The Public Passenger Service Limited vs M. A. Khader And Two Others on 30 August, 1965

Equivalent citations: 1966 AIR 489, 1966 SCR (1) 683, AIR 1966 SUPREME COURT 489, 1966 36 COM CAS 1, 1966 (1) SCR 683, 1966 (1) SCJ 68, 1966 (1) SCWR 103, 1966 SCD 952

Author: R.S. Bachawat

Bench: R.S. Bachawat, J.R. Mudholkar

PETITIONER:
THE PUBLIC PASSENGER SERVICE LIMITED

Vs.

RESPONDENT:
M. A. KHADER AND TWO OTHERS

DATE OF JUDGMENT:
30/08/1965

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
SUBBARAO, K.
MUDHOLKAR, J.R.

CITATION:
1966 AIR 489 1966 SCR (1) 683

ACT:
Companies Act (1 of 1956), s. 155--Scope of.

HEADNOTE:
The respondents were shareholders in the appellant company. As they did not pay the call money on their shares, a notice under Art 29 of the Articles of Association was issued and as the respondents defaulted in the payment demanded, their shares were forfeited under Art. 30. The respondents filed a petition under ss. 402 and 237 of the Companies Act, 1956, and obtained. interim orders directing stay of collection of the moneys and restraining forfeiture of the shares, before the forfeiture by the appellant; but, as the call money was not paid into court as directed the interim order was

vacated and the petition was finally dismissed. Thereafter, the respondents filed an application under s. 155 praying that the forfeitures may be set aside -and the necessary rectifications made in the share register. The High Court on its original side and in Patent Appeal allowed the application, holding that the notice under Art. 29 wag defective and therefore the forfeiture was invalid.

In the appeal to this Court,

HELD : The forfeiture was invalid, and therefore the names of the respondents were omitted from the share register without sufficient cause and the jurisdiction of the High Court under s. 155 was attracted and rightly exercised. [687 B]

A proper notice under Art. 29 is a condition precedent to forfeiture under Art. 30. The object of the notice under Art. 29 is to give the shareholder an opportunity for payment of the call money, interest and expenses. In the absence of particulars of expenses, the respondents were not in a position to know the precise amount which they were re-quired to pay and that slight defect in the notice invalidated it and was fatal to the forfeiture. [685 D-G]

Section 155(1)(a)(ii) allows rectification of the share register if the name of any person after having been entered in it, is without sufficient cause, omitted therefrom The issue under the section is not whether the shareholder has sufficient cause to approach the Court, but whether his name has been omitted from the register without sufficient cause. [686 D: 687 A]

Where by reason of its complexity or otherwise the matter can more conveniently be decided in a suit, the court may refuse -relief under s. 155 and relegate the parties to a suit. But having found summaribly that the notice was defective and the forfeiture invalid, the Court could not arbitrarily refuse relief to the respondents. The unwarranted proceedings under ss. 402 and 237 and other vexatious proceedings started by the respondents have no relation to the invalidity of the forfeiture and the -relief of rectification and were not valid grounds for refusing, relief, even if it was an equitable one. [688 B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 202 and 203 of 1965.

Appeals from the judgment and decree dated December 21, 1961 of the Madras High Court in O. S. Appeals Nos. 55 and 56 of 1959.

K. K. Venugopal and R. Gopalakrishnan, for the appellant. A. V. Viswanatha Sastri, P. Ram Reddy and A. V. V. Nair, for respondent No. 1.

The. Judgment of the Court was delivered by Bachawat, J. The appellant is a limited Company carrying on transport business in South Arcot District. M. A. Khader, the contesting respondent in Civil Appeal No. 202 of 1965, holds 13 shares and his brother, M. A. Jabbar, the contesting respondent in Civil Appeal No. 203 of 1965, holds 163 shares in the Company. Articles 29 and 30 of the Articles of Association of the Company read:

> "29. The notice shall name a future day, not being less than seven days from the service of the notice, on or before which such all or other money and all interest and expenses that may have accrued by reason of such non-payment are to be paid and the place where payment is to be made, the place so named being either registered office of the Company are usually made payable and shall state that in the event of non-payment at or before the time and at the place appointed the share in respect of which such payment is due, will be liable to be forfeited.
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> 30. If the requisition-, of any such notice as aforesaid be not complied with, any share in respect of which such notice has been given may, at any time thereafter before payment of all money due thereon with interest and expenses, be forfeited by a resolution of the Directors to that effect."

On January 2, 1957, the board of directors of the Company passed a resolution calling the unpaid amount of Rs. 25/- on each share. On January 3, 1957, a call notice was issued to the shareholders requesting payment on or before January 19, 1957. The call notices were duly served on the contesting respondents. As the call monies remained unpaid, the Company issued the 68 5 following notice dated January 20, 1957 to the respondents under Art. 29 "Sir, As the call amount of the balance of Rs. 25/- for every share held by you remains unpaid in respect of the notice dated 3rd January 1957 issued in pursuance of the resolution of the Board, I hereby issue this notice calling upon you to pay the called amount at the registered office of the Company on or before Wednesday the 30th January 1957, together with interest at six per cent and any expenses that might have accrued by reason of such non-payment. Take further notice that in the event of non- payment as mentioned above, the shares registered in your name will be liable to be, once for all, forfeited without further notice and without prejudice to any legal action that may be taken against you for recovering the balance amount due from you treating the same as a debt due to and recoverable as such by the Company under Article 14.

By order of the Board (Signed) A. R. Hassain Khan Managing Director."

In spite of this notice, the respondents did not pay the call monies, and on February 11, 1957, the board of directors passed a resolution under Art. 30 forfeiting the shares held by them. On November 8, 1957, the respondents filed two separate applications under s. 155 of the Indian Companies Act, 1956 in the High Court of Madras praying that the forfeitures be set aside and the necessary rectifications be made in the share register of the Company. Ramachandra Ayyar, J. allowed the applications, and passed conditional orders for rectification of the registers and his decision was affirmed by the appellate Court. The Courts below held that in the absence of Particulars of interest and expenses, the notice dated January 20, 1957 was defective and the

forfeiture is invalid. The Company now appeals to this Court by on a certificate granted by the High Court.

In all standard articles of a company, the regulations relating to calls provide for payment of interest on the unpaid call money at a certain rate from the date appointed for its payment up to the time of actual payment, see regulation 14 of Table A in the first Schedule to the Indian Companies Act, 1913, regulation 16 of Tabie A in the first Schedule to the Indian Companies Act, 1956 and Palmer's Company Precedents, 17th Edn., Part 1, p. 437 and the regulations relating to calls are followed by regulations relating to Forfeiture like Arts. 29 and 30 of the appellant Company. In the light of Art. 29 read with similar regulations relating to calls, we would have no difficulty in holding that the notice dated January 20, 1957 required payment of Interest on tile call money from the date appointed for the payment thereof, that is to say, January 19, 1957 up to the time of the actual payment. Unfortunately, all the regulations of the Company relating to payment of calls have not been printed in the paper book, and in the present state of the record, we express no opinion on the question whether the notice is defective in respect of the demand for interest.

But we agree with the High Court that the notice is defective in respect of the demand for expenses. The amount of expenses incurred by the Company by reason of the non- payment was not disclosed. The respondents were not informed how much they should pay on account of the expenses. The object of the notice under Art. 29 is to give the shareholder an opportunity for payment of the call money, interest and expenses. The notice under Art. 30 must disclose to the shareholder presumably conversant with the Articles sufficient information from which he may know with certainty the amount which he should pay in order to avoid the forfeiture. In the absence of particulars of the expenses, the respondents were not in a position to know the precise amount which they were required to pay on account of the expenses. A proper notice under Art. 29 is a condition precedent to forfeiture, under Art. 30. Here, the notice under Art. 29 is defective, and the condition precedent is not complied with. The slight defect in the notice invalidates it and is fatal to the forfeiture. The Courts below, therefore, rightly declared that the forfeiture was invalid.

Section 155(1) (a) (ii) of the Indian Companies Act allows rectification of the share register if the name of any person after having been entered in the register is, without sufficient cause, omitted therefrom. There is no sufficient cause for the omission of the name of the shareholder from the register, where the omission is due to an invalid forfeiture of his shares, and on finding that the forfeiture is invalid, the Court has ample jurisdiction under s. 155 to order rectification of the register. me High Court said that the shareholder may approach the Court under s. 155 if be has sufficient cause. This mode of expression 68 7 was rightly criticised by counsel for the appellant. The issue under s. 155(1)(a)(ii) is not whether the shareholder has sufficient cause but whether his name has been omitted from the register without sufficient cause. As the forfeiture is invalid, the names of the respondents were omitted from the share register without sufficient cause, and the jurisdiction of the Court under s. 155 is attracted.

Counsel for the appellant contended that the point as to the invalidity of the notice dated January 20, 1957 was not open to the respondents in the absence of any pleading on this point. In the affidavit in support of the application, the respondents pleaded that the steps prescribed before

there can be a forfeiture, have not been complied with. No further particulars were given, but the contention as to the invalidity of the notice dated January 20. 1957 was pointedly raised in the argument in the firs,. Court. 'Me contention was allowed to be raised without objection. Had the objection been then raised, the Court might have allowed the respondents to file another affidavit. The appellant cannot now complain that the pleadings were vague. We may now conveniently refer to certain events which happened after January 2, 1957 when the directors resolved to make the call and February 11, 1957 when the shares were forfeited. On January 18, 1957, M. A. Jabbar, M. A. Khadir and other shareholders filed Application No. 119 of 1957 in the Madras High Court praying for reliefs under ss. 402 and 237 of the Indian Companies Act, 1956, and obtained an interim order directing stay of collection of monies pursuant to the notice dated January 3. 1957. The stay order was communicated to the directors on January 21, 1957 after the notice of the intended forfeiture dated January 20, 1957 was issued. On January 30, 1957, the Court passed a modified interim order restraining the forfeiture of the shares, and directed M. A. Jabbar to pay the call money into Court within one week. The call money was not paid into Court, and on February 8, 1957, the Court vacated the stay order. Application No. 119 of 1957 was eventually dismissed on April 10, 1957. Counsel for the appellant contended that (1) by reason of the aforesaid proceedings the respondents waived and abandoned their right to challenge the forfeiture (2) the order dated January 30. 1957 substituted a fresh notice of intended forfeiture under Art, 29 in lieu of the original notice dated January 20, 1957 and in the absence of compliance with this order, the forfeiture is valid. Neither of these contentions was raised in the Court below. We find nothing in the proceedings in Application No. 119 of 1957 from which we can infer a waiver or abandonment by the respondents of their right to challenge the validity of the notice dated January 20, 1957 and the subsequent forfeiture. We also fail to see how the order of the Court dated January 30, 1957 can amount to a notice under Art. 29. The only notice under Art. 29 is the one dated January 20, 1957, and as that notice is defective, the forfeiture is invalid. Counsel for the appellant contended that the relief under s. 155 is discretionary, and the Court should have refused relief in the exercise of its discretion. Now, where by reason of its complexity or otherwise the matter can more conveniently be decided in a suit, the Court may refuse relief under s. 155 and relegate the parties to a suit. But the point a,; to the 'Invalidity of the notice dated January 20, 1957 could well be decided summarily, and the Courts below rightly decided to give relief in the exercise of the discretionary jurisdiction under s. 155. Having found that the notice was defective and the forfeiture was invalid, the Court could not arbitrarily refuse relief to the respondents.

Counsel for the appellant points out that the respondents are the trade rivals of the appellant and are anxious to cripple its affairs, and the appellate Court recorded the finding that the respondents were acting mala fide and prejudicially to the interests of the appellant and their conduct in taking various proceedings against the appellant is reprehensible. Counsel then relied upon the well-known maxim of equity that "he who conics into equity must come with clean hands", and contended that the Courts below should have dismissed the applications as the respondents did not come with clean hands. This contention must be rejected for several reasons. The respondents are not seeking equitable relief against forfeiture. They are asserting their legal right to the shares on the ground that the forfeiture is invalid, and they continue to be the legal owners of the shares. Secondly, the maxim does not mean that every improper conduct of the applicant disentitles him to equitable relief. The maxim may be invoked where the conduct complained of is unfair and unjust in relation

to the subject-matter of the litigation and the equity sued for. The unwarranted proceedings under ss. 402 and 237 of the Indian Companies Act, 1956 and other vexatious proceed- ings started by the respondents have no relation to the invalidity of the forfeiture and the relief of rectification and are not valid Grounds for refusing relief. In the result, the appeals are dismissed. There will be no order as to costs.

Appeals dismissed.