other people in order that more money might come in from people paying premia, these premia apparently passing straight into the pocket of Mr. Dinshaw. At this time the company had not received a certificate under section 103 of the Indian Companies Act which entitled it to commence business for that was only issued on the 1st November, 1935. This being an insurance company it also could not begin business until it had paid in an amount of Rs.25,000 as security. In the ledger there is an entry which purports to have been a deposit of Government paper of the face value of Rs.25,000 which was shown as withdrawn on the 31st December, 1934, the date of audit. Apparently this is a fictitious entry. Until the date of that certificate the company could not commence any business nor exercise any borrowing powers under secion 103 of the Indian Companies Act although it could offer for subscription or allotment of any shares and debentures and presumably keep as much staff as was necessary for the business of the company which under the provisions of section 103 of the Indian Companies Act could be considered as legitimate. The position, therefore, is that the company at that time was not entitled to borrow money or to do business; that Mr. Dinshaw as the managing agent knew of this prohibition nevertheless he did business which purported to be on behalf of the Equity Insurance Co., but which in reality was merely the method which he adopted to put in his pocket money which should have been credited to the company and which, according to the ledgers, was sufficient to make it unnecessary to incur any over-draft in the Bank at all. We fail to see any thing *bona fide* in this transaction, and this differentiates it from *Pratt* v.

940

THE EQUITY INSURANCE COMPANY, LIMITED v. MESSRS. DINSHAW & CO. (BANKERS), LIMITED

Hamilton and Radha Krishna, JJ

Sassoon (1) and other cases. Outwardly the money was spent for the benefit of the company in that it met expenses which were necessary to carry on insurance business which, however, the company was then not competent to perform and to meet certain expenditure which was not forbidden by section 103 of the Companies Act. In fact, however, it was merely an attempt to make the company pay the necessary expenditure in order that Mr. Dinshaw might be able to lay his hands on sums which were paid in by persons who took out insurance policies. We do not think that in a case like the present one to attempt to saddle a company with liabilities to obtain an income which does not go to the company at all but of which the company is deprived can be said to be for the benefit of the company. We cannot be in any doubt as to the fact that Dinshaw Bankers which were managed by Mr. Dinshaw were giving the money of its depositors into this current account, which stood in the name of the Equity Insurance Co., which had been opened with Rs.300 from Mr. Dinshaw's personal account and which was operated by a so-called general secretary of the Insurance Co., who, as the correspondence show, was acting all the time entirely at the bidding of Mr. Dinshaw himself. This current account was the means to defraud the Equity Insurance Co., and not a necessary, even if *ultra vires,* borrowing of money made *bona fide* to safeguard the interest of the Insurance Co. On the facts, therefore, we feel we must distinguish between this and *Pratt* v. *Sassoon* (1) and other cases embodying the principle there stated as the unauthorised borrowing in those cases was *bona fide* and necessary for the company while here it was merely saddling the company with liabilities without any corresponding benefit.

In the circumstances we find that the defendant is not liable for this sum and we, therefore, allow the appeal and dismiss the suit with costs, in both courts.

Appeal allowed.

(1) (1936) A.I.R., Bom., 62.