

Totalal Vs. the State

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Court : Rajasthan

Decided On : Mar-13-1962

Reported in : AIR1963Raj6

Judge : C.B. Bhargava, J.

Acts : [Companies Act, 1956](#) - Sections 295, 295(1) and 295(3)

Appeal No. : Criminal Revn. No. 366 of 1961

Appellant : Totalal

Respondent : The State

Advocate for Def. : B.C. Chatterji, Deputy Govt. Adv.

Advocate for Pet/Ap. : M.D. Bhargava, Adv.

Disposition : Revision allowed

Judgement :

ORDER

C.B. Bhargava, J.

1. Petitioner Totalal, who at the relevant time, was a Director of the Edward Mills Co. Ltd., Beawar (hereinafter called the Mills) incorporated and registered as a public limited company under the provisions of the Indian Companies Act, 1882 on

9th August 1906, has been sentenced to pay a fine of Rs. 500/- for an offence punishable under Section 295(4) of the Indian [Companies Act, 1956](#); in default of payment of fine, he is to undergo simple imprisonment for two months. Along with the petitioner, three other Directors, namely, Chandmal, Rishi Kesh and Lalita Prasad, were also convicted for the same offence, but no revision application has been filed on their behalf.

2. Section 295 of the Indian [Companies Act, 1956](#), runs thus :

'Section 295. Loans to directors etc. -- (1) Save as otherwise provided in Sub-section (2), no company (hereinafter in this section referred to as 'the lending company') shall, without obtaining the previous approval of the Central Government in that behalf, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by, --

(a) any director of the lending company or of a company which is its holding company or any partner or relative of any such director;

(b)

(c)

(d)

(e).....

(2)

(3). Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Act could not have been made, given or provided without the previous approval of the Central Government, if this section had then been in force, the lending company shall, within six months from the commencement of this Act or such further time not exceeding six months as the Central Government may grant for that purpose, either obtain the approval of the Central Government to the transaction or enforce the re-payment of the loan made, or in connection with which the guarantee was given or the security was

provided, notwithstanding any agreement to the contrary.

(4). Every person who is knowingly a party to any contravention of Sub-section (1) or (3), including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable either with fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months :

Provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section; and where the loan has been re-paid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced'.

On 8th February, 1942, one Motilal Raniwala by a resolution passed at an extraordinary general meeting of the said Mills was appointed as Agent, Secretary, Treasurer and Managing Director for a period of twenty years. This Motilal Raniwala was also the proprietor of a concern known as Champalal Ram Swaroop at Beawar and Bombay. It was a joint Hindu Family concern of which Motilal Raniwala was the Karta or manager. It appears that on 15th February, 1945, the Directors of the Mills by a resolution decided to keep amounts of the Mills to the extent of Rs. 1,50,000/- in current account with Champalal Ram Swaroop for the purpose of Mills business. Copy of the resolution is marked Ex. P. 27. Some more amounts appear to have been advanced as on 1st of April, 1955, when the new Act (No. 1 of 1956) came into force, a sum of Rs. 3,96,000/- was the to the Mills from Champalal Ram Swaroop.

The Directors of the Mills in compliance with the provisions of Sub-section (3) of Section 295, sought the approval of the Central Government for the continuance of the aforesaid amount in the current account of Champalal Ram Swaroop. On. 11th January, 1957, the Central Government expressed their inability to grant approval in respect of the loans made by the Edward Mills CB. Ltd. to Messrs. Champalal Ram Swaroop at Beawar and further directed them to enforce the re-payment of

loan by 31st March, 1957. The Mills again asked the Central Government to reconsider and the Central Government by their letter dated 6th March, 1957 (Ex. D. 2) expressed their willingness to reconsider the request of the Mills provided the Mills fulfilled the following conditions :

1. the loan is fully secured;
2. the loan bears interest at 6%per annum
3. the loan is to be fully repaid before 31st March,1958;
4. the grant of the loan is approved by the Board of Directors of the Mills.

By their resolution No. 6, the Board of Directors gave their consent to keep the amount of Rs. 3,96,000/-till 31st March, 1958, with Champalal Ram Swaroop carrying interest at 6% per annum provided they gave security by mortgaging their properties in favour of the Mills (vide Ex. D. 21). On 29th October, 1957, the Board of Directors of the Mills in compliance with the letter dated 30th July, 1957, of the Central Government passed a resolution to give Rs. 3,96,000/- which were outstanding to the company by Messrs. Champalal Ramswaroop as a fresh loan by debiting the said amount to Rai Bahadur Seth Champalal Ramswaroop, Beawar, and crediting the same to the existing account of Rai Bahadur Seth Champalal Ramswaroop so that the existing account be squared up and the amount of Rs. 3,96,000/- be treated as a fresh loan by the company to Rai Bahadur Seth Champalal Ramswaroop, Beawar, in current account upto 31st March, 1958, and to carry interest at the rate of 6% per annum.

The Board of Directors further resolved that Rai Bahadur seth Champalal Ramswaroop do give security to the company in the manner required by law in respect of their properties mentioned in the resolution. It was further noted that Rai Bahadur Seth Champalal Ramswaroop had also entered into an agreement dated 12 July, 1957, agreeing to repay to the company the said sum of Rs. 3,96,000/- with interest thereon at the rate of 6% per annum from 1st April, 1956, and to execute mortgage in favour of the company in respect of the properties mentioned in the resolution.

It appears that some further correspondence between the Directors and the Central Government regarding the latter's approval continued and finally on 11th March, 1958 vide Ex. P-13 the Central Government refused to give approval. It was pointed out that the Mills had all along suppressed this fact that the borrowing firm was an associate of the Managing Agent of the company. The company was also advised to enforce immediate recovery of the loan by 31st March, 1958, which under the provisions of law, should have been recovered by the company by 30th September, 1956. Since no steps were taken by the company to enforce repayment of the above sum from Messrs. Champalal Ramswaroop, the Registrar of Companies filed this complaint on 9th December, 1958. The two courts below have found the petitioner guilty.

3. Substantially, three questions have been argued on behalf of the petitioner:

(1) that the amount of Rs. 3,95,000/- outstanding to the Mills by Messrs. Champalal Ramswaroop on 1st April, 1956, was not a loan requiring the approval of the Central Government or enforcement of repayment as provided in Sub-section (3) of Section 295;

(2) that it was not a loan to the persons mentioned in Sub-section (1)(a) but was in the current account of Messrs. Champalal Ramswaroop which was a joint Hindu family concern;

(3) that the Directors of the Mills did take steps by calling upon Messrs. Champalal Ramswaroop to pay the said amount and also got a mortgage deed in their favour of their properties on 31st July, 1958, and thus complied with the provisions of Sub-section (3) of Section 295.

4. As for the first contention, it is pointed out that there is a distinction between a loan and a deposit. It is urged that in the present case, the amount was deposited with Messrs. Champalal Ramswaroop so that money may be conveniently at hand when required by the Mills for its business. It is urged that to such a transaction, the provisions of Section 295(1) and (3) were not applicable. Reliance was placed on the observations of Atkin, Lord Justice in *N. Joachimson v. Swiss Bank Corporation*, 1921-3 KB 110, *Gurcharan Das v. Ram Rakha Mal*, AIR 1937

Lah 81 and Suleman Haji Ahmed Umer v. Abdulla Haji Rahimtulla, AIR 1940 PC 132.

5. It is to be remembered that both in case of a loan and a deposit there is relationship of a debtor and a creditor and the amount is repayable to the creditor. As pointed out by the Privy Council :

'A loan and a deposit payable on demand are not mutually exclusive. A deposit of money is not confined to a bailment of specified currency to be returned in specie. As in the case of a deposit with a banker it does not necessarily involve the creation of a trust, but may involve only the creation of the relation of debtor and creditor, a loan under conditions. The distinction which is perhaps the most obvious is that the deposit not for a fixed term does not impose an immediate obligation on the deposited to seek out the depositor and repay him. He is to keep the money till asked for it. A demand by the depositor would therefore be a normal condition of the obligation of the deposited to repay'.

6. In my opinion the distinction pointed out by the learned counsel has no bearing so far as the provisions of Section 295 of the Companies Act are concerned. It may have bearing on the question of statutes of limitation. Money in the hands of a banker is merely money lent with a superadded obligation that it shall be payable on demand. May be that in the case of a deposit the cause of action for filing an action does not arise until a demand is made, but for the purposes of Section 295, this is immaterial and the amount with the banker would still be a loan. I do not, therefore, find any force in this contention. In all the cases referred above question of limitation was involved and in that connection distinction between a loan and a deposit came to be considered.

7. There is also no force in the second contention, in the joint family concern of Messrs. Champalal Ramswaroop, Motilal Raniwala was the Karta and manager. In a joint Hindu family concern, the Karta represents the family and is authorised to enter into contracts and borrow money on behalf of the family. He is personally liable to pay the amounts borrowed for the purpose of the family. The other members of the family may also be liable to the extent of their interest in the joint Hindu family property. But by no stretch of argument it can be said that the Karta is

not a debtor and the amount had not been advanced to him.

Therefore, when the amount is taken by the Karta of a joint Hindu family concern, it is a loan to him though the members of the family may also be liable to pay it. Since Motilal Raniwala, who was the Karta of the joint family concern of Champalal Ramswaroop, was also a Director of the Mills, the provisions of Section 295(1)(a) are clearly attracted. The conduct of the Directors after the coming into force of the new Act also clearly shows that they treated this outstanding as a loan to a Director and that is why they sought approval of the Central Government for the transaction.

8. The last question involves the determination of the meaning of 'enforce the repayment of the loan made' used in Sub-section (3) of Section 295 of the Act. The contention of the learned counsel is that they do not necessarily mean the taking of any legal action for recovery of the amount but making a demand or to obtain a mortgage of the properties of the debtor would to sufficient compliance of Sub-section (3) of Section 295. The word 'enforce' has not been defined in the Act and it is necessary to revert to the dictionaries for its meaning. The word 'enforce' means 'direct, command' 'To enforce' is more authoritative than 'direct' and less imperious than a 'command'; the word has the force of pressing admonition with authority.

9. Again, to enforce is to endue with force, or to bring into operation that which has a force of its own: as, to enforce a command or to enforce a law or obedience to it. Urge has a more purely moral character than enforce. It has more of argument, persuasion, entreaty, expostulation; enforce, more of authority and power. (Law Lexicon of British India by R.N. Iyer), in the Oxford English Dictionary (Vol. III-D-E p. 172-1933 Edn.), 'enforcement' is described as 'constraint, compulsion; a constraining or compelling influence' and the word 'enforce' as 'to put force or strength into' or strength into to bring force or press home.

10. The word 'enforce' used in Section 295(3), therefore, means the taking of such action on the part of the creditor which compels the debtor to effect repayment of the loan such as the institution of a suit, attachment or sale of the latter's properties, etc. Making a demand from the debtor to repay the loan would not

amount to enforcing repayment. A demand may only be a request or may be accompanied by some threat of legal action but the element of force which compels obedience which the word 'enforce' carries is absent from it. The act of the Directors, therefore, in calling upon Messrs. Champalal Ramswaroop to repay the loan would not be a compliance of Section 295(3) of the Indian Companies Act. Under Sub-section (3), the Directors are required to get the approval of the Central Government for the said transaction within six months from the commencement of the Act or such further period not exceeding six months as the Central Government may grant for that purpose.

It appears that the Board of Directors had sought the approval of the Central Government and although at first the Central Government vide Ex. D-1 dated 11th January, 1957, had refused to grant approval but later on reconsidered the request and finally refused approval on 11th March, 1958. The correspondence might have continued because the Board of Directors suppressed the fact that the borrowing firm was an associate of the Managing Agent of the company, but the fact remains that the final refusal was communicated by the Central Government on 11th March, 1958, vide Ex. P-13. The Board of Directors upto 11th March, 1958, were expecting the approval of the Central Government to the transaction and till that time their omission to enforce the repayment of the loan cannot be regarded as violation of the provision of law.

It is to be noted that the Central Government made it clear to the Board of Directors that they had to enforce repayment of the loan by 31st March, 1953. The only step, which the Board of Directors took after 11th March, 1958, till this complaint was filed against them was that they obtained a mortgage of certain properties from Messrs. Champalal Ramswaroop on 31st July, 1958, though the mortgage deed was not placed on the record of this case and was only produced for perusal in this court. It might be that the loan which was unsecured became secured after this mortgage, still the amount remained in the hands of the debtor. Merely obtaining of a mortgage, in my opinion, would not amount to 'enforcing the repayment' of the loan within the meaning of Sub-section (3) of Section 295 of the Act.

11. No authority was cited to me on behalf of the petitioner to show that making of a demand or getting a mortgage deed from a debtor amounts to a 'enforcing repayment' of loan. Reference may, however, be made to Guaranty Trust Company of New York v. Hannay and Co., 1918-1 KB 43, where by Section 72, Sub-section (1) proviso (b) of the Bills of Exchange Act, 1882, it was provided:

'Where a bill issued out of the United Kingdom conforms, as regards requisites in form, to the law of the United Kingdom, it may for the purpose of enforcing payment thereof, be treated as valid as between all persons who.....become parties to it in the United Kingdom.'

The plaintiffs brought an action in England claiming declaration that they did not, by presenting the bill for acceptance with the bill of lading attached, warrant or represent that the bill of lading was genuine, and that they were not bound to repay the amount of the bill. It was held:

'That the expression 'enforcing payment thereof' in Section 72, Sub-section (1), proviso (b), did not include the obtaining of a declaration that the holder of a bill who had been paid was entitled to retain the money, and that as the action was brought by the plaintiffs for the purpose, not of obtaining payment, but of preventing the defendants from getting the money back, the proviso did not apply.'

12. This case, to some extent, lends support to the view which I have taken and indicates that 'enforcing the repayment' means taking such action which compels the debtor to repay the loan.

13. The conduct of the petitioner in not complying with the provisions of Sub-section (3) of Section 295 of the Companies Act till 11th March, 1958, may be excusable because the question of approval of the transaction was under the consideration of the Central Government, but thereafter they had no excuse for not enforcing the repayment of the loan. The petitioner has, therefore, been rightly convicted for contravention of Sub-section (3) of Section 295 of the Companies Act.

However, it appears from the statement of Bishanlal (P.W. 2) and the accounts Exs. D-29 to D-32 produced in the case that from 1957 to 1960, a sum of Rs. 2,18,030/- has been recovered from Messrs. Champalal Ram Swaroop. In view of this circumstance, a sentence of fine of Rs. 250/- will meet the ends of justice.

14. The result, therefore, is that this petition is partly allowed, conviction of the petitioner is maintained, but his sentence is reduced from payment of Rs. 500/- as fine to Rs. 250/- only. I am informed that the total amount of fine imposed on him by the courts below has been paid. In view of the reduction, the amount paid in excess of Rs. 250/- will be repaid to him.

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