

Calcutta High Court

Jogesh Chandra Majumdar vs Durga Mohan Chakrabarty And Ors. on 17 February, 1932

Equivalent citations: AIR 1932 Cal 714, 140 Ind Cas 76

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JUDGMENT Pearson, J.

1. This is an appeal arising out of a suit for the declaration that the issue of 200 ordinary shares and two so-called preferential shares to certain of the defendants at a meeting of the Directors of the Arjya Insurance Company Ltd., held on 23rd March 1922 and purporting to give effect to a resolution passed at a meeting of the share-holders held on 30th March 1913, increasing the share capital, and the acts done by them on the basis of subscription of such shares are illegal, ultra vires and void and that the principal defendants are not competent to act as share-holders of the company. The first Court dismissed the suit and the learned Judge in appeal affirmed that decision. The main point which was taken before us upon the merits was that the resolution passed at the meeting of the share-holders on 30th March 1913, whereby the capital was increased, was ineffective and void for the reason that it was a "special resolution" of the company and, as such, required to be confirmed in the manner provided by the Act, at a subsequent meeting; whereas it was admitted that no such confirmation took place. The argument on the other side was, we understand, that the meeting was one which held in accordance with the Articles of the company as then existing, and was not a "special resolution" in the sense that it required confirmation at a subsequent meeting. The learned Judge in the lower appellate Court found that this resolution was good and valid. In the present case we desire to express no opinion either for or against this view and the matter must be left open.

2. The other point which was found by the learned Judge in the lower appellate Court against the appellant was that a declaratory suit of this kind would not lie having regard to the provisions of Section 42, Specific Relief Act. In that view we think that he was correct. The present plaintiff is a share-holder in the company and he is only entitled to ask for a declaratory decree if he can show that he is a person entitled to a particular legal character or to a particular right as to any property and that the defendant is a person who denies or is interested in denying his title to that character or that right. It is difficult to say that the plaintiff in the present suit in his capacity as a share-holder whether you call that a legal character or a right to property is meeting with the denial of that right or that character at the hands of the defendant. It will not do to say that he claims to be a share-holder in a company with 20,000 shares, whereas the defendant says that he is a share-holder in a company with 20,000 shares plus the increased capital under the contested resolution. It is legal character and his property are there as a share-holder and neither the defendant nor anybody else is denying his title to that right or property. The only thing that can be said is, not that the defendant is denying his character or his right to the property, but that he is setting up a right in himself to certain other property connected with the same company and if the result of that may be, in some way or other, to affect his holding as a share-holder I do not think that it is sufficient to bring him within the terms of Section 42, Specific Relief Act.

3. There is a further consideration arising upon this section in the matter of the reliefs which the plaintiff has claimed. The learned Judge has said that apart from the consideration whether Section

42 applies or not strictly, he is not prepared to exercise his discretion in the plaintiff's favour for the reason that the plaintiff's proper remedy would have been to apply to the Court for a rectification of the register and so on, under Section 36, Companies Act. Whether that be so or not, and assuming that a suit of this character were open to him, I would at least have expected to find that the relief which would be claimable in an application to us company would have been claimed as ancillary to the declaratory relief sought in this suit. Probably also one would have expected to find some kind of injunction asked for and the rectification of the register, the removal of the names of these persons and so on. But there is nothing of this sort to be found. So that in this respect also it seems that the plaintiff is within the mischief of the proviso to Section 42 in that he has not claimed any further relief. On the footing therefore that we agree with the learned Judge in the lower appellate Court that this suit is not maintainable under Section 42, Specific Relief Act, the appeal must be dismissed with costs.

Mallik, J.

4. I agree.