

LETTERS PATENT APPEAL.

Before Addison and Din Mohammad JJ.

JAGRAON TRADING SYNDICATE, LIMITED

(IN LIQUIDATION) Appellant

versus

MANAK CHAND-ROSHAN LAL—Respondents.

1935

Jan. 31.

Letters Patent Appeal No. 119 of 1934.

Indian Companies Act, VII of 1913, section 156 : Scope of — Unpaid calls — barred by time — whether recoverable after liquidation — Limitation — Indian Limitation Act, IX of 1908, Articles 115, 120 : starting point.

Held, that section 156 of the Indian Companies Act imposes new rights and liabilities upon shareholders as soon as the liquidation proceedings start, so that unpaid calls are recoverable from past shareholders at the instance of the liquidators, though barred by time and though the Company could not recover them.

Jagannath Prasad v. U. P. Flour and Oil Mills Co. (1), Sorabji Jamsetji v. Ishwardas Juggiwandas (2), and Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Company, Ltd. (3), followed.

Held further, that even if the Indian Limitation Act applied to such cases, the period of limitation applicable to a suit brought by a liquidator to recover unpaid calls from a shareholder, is six years from the date of default under Article 120 of the Indian Limitation Act and not three years under Article 115.

Harchand Rai v. Rang Lal (4), relied upon.

Maneklal Mansukhbhai v. Suryapur Mills Co. Ltd. (5), not followed.

Letters Patent Appeal from the order passed by Bhide J. in C. A. No. 1660 of 1933, on 21st June, 1934, reversing that of Lala Devi Dayal, Dhawan, District

(1) (1916) I. L. R. 38 All. 347. (3) 1933 A. I. R. (P. C.) 63

(2) (1896) I. L. R. 20 Bom. 654. (4) 70 P. R. 1903.

(5) (1928) I. L. R. 52 Bom. 477.

1935

JAGRAON
TRADING
SYNDICATE
(IN LIQUIDA-
TION)

v.

MANAK CHAND-
ROSHAN LAL.

Judge, Ludhiana, dated 30th August, 1933, and dismissing the application for a payment-order for unpaid calls.

NAWAL KISHORE, for Appellant.

MADAN MOHAN, for Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—This judgment will dispose of Letters Patent Appeals Nos.119, 120 and 121 of 1934, as they proceed on identical grounds.

The facts bearing upon the point of law involved in these cases are as follows :—

Certain shares of the Jagraon Trading Syndicate, Limited, were duly allotted to the respondents in all the three appeals on their applications. On the 15th February, 1930, these shares were, however, forfeited on default of payment of the first call. On the 30th June, 1930, the Syndicate went into voluntary liquidation. An application having been made by the voluntary liquidators and others to this Court, a supervision order was passed under section 221 of the Indian Companies Act and the case was sent to the District Judge for further proceedings. The respondents were placed by the liquidators on list ' B ' of the contributories and as they failed to pay the amounts due from them, the liquidators applied to the District Judge for a payment order. On notices being issued, the respondents contested their liability on various grounds and urged *inter alia* that the liquidators' applications were time-barred. The District Judge disallowed these objections and called upon the respondents to pay the amounts due from them, respectively. On appeal to this Court, Bhide J. held that the applications were time-barred inasmuch as they had not been made within three years of the forfeiture of

shares. It is against this order that the liquidators have filed the three appeals now before us.

We have heard counsel for the parties and have arrived at the conclusion that the decision of the learned Judge cannot stand. Section 156 (1) of the Indian Companies Act enacts that " In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities * * * * ". The qualifications referred to in this section are enumerated in clauses (i) to (vii) of sub-section (1). The only relevant clause on which reliance has been placed by both sides is clause (i) which says that " a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up." It is admitted that the case of the present respondents is not covered by this clause as the company went into liquidation on the 30th June, 1930, and the forfeiture had been made on the 15th February, 1930. It is well settled now that section 156 imposes new rights and liabilities upon shareholders as soon as the liquidation proceedings start. As laid down in several authorities on the subject, as soon as a company goes into liquidation, this section saddles the shareholders with a new liability in respect of unpaid calls and such unpaid calls are recoverable at the instance of the liquidators, though barred by time and though the company could not recover them. (See Indian Companies Act by Khanna, page 250).

Reference may be made in this connection to *Jagannath Prasad v. The U. P. Flour and Oil Mills* (1), *Sorabji Jamsetji v. Ishwardas Jugjiwandas* (2)

1935

JAGRAOI
TRADING
SYNDICATE
(IN LIQUIDA-
TION)
v.
MANAK CHAND.
ROSHAN LAL.

1935

JAGRAON
TRADING
SYNDICATE
(IN LIQUIDA-
TION)
v.

MANAK CHAND-
RUSHAN LAL.

and *Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Company* (1).

In *Jaggannath Prasad v. The U. P. Flour and Oil Mills* (2), a Bench of the Allahabad High Court held that a member of a company was liable in respect of unpaid calls in the event of the company being wound up, even though as against the company the realisation of such calls may have become barred by time. In that case, *Sorabji Jamsetji v. Ishwardas Jugjivandas* (3) was followed, where a Bench of the Bombay High Court had laid down that section 61 of the Indian Companies Act (VI of 1882) created a new liability in the shareholders and that that liability included contribution, not only in respect of calls made since the winding up, but also in respect of unpaid calls made before the date of the winding up, whether barred by limitation at that date or not.

The Allahabad case referred to above came under consideration of their Lordships of the Privy Council in *Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Company* (1) and their Lordships of the Privy Council approved of the principles enunciated in that judgment in the following words:—"It was a case relating to money due on shares in the company which was in liquidation, the liability for which on a winding up became a statutory liability under section 156, Companies Act, 1913."

Counsel for the respondents has relied on *Manek-Lal Mansukhbhai v. The Suryapur Mills Co., Ltd.* (4) where it was held that the period of limitation began to run from the date of forfeiture of the shares and as the suit was for compensation for breach of the

(1) 1933 A. I. R. (P. C.) 63. (3) (1896) I. L. R. 20 Bom. 654.
(2) (1916) I. L. R. 38 All. 347. (4) (1928) I. L. R. 52 Bom. 477.

contract entered into between the member and the company, the claim was governed by Article 115. With all respect we may say that in face of the authorities referred to above we are not prepared to follow this decision.

Even if the Indian Limitation Act applied to a claim like the present, it has been held by a Division Bench of the Punjab Chief Court in *Harchand Rai v. Rang Lal* (1) that the period of limitation applicable to a suit brought by a liquidator of a public company to recover the unpaid amount of calls from a shareholder is six years from the date of default under Article 120 of the Second Schedule to the Limitation Act.

We, therefore, hold that the applications of the liquidators were well within time and, accordingly, accept these appeals with costs throughout.

P. S.

Appeal accepted.

1935

JAGRAON
TRADING
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