

In Re: Jagannath Prasad

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Court : Allahabad

Decided On : Dec-10-1937

Reported in : AIR1938All193

Appellant : In Re: Jagannath Prasad;In Re: Bharat Dharma Syndicate (In Liquidation)

Respondent : ;

Judgement :

ORDER

Iqbal Ahmad, J.

1. This is an application by one Jagannath Prasad under Section 183(5), Companies Act, and the prayer contained in the application is that the applicant's name be removed from the list of contributories prepared by the official liquidators. It is common ground that the applicant applied for the purchase of one deferred share of the Company on 15th November 1923, and paid a sum of Rs. 5 on account of the application money on 26th November 1923. Each deferred share was of the face value of Rs. 100. A further sum of Rs. 20 was paid by the applicant on account of the share purchased by him on the allotment of that share on 11th March 1924. A sum of Rs. 75 on account of the share remained due and the first call with respect to a portion of that amount was made on 25th May 1927. The applicant how-ever did not pay the first call or any calls that may have been

subsequently made and Rs. 75 remained due from the applicant to the Company on account of the share.

2. By an order dated 16th July 1929, this Court approved a reconstruction scheme by virtue of which every deferred share was converted into four ordinary shares of Rs. 25 each with the result that the deferred share purchased by the applicant was, after the reconstruction scheme, represented by four ordinary shares. An order for the compulsory winding up of the Company was passed by this Court on 29th April 1935, and thereafter the official liquidators fixed 2nd August 1937, for the settlement of the list of contributories and sent a notice to the applicant calling upon him to show cause why his name should not be included in the list of contributories with respect to the sum of Rs. 75 that was still due from him on account of the four ordinary shares. The applicant did not appear on the date fixed and his name was put on the list of contributories by the liquidators and intimation of this fact was given to the applicant. The applicant then filed the present application which is for disposal before me to-day.

3. The applicant repudiates his liability as a contributory on two grounds. Firstly he alleges that he purchased the deferred share on the understanding that the proceeds of the sale of the deferred shares would be invested in the publication of newspapers and that the holders of the shares would be supplied with copies of those papers free of cost. He states that newspapers were not regularly supplied to him, and, as such, he is absolved from the liability to pay the price of the share. Secondly he alleges that it was stated in the application form signed by him that the purchase of the share by him was 'in terms of the Company's prospectus' and he asserts that as the Company's prospectus was fraudulent the agreement entered into by him for the purchase of the share was void in law and is not binding on him. In my judgment there is no force in either of the grounds relied upon by the applicant. There is nothing on the record to show that the purchase of the deferred shares by the applicant or the other shareholders of the Company was subject to the condition that newspapers published by the Company would be supplied to them free of cost. On the other hand it was provided by the prospectus of the Company that

a subscriber subscribing one deferred Bhare will be entitled to get free of charge either of the two weekly newspapers...and will also be entitled to the surplus dividend after deducting the annual subscription of the weekly journal he subscribes.

4. This provision in the prospectus dearly meant that the supply of the newspaper to the shareholder was not to be free of charge and that the annual subscription of the journal was to be deducted from the dividend due to him. It is further a fact that some journals were published by the Company and supplied to the shareholders from the year 1924 to 1928. It cannot therefore be said that the Company did not in terms of the prospectus, supply the journals referred to in the prospectus to its shareholders. The applicant cannot therefore be absolved from the payment of the amount due from him on account of the share purchased by him. In support of the second ground relied upon by the applicant reliance has been placed by his learned Counsel in *Aaron's Reefs Ltd. v. Twiss* (1896) A.C. 273. It was held in that case that where a person is induced by a fraudulent prospectus to apply for an allotment of shares, and his shares are afterwards forfeited by his failure to pay calls, he ceases to be a shareholder and becomes a mere debtor to the Company, and if he has done nothing to affirm the contract he may repudiate it and defend an action for calls on the ground of fraud.

5. It is a fact that the prospectus that was issued by the Company was a false and misleading document and contained untrue statements and representations and the applicant had therefore the right to avoid the agreement to purchase the share provided he exercised that right within a reasonable time. Any contract that is induced by undue influence, misrepresentation or fraud is voidable at the option of the party who was led to enter into the contract by reason of undue influence, misrepresentation or fraud. This proposition though applicable to contracts relating to the purchase of shares of a company is subject to certain other rules of law, and one of those rules is that the repudiation or the avoidance of the contract by the shareholder must be within a reasonable time and before the commencement of proceedings for the winding up of the company. The reason for this rule is not far to seek. If a shareholder does not within a reasonable time exercise option of avoiding the contract for the purchase of shares of a Company on the ground of

fraud, misrepresentation or undue influence, a presumption arises that he waives his right to avoid the agreement. Moreover during the normal working of a Company the rights and interests of third persons come into existence who, not being parties to the agreement for the purchase of the shares, remain unaffected by the right-that the purchaser of the shares may have against the Company.

6. It is on this ground that it has been held that the right to avoid an agreement for the purchase of a share cannot be exercised after the proceedings for the winding up of the company have been initiated. To this effect are the decisions in *In re Scottish Petroleum Co.* (1883) 23 Ch. D. 413 at p. 434 and *Oakes v. Turquand* (1867) 2 H.L. 325. In the case before me I find that the applicant purchased the share in the year 1923 and he did not exercise his right to avoid the agreement to purchase the share till the date on which the application for the winding up of the Company was filed in this Court. Indeed it is only now when the applicant has been put on the list of contributories that he wants to be released from the agreement for the purchase of the share. This cannot be allowed. The official liquidators were therefore right in including the applicant in the list of contributories. I accordingly dismiss this application with costs which I assess at a sum of Rs. 16.