

## **Deputy Commissioner Of Partabgarh vs The Universal Film Co. (India) Ltd. on 10 April, 1950**

**Equivalent citations: AIR1950ALL696, AIR 1950 ALLAHABAD 696**

**Author: Ghulam Hasan**

**Bench: Ghulam Hasan**

### **JUDGMENT**

Ghulam Hasan, J.

1. These are two connected appeals arising out of a suit for recovery of rupees 1280-13-4 brought by the respondent against the appellant.

2. The plaintiff is a limited liability Company called the Universal Film Company Limited, Lucknow. It went into voluntary liquidation on 13th December 1941, and Mr. Kashi Prasad, Advocate, was appointed liquidator. Rai Krishna Pal Singh, the taluqdar of Birapur, who is now represented by the Deputy-Commissioner of Pratapgarh in charge of the Court of Wards, purchased 100 shares of the Company at RS. 10 each share for a sum of Rs. 1000. These shares were allotted to him on 25th November 1936. Rai Krishna Pal Singh paid Rs. 250 upon allotment and he was still liable to pay the balance of Rs. 750 according to the Company. Rai Krishna Pal Singh was a director of this Company also at one time. He did not pay the sum due from him, whereupon, the Company brought a suit for recovery of, that amount plus Rs. 513-13-4 as interest at 12 per cent. per annum according to Article 25 of the Memorandum and Articles of Association (Ex. 5). The total sum claimed was Rs. 1280-134.

3. The defence with which we are concerned in the present appeal was that the notification under Section 9, Court of Wards Act was issued against Rai Krishna Pal Singh on 21st October 1939, and his estate was taken over by the Court of Wards on 23rd May 1941 under Section 8 (1) (d) (iii) and (iv), U. P. Court of Wards Act. A notification inviting claims under Section 17 of the Act was published in the U. P. Gazette on 21st June 1941 (EX. 3) but the Company did not notify their claim as required by that section, hence the suit was not maintainable. The other defence was that the suit was barred by three years' rule of limitation and the company was in any case not entitled to charge any interest as after liquidation Article 25 of the Articles of Association had lost its force and the rights of the parties are governed by the Indian Companies Act which does not provide for any interest to be charged by the Company.

4. The trial Court held that the Company did notify its claim, that the last call for rupees 250 made on 1st May 1938 was within time but the rest of the claim was beyond time. Interest at the rate of 12 per cent. was allowed on the last call. In the result the suit was decreed for Rs. 250 plus interest, that

is to say for Rs. 65.

5. The plaintiff and the defendant were both aggrieved by this decree and while the defendant filed an appeal the plaintiff filed cross-objections. The lower appellate Court, however, upheld the decree of the trial Court. Both parties being dissatisfied with that decree have filed second appeals. Second Civil Appeal No. 329 of 1915 is filed by the defendant whereas Second Civil Appeal No. 398 of 1945 is filed by the plaintiff.

6. In the defendant's appeal three main points which were decided by the Courts below against the defendant were pressed. These relate to the ratification of the claim under Section 17, U. P. Court of Wards Act, limitation and interest embodied in issues Nos. 5, 6 and 3 respectively. The plea regarding the giving of a notice as prescribed by Section 54, U. P. Court of Wards Act embodied in issue No. 4 was not pressed.

7. Under issue No. 5 the trial Court held on the basis of the original of Ex. 26 sent by Bhairon Prasad acting as liquidator to the defendant that it amounted to the filing of a claim under Section 17, Court of Wards Act. The trial Court further held under issue No. 5(a) that the Company honestly believed that the claim had been filed before the Court of Wards, but if this belief turned out to be wrong, then the Company must be deemed to have been prevented by sufficient reason from filing it. These findings were challenged on grounds Nos. 5 and 6 of the memorandum of appeal to the lower appellate Court, but the lower appellate Court says :

"There were certain other grounds taken in defence about the failure of the plaintiff to put forth his claim before the Court of Wards, but these were not taken up in the grounds of appeal."

This is clearly wrong and it is urged before me on behalf of the defendant that the lower appellate Court, under a misapprehension, did not address itself to this question and that there was no abandonment on the part of the defendant, as urged by the plaintiff company. It has been strenuously urged on behalf of the defendant-appellant that Section 17, Court of Wards Act not having been duly complied with the plaintiff was not entitled to any decree. Section 17 lays down in imperative terms that "on the publication of a notification under Section 15 the Collector specified in the order of assumption. . . shall publish in the official gazette a notice in English and in the vernacular calling upon all persons having claims, including decrees, for money whether secured by mortgage or not, against the ward or his property to notify the same in writing to such Collector within six months from the date of publication of the notice."

Under Sub-section (3) of that section every claimant is required to present together with his statement of claim full particulars thereof and under Sub-section (4) every document on which the claimant founds his claim or on which he relies in support thereof, is to be produced before the Collector with the statement of claim. By Section 18 it is provided that every such claim, which is not notified under Section 17, shall be deemed for all purposes and on all occasions, whether during the continuance of the superintendence of the Court of Wards or afterwards to have been duly discharged; provided that if the claimant can show sufficient cause for failure to comply with the

provisions of Section 17, the Collector shall receive his claim, and the claim so received shall be deemed to have been notified under Section 17.

8. It is contended that Ex. 26 dated 22nd August 1941, which the plaintiff asserts to be a notification of the claim under Section 17 is not duly proved. It may be mentioned that the Court of Wards assumed superintendence of the property of the ward on 23rd May 1941 (Ex. A-2) and a notice inviting claims under Section 17 was issued on 21st June 1941 (Ex. A-3). Exhibit 26 dated 22nd August 1941, is put forward as a notification of the claim. A look at EX. 26 will show that it is a typed letter from the plaintiff Company to the Deputy Commissioner of Partabgarh and purports to bear the signature of B.P. Sinha. In the margin the enclosures are given from 1 to 10 in the handwriting of some person. These include the memorandum of the Article of Association, share application and the letter from Rai Krishnapal Singh and some other papers. At the right-hand corner in the margin there is a note to the effect "office copy". It purports to bear the signature of some one which is not easily decipherable. The top of the letter contains the words "under certificate of posting". Exhibit 27 is the certificate of posting. It may be taken therefore that such a letter was sent on 22nd August 1941. This letter was denied on behalf of the defendant. The original of Ex. 26 was summoned on 17th December 1943, in order to let in secondary evidence as required by Section 65 (a), Evidence Act. The only question, therefore, which arises for determination is whether Ex. 26 which is put forward as being secondary evidence has been proved according to Section 67, Evidence Act. That section says that:

"If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting."

Is there proof on record to satisfy the requirements of the section ?

9. The only witnesses to prove Ex. 26 are Mr. Kashi Prasad Saksena (P. W. 3) and Mr. Rama Shankar (P. W. 5). The former says:

"Exhibit 23 bears the signature of Bhairon Prasad, who was my predecessor in office. I recognise his signature. Exhibit 27 is the certificate of posting of Ex. 26. The appointment of Bhairon Prasad was found illegal and so I was appointed liquidator later on. Bhairon Prasad sent the letter during the tenure of his office."

The latter merely says "EX. 27 is the postal certificate for despatch of EX. 26." There is no other evidence. Bhairon Prasad did not give evidence, but that in my opinion was not essential, and it may be taken that the signature of Bhairon Prasad upon this letter is proved by the evidence of Mr. Kashi Prasad. There is no evidence, however, to show in whose handwriting the rest of the document other than the typed portion is. The enclosures are not proved nor is there anything to show that Ex. 26 is the office copy of the original letter, which was sent to the Deputy Commissioner, for no one has come forward to prove this fact. It is not suggested that the words "office copy" or the enclosures are in the hand of Mr. Bhairon Prasad. Indeed such a

suggestion could not be seriously put forward because the writings are wholly dissimilar. The letter purports to give a notice on behalf of the liquidator to the Deputy Commissioner that Rai Krishnapal Singh purchased 100 shares and that he paid Rs. 250 and the balance due from him was Rs. 750. It also went on to say that lengthy correspondence had passed between the Deputy Commissioner and the Company and he was asked to admit the claim as early as possible. It was enquired whether it would be necessary for the liquidator to file a suit against the Court of Wards to realise the same or whether it would make arrangements to pay the same at an early date. Notice was given that interest at 12 per cent. per annum was accumulating and would be charged along with the principal. That such a letter was prepared and signed by Mr. Bhairon Prasad, there cannot be the slightest doubt but the question is whether this letter is the true office copy of the letter which was actually sent under EX. 27. There is further no proof that any enclosures were sent as required by Section 17. Such evidence as has been adduced by the plaintiff Company falls far short of proving the contents of the original of Ex. 26, and mere proof of the signature of Mr. Bhairon Prasad cannot, in my opinion, amount to proof of the contents of the original. There is nothing to show that Ex. 26 was the result of an uniform process, namely, typing with the aid of the carbon paper and there is certainly no evidence to show that it was compared with the original. After all, Ex. 26 is no more than secondary evidence of the contents of the original and in order to show that it is an exact copy of the original, it is necessary to prove that either it was prepared by an uniform process or it was compared with the original by some witness, who can give evidence to that effect.

10. It was held in *Narendra Chandra v. Rajendra Chandra*, A. I. R. (28) 1941 Cal. 506: (197 I. C. 45) that where in the case of an uncertified copy of the deposition given by a person in another case the person who is alleged to have made the copy and also the person who compared with the original are both dead and their signatures only are proved by a clerk who was acquainted with their handwriting, it cannot be said that the uncertified copy has been proved to have been made from or compared with the original and hence it is inadmissible in evidence.

11. There are a number of decisions of the late Chief Court of Avadh which lay down that under the provisions of Section 17 it is incumbent upon the person having a claim to produce the document or documents in support of such a claim and his failure to do so would be taken to be a non-compliance with the provisions of Section 17 and his claim would be deemed to have been extinguished under Section 18 (vide *Maqsood Ali v. Deputy Commissioner, Bara Banki*, 5 O. W. N. 927: (A. I. R. (15) 1928 oudh 495), *Daulat Shah v. Deputy Commissioner, Bahraich*, 9 O. W. N. 824: (A. I. R. (19) 1932 oudh 311). It was also held in the *Collector of Bulandshahr v. Gokal Chand*, A. I. R. (21) 1934 ALL. 573 : (153 I. C. 788) that the omission to give notice in response to notification under Section 17 has the effect of extinguishing the claim altogether. The notice under Section 17 is in order to keep alive the claim and to prevent it from being deemed to be discharged.

12. I hold, therefore, that Ex. 26 is not legally proved and cannot be accepted as a notification of the claim under Section 17.

13. It was also contended on behalf of the plaintiff Company that if Ex. 26 was rejected as not proved, the Company would rely on Ex. 25--Ex. P. W. 1/1 as embodying the claim under Section 17. This document is a letter sent on 10th March 1941 by Mr. Bhairon Prasad. This letter cannot be regarded as a notification of the claim under Section 17 for the assumption took place on 23rd May 1941 while this letter was sent on 10th March 1941 when the matter was still in the stage of enquiry. It is also clear from Ex. 25 that the original document upon which the claim was founded was not sent. It was held in *Bhagwan Din v. Deputy Commissioner, Kheri*, 2 O. W. N. 320: (A. I. R. (12) 1925 Oudh 349) that proof of a debt in proceedings under Section 9, U. P. Court of Wards Act is not a sufficient ground for failure to notify under Section 17 of the same Act, which requires all persons having claims against the estate to notify those claims after it has been taken over by the Court of Wards. The distinction between enquiry under Section 9 and that under Section 17 was brought out in the case of *Pandit Sheo Dayal v. The Deputy Commissioner, Kheri*, 2 O. W. N. 322 : (A. I. R. (12) 1925 Oudh. 326) and it was held that where a creditor claims a debt in the course of an enquiry conducted under Section 9, Court of Wards Act but fails to notify his claim within 6 months of the said Act, a suit for the recovery of the debt against the Court of Wards is not maintainable, the attendance of a creditor and setting up of a claim by him under Section 9 being not a "good and sufficient cause" within the meaning of the proviso to Section 20 of the Act.

14. Lastly Ex. 28, another letter sent in December 1941 by the liquidator to the Deputy Commissioner, was invoked in support of the contention that it may be treated as a submission of claim but it is nothing of the kind. The letter merely states that the Collector if he desired to object to the list of contributories, and to release him of the liability of the sum due from the ward, should file objections otherwise the matter will be decided in his absence. This letter is of no value. No original documents were sent along with this letter.

15. Upon the main point in the case, therefore, the plaintiff's suit is liable to fail. In this view it is unnecessary to discuss the question about limitation and interest. My finding upon the main question of the case is sufficient to dispose of the two appeals, the result of which is that the plaintiff's appeal is dismissed and the defendant's appeal is allowed. The suit of the plaintiff will stand dismissed with costs to the defendant throughout.