

stage or for the Tribunal to decide whether the list complies with the provisions of s. 83 (2) or not. Apparently, the view taken both by the Commission, inasmuch as it did not dismiss the petition under s. 85, and also by the Tribunal is that the list does comply with the provisions of s. 83 (2) and what the Tribunal has done is, it has allowed opponent No. 1 to give further particulars and to amend the particulars given in the list by treating the additional list as falling under s. 83 (3). These are matters of merit into which we are not entitled to go on a petition for a writ. But the central point that arises on this petition and which we have to decide apart from all these refinements is whether there is anything in the Act which casts a duty upon the Tribunal under the circumstances alleged by the petitioner to dismiss the petition. It is only if we are satisfied that there is such a clear and unequivocal statutory obligation upon the Tribunal that we can issue a writ and direct the Tribunal to dismiss the petition. In our opinion, no such statutory obligation appears on a plain reading of the statute, and therefore apart from any other consideration the petition must fail and is dismissed with costs.

Rule discharged.

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APPEAL FROM ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Shah.

NARANDAS MANMOHANDAS RAMJI AND OTHERS, APPELLANTS
(ORIGINAL PLAINTIFFS AND DEFENDANTS TO THE COUNTERCLAIM) v. THE
INDIAN MANUFACTURING COMPANY, LIMITED, RESPONDENTS
(ORIGINAL DEFENDANTS AND PLAINTIFFS TO THE COUNTERCLAIM).*

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Indian Companies Act (VII of 1913), s. 30 (2)—Whether each of the persons holding shares in a company jointly with others is a 'member' within the meaning of s. 30 (2)—Indebtedness of one of joint holders of shares to Company—Articles of association of Company—Article enabling Company to have a lien on shares registered in the name of each member whether solely or jointly with others.

One N. and his sons V. and J.—plaintiffs—jointly held certain shares in I. M. Company, Ltd. V. became indebted to the Company. The Company relying on art. 29 of the Articles of Association of the Company claimed a lien for V.'s indebtedness on the shares jointly held by the plaintiffs. The plaintiff's contention that the Company was not entitled to claim a lien on shares held by V. jointly with others for his indebtedness to the Company was negatived by the trial Court. On appeal, confirming the decision of the trial Court,

* O. C. J. Appeal No. 18 of 1953; Suit No. 406 of 1950.

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Held, that each one of joint holders of shares in a Company is a member within the meaning of s. 30 (2) of the Indian Companies Act, 1913. *Held*, therefore, that in accordance with art. 29 of the Articles of Association of the Company, the Company was entitled to a lien on shares held by V. jointly with N. and J. for V.'s indebtedness to the Company.

Cory v. Reindeer Steamship, Limited⁽¹⁾ and *New London and Brazilian Bank v. Brockle Bank*,⁽²⁾ distinguished.

Narandas Manmohandas Ramji (1st plaintiff) was a holder of 5 shares standing in his name in the Indian Manufacturing Company, Limited (1st defendants), hereinafter referred to as the Company. He and his son, Vithaldas, (2nd plaintiff) held in their joint names 5 shares in the Company. Both of them, along with Jamnadas, Narandas' 2nd son (3rd plaintiff) were the joint holders of 47½ shares in the Company. All the plaintiffs, along with Bai Harkorebai, 1st plaintiff's wife and mother of the 2nd and 3rd plaintiffs, held in their joint names 1 share in the Company.

The Company alleged that the 2nd plaintiff was in the sole and exclusive management and conduct of the business of the Company from the year 1944 to the end of September 1948 when he was removed by the Company. During his management, the Company alleged, the 2nd plaintiff wrongfully removed and converted to his own use certain stock of colours and chemicals belonging to the Company of the total value of Rs. 5,38,457. The Company contended that the 2nd plaintiff had become liable to the Company to pay this amount as also a further sum of Rs. 64,320 as and by way of damages for such wrongful conversion. In respect of this liability of the 2nd plaintiff to the Company for wrongful conversion and damages, the Company relying on art. 29 of their Articles of Association*

⁽¹⁾ (1915) 31 T. L. R. 530.

⁽²⁾ (1882) 21 Ch. D. 302.

* Article 29 of the Company reads as follows:

"The Company shall have a first and paramount lien upon all the shares registered in the name of each member (whether solely or jointly with others), and upon the proceeds of the sale thereof for his debts, liabilities and engagements, solely or jointly with other person, to or with the Company whether the period for the payment, fulfilment or discharge thereof shall have actually arrived or not, and no equitable interest in any share shall be

created except upon the footing and condition that clause hereof shall have full effect; and such lien shall extend to all dividends from time to time declared in respect of such shares. Unless otherwise agreed, the registration of transfer of shares shall operate as a waiver of the Company's lien, if any, on such shares. The Directors may at any time declare any shares to be wholly or in part exempt from the provisions of this clause."

claimed a lien on all the above shares, as also on the bonus preference shares to which the holders became entitled and on dividends, declared or to be declared on all the shares.

The plaintiff filed this suit on March 3, 1950, challenging the alleged liability of the 2nd plaintiff to the Company and praying, *inter alia*, for a declaration that the Company was not entitled to any such lien. The Company filed a counter-claim, adding Bai Harkuverbai as a party defendant to the counter-claim, claiming the above amounts from the 2nd plaintiff and praying for a declaration that the Company had a first and paramount lien as hereinbefore set out.

By an order of adjudication dated April 18, 1951 the 2nd plaintiff was adjudicated insolvent and the Official Assignee was added as 2nd defendant to the suit on January 6, 1953.

At the hearing of the suit, the plaintiff admitted that the amounts claimed by the Company were due by the 2nd plaintiff to the Company but contended that as the liability was solely that of the 2nd plaintiff and as the shares on which the lien was claimed did not solely belong to him but were the joint property of the 2nd plaintiff along with the 1st plaintiff, 3rd plaintiff or Bai Harkuverbai, the Company had no right to enforce their lien on these shares. The trial Court negatived the plaintiffs' contention and allowed the Company's counter-claim except with regard to the 5 shares standing solely in the name of the 1st plaintiff, in respect of which the plaintiffs were given a declaration that the Company were not entitled to a lien on those 5 shares for the 2nd plaintiff's admitted liability.

The plaintiffs appealed.

M. V. Desai with *S. A. Desai* and *K. H. Kaji*, for the appellants.

Sir Jamshedji B. Kanga with *Purshottam Tricumdas* and *P. N. Bhagwati*, for the respondents.

Chagla C. J. This is an appeal against the judgment of Mr. Justice Desai and the appeal involves a very short question as to the construction of s. 30 (2) of the Indian Companies Act and the construction becomes necessary under circumstances which we will presently relate. The first plaintiff is the father of plaintiffs Nos. 2 and 3 and they filed a suit for a declaration that certain shares which they held in the first defendant company were not subject to the lien of the company and that the company was not entitled to enforce a lien against these

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shares. The shares with which we are concerned are five shares registered jointly in the names of the first and second plaintiffs, 44 shares registered jointly in the names of the three plaintiffs, and three half shares also registered jointly in the names of the three plaintiffs. The plaintiffs also had one share jointly with Bai Harkuverbai, the wife of the first plaintiff, and with regard to this share the question arises because of the counterclaim to which a reference will be presently made. The first defendant company filed its written statement and also a counterclaim and in the counterclaim they made Harkuverbai also a defendant and they claimed by the counterclaim a lien on all the shares to which reference has just been made, also a right to enforce its lien, and the counterclaim stated that the lien was being exercised by reason of a debt due by the second plaintiff to the company. When the matter came for hearing before Mr. Justice Desai, the plaintiffs admitted that a sum of over Rs. 6,00,000 was due by the second plaintiff to the defendants and all issues of fact which arose on the pleadings were admitted by the plaintiffs. The plaintiffs contended themselves with arguing before the learned Judge below a short and narrow point of law and the point that they put forward was that as the debt was due solely by the second plaintiff and as the shares did not belong to the second plaintiff alone but were the joint shares of the second plaintiff along with the first or the third plaintiff or Harkuverbai, the company had no right to enforce the lien in respect of these shares. The learned Judge decided this point of law against the plaintiffs and passed a decree in favour of the first defendant. It is from that decision that this appeal is preferred.

Now, the article on which the company relies is art. 29 and that article, to the extent that it is material, provides:

"The company shall have a first and paramount lien upon all the shares registered in the name of each member (whether solely or jointly with others) and upon the proceeds of sale thereof for his debts, liabilities and engagements solely or jointly with any other person, to or with the company."

The contention of Mr. Desai on behalf of the plaintiffs is that it is only in respect of the debts of a member that the company has a first and paramount lien and according to Mr. Desai the member in this case is not the second plaintiff but is plaintiffs Nos. 1, 2 and 3 collectively and in respect of some shares plaintiffs Nos. 1, 2, 3 and Harkuverbai collectively. Further, it is Mr. Desai's contention that unless the shares belong solely to

the second plaintiff he could not become a member of the company and it is only when the shares belong solely to him that in respect of those shares the company could have a first and paramount lien when debts were contracted by him. In order to understand and appreciate this argument one must turn to the provisions of the Companies Act in order to determine who is a member of a company. The relevant provision is to be found in s. 30 which defines a "member". We are not concerned with sub-s. (1), and turning to sub-s. (2) it provides:

"Every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company."

Therefore you must have for the purposes of this sub-section a person and you must have an agreement between that person and the company, and when that agreement is entered into to become a member of the company that person becomes a member and it is also necessary that his name should be entered in the register of members as a member.

Mr. Desai contends that in this case the agreement was entered into not only by the second plaintiff but by the second plaintiff jointly with others and Mr. Desai says this is a case of joint contractors who have entered into a contract with the company and therefore the person who becomes a member is not one of the joint contractors but all the joint contractors. We find it difficult to understand how, if more than one person agree to become members of the company, the resulting agreement creates a situation whereby there is only one member of the company and not as many members as persons who agreed to become members. It is clear that the persons who agreed to become members of a company do not constitute a legal entity. If there are joint contractors, whatever their rights, obligations and liabilities may be *inter se*, they do not in the eye of the law become a legal person or a legal entity, and, therefore, if they are not a legal entity they are individuals who enter into an agreement with the company in order to obtain certain rights and certain status. If the joint contractors are not a legal entity, it is difficult to understand how they can become a member of the company, thereby assuming a legal entity which they did not possess when they entered into the contract. By his contention Mr. Desai wants to confer upon individuals, who apply to become members of a company and who enter into a contract for that purpose, the rights and status of a legal entity which can only be conferred by the Legislature. There is nothing to

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suggest in s. 30 (2) that a member of a company is a legal entity which can comprise more than one individual. Looking at the plain and ordinary language used by the Legislature, it is clear that if one person agrees to become a member of a company he becomes a member of that company, and if more than one person agree to become members of the company then they become as many members as are persons, who have agreed so to become. Mr. Desai is oppressed by the fact that the agreement by which the plaintiffs applied for shares and obtained shares was the agreement by persons jointly and therefore the result of that agreement could not be to make them separate members of the company. But in sub-s. (2) the person who agrees corresponds to the member of the company which he becomes by reason of the agreement. The person and the member are both individuals, neither is a legal entity, and this sub-section has maintained correspondence between the person who enters into the agreement and the person who becomes the member of the company. We find it extremely difficult to visualise the legal concept of more than one individual becoming a member of a company. Even a firm, if it were to apply to become a member of a company, would become a member of the company not as a firm but as the members which constitute the firm because in law there is no such entity as a firm. It would be different if a company or a corporation were to agree to become a member of a company because a company or a corporation is an entity recognized by law and if it applies as an entity to become a member it can become a member as the same entity. Therefore on a simple construction of sub-s. (2) of s. 30 we are of the opinion that if plaintiff No. 2 along with plaintiff No. 1 and/or plaintiff No. 3 and/or Harkuverbai applied for shares and were allotted shares, each one of the applicant became a member of the company.

It is rather surprising that there should be no direct authority on the construction of s. 30 (2). There is a corresponding section in the English Companies Act, s. 26 (2), but there is also an equally surprising dearth of authorities in England on the construction of this section. Reliance has been placed on a passage in Buckley at p. 257. The commentary of the learned author is really not on s. 30 (2), but on the English s. 111 corresponding to s. 31 of the Indian Companies Act, and the commentary of the learned author is that for the purpose of this section joint holders are not to be treated as a single member. There is some justification in what Mr. Desai says that this commentary

would have been of considerable significance and importance if it had appeared under s. 26 (2) of the English Act which corresponds to s. 30 (2), but inasmuch as it appears under a section other than the defining section, the commentary can only be held to be good with regard to the interpretation of that particular section.

Reliance has also been placed on two decisions of the English Courts, but in our opinion neither of these two decisions is very helpful. The first is a decision reported in *Cory v. Reindeer Steamship Ltd.*⁽¹⁾ In that case the company's articles provided that at general meetings resolutions were to be decided by a numerical majority of votes, unless a poll was demanded by three members, and that when two or more persons were entitled to a share the one whose name stood first on the register should be the only one entitled to vote. The plaintiffs in that case, who numbered more than three, held a majority of shares and they opposed certain resolutions, which were however carried on a show of hands. Owing to the fact that some of the plaintiffs' shares being jointly held they only counted as two persons and so did not amount to the three persons necessary for the demand of a poll. The plaintiffs then brought an action to restrain the carrying out of the resolutions and asked for an injunction until the trial, and the Court granted the injunction. When we turn to the judgment, the judgment is mainly concerned with the question as to whether injunction should be granted or not. But what Mr. Desai relies on is the fact that although the plaintiffs were more than three and they held shares jointly, they were counted as two persons and not as many members as there were plaintiffs. It has got to be borne in mind, as the report of the case clearly points out, that there was an article in the articles of association which entitled only that person to vote who stood first on the register when they were joint share holders, and therefore if the right to demand a poll turned upon the right to vote, then by the articles of association all the joint holders were not entitled to vote, but only the one who stood first among them.

The other decision which has been relied upon by the other side is a decision reported in *New London and Brazilian Bank v. Brocklebank*.⁽²⁾ In that case the trustees of a marriage settlement invested part of their trust funds in the purchase of shares of a limited banking company. One of the trustees was a partner in a firm and the firm owed the company a debt which

⁽¹⁾ (1915) 31 Tins Law Ref. 530.

⁽²⁾ (1882) 21 Ch. D. 302.

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debt had arisen after the registration of the shares in the name of the trustees, and it was held by the Court that the bank had a lien on the shares for this debt which must prevail over the title of the *cestuis que* trust. The real decision, as the judgment of the Master of Rolls Jessel makes it perfectly clear, turns upon the question as to whether the bank had a lien which can prevail against the right of the *cestuis que* trust to go against the trustees, and the Court held that the lien of the bank must prevail over whatever rights the *cestuis que* trust may have. But what is relied upon in this judgment is the fact that although the shares were taken by all the trustees, the lien of the bank was held to prevail over the debt of one of the trustees, and therefore it is contended that the position in that case was identical to the position here where the company is claiming a lien in respect of the debt of one of the joint shareholders. But Mr. Desai has pointed out that the articles of association in that case were different from the articles of association before us and on the articles as they were framed there no possible question could arise that the bank had a lien in respect of the debt of one of the joint shareholders.

In our opinion, the real key to the construction of s. 30 (2) is to be found in the Indian Companies Act itself. Section 2 (13) defines a "private company" and a private company means a company which among other things limits the number of its members to fifty not including persons who are in the employment of the company. Then there is a very important and significant proviso and it is to the effect that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be treated as a single member. If Mr. Desai's contention were sound, it was absolutely unnecessary to enact this proviso. But the proviso became necessary because but for it every joint shareholder would be a member and if every joint shareholder was to be counted as a member the member might go beyond fifty to which the private company was restricted, and therefore the proviso specifically states that where two or more persons hold one or more shares in a company jointly, they are not a single member but they shall be treated as a single member for the purposes of the definition. Therefore only in the case of a private company by a legal fiction joint shareholders are not to be considered as members but to be treated as a single member. Therefore it is clear that where we are dealing with a public company every joint shareholder is a member, and Mr. Desai's contention is not correct that when three or four persons agree to accept shares in

a company they constitute a single member and not as many members as there are applicants.

Turning to some of the other sections of the Act, perhaps one might usefully look at s. 31. That deals with register of members and some of the particulars that have got to be entered in that register are the names and addresses and the occupations, if any, of the members. It seems rather difficult to understand how, if several joint shareholders were to be entered in the register as a single member, it would be possible to give the names and addresses and occupations as common to all these three which must be looked upon as a single entity. This section again makes it clear that more than one joint shareholder do not constitute an entity and they cannot be entered in the register as a single entity. Section 32 (2) is also to the same effect and it deals with annual list of members and summary and in the list also the names, addresses and occupations of all the past and present members are to be stated. There are other sections to which reference was made, but they are consistent with either view of the matter and it is unnecessary to consider them.

Turning to the articles, reliance is placed on arts. 9 and 12 by Mr. Desai. Article 9 provides that the company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and art. 12 provides that every member shall be entitled to one certificate for all the shares registered in his name. Mr. Desai says that it would not be possible to comply with this article if joint share-holders were looked upon as members. But the answer to this criticism is to be found in art. 14 which expressly provides that the certificate of shares registered in the names of two or more persons shall, unless otherwise directed by them, be delivered to the person first named on the register. Then attention is drawn to art. 15 which deals with calls and provides that the Directors may, from time to time, make such calls as they think fit upon the members in respect of all moneys unpaid on the shares held by them, and Mr. Desai says that if all the joint shareholders were members, under this article a call could be made on each one of them and each one would be liable to pay the call. Again, the answer to that is to be found in art. 8 which provides that joint holders of a share shall be severally as well as jointly liable for the payment of all instalments and calls due in respect of such share. Then attention might be drawn to art. 42 which provides for the shares of deceased persons and it provides that in the

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case of a deceased member the executor or the administrator shall be the only person entitled to be recognised by the company as having any title to his share, but in the case of joint holders the surviving holder or holders or the executor or administrator of the last surviving holder shall be entitled to be recognised. Then we have the provision with regard to voting at general meetings and art. 63 provides that five members personally present shall be a quorum for a general meeting for the purposes mentioned in that article. Article 68 provides that at any general meeting, unless a poll is demanded, in the case of a special or extraordinary resolution by at least five persons entitled to vote, or in any other case by the chairman or by at least five members, or by a member or members holding or representing by proxy or entitled to vote in respect of at least one-tenth part of the capital represented at the meeting, a declaration by the chairman that a resolution has been carried shall be conclusive evidence of the fact. Therefore this article provides for a poll by at least five persons entitled to vote. When we turn to art. 76 we find that in the case of joint holders, if there is one of them present he is entitled to vote either personally or by proxy, and if more than one is present then the person who stands first in the register is entitled to vote. Therefore by giving the construction we are proposing to do on the expression "member" no difficulty or inconvenience can be caused looking to the scheme of the articles.

Turning back to the article in question, we have so far dealt with that article as if the words in parenthesis "whether solely or jointly with others" were not incorporated in that article, and Mr. Desai concedes that if we take the view that each joint shareholder is a member then no further question can arise with regard to the interpretation of that article. But the parenthesis does throw some light on the interpretation of the expression "members". The words in brackets "whether solely or jointly with others" clearly imply that a member may be registered alone or he may be registered jointly with others, and therefore the article clearly contemplates the possibility of there being joint holders who are all registered as members, one member being jointly registered with the others. Strictly it was not necessary at all to have these words in brackets, but they are inserted for greater caution and in order to repel any such argument as has been advanced by Mr. Desai that in the case of a member who has been jointly enrolled as a member with others, his debts would not be liable to a lien on the part

of the company. The whole of Mr. Desai's argument really resolves itself into this that in respect of one share there cannot be more than one member. No authority whatever has been adduced by Mr. Desai for this proposition. It is difficult to understand on principles why, if in respect of one share more than one person is interested, they cannot all be registered as members if they have all applied to the company and the share has been allotted to all of them.

In our opinion, therefore, the learned Judge below was right when he held that in respect of the debt of the second plaintiff the company was entitled to claim a lien under its articles in respect of the shares which the second plaintiff held jointly with the first plaintiff and/or the third plaintiff and/or Har-kuverbai who is the fourth defendant to the counterclaim.

The result is that the appeal fails and must be dismissed with costs in favour of the first respondent. Liberty to the first respondent's attorneys to withdraw the sum of Rs. 500 deposited by the appellants and to apply the same in part satisfaction of the decree passed herein.

Attorneys for appellants: *Manohar & Co.*

Attorneys for respondents: *Mulla & Mulla.*

Appeal dismissed.

P. M. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Tendolkar.

THE COMMISSIONER OF INCOME-TAX, BOMBAY NORTH, CUTCH AND SAURASHTRA, BARODA, APPLICANT *v.* MESSRS. TEJAJI FARASRAM KHARAWALLA, RESPONDENTS.*

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Indian Income-tax Act (XI of 1922), s. 33B—Appeal preferred by assessee to Appellate Assistant Commissioner against order of Income-tax Officer—On appeal order of assessment confirmed—Powers of Commissioner to revise assessment orders under s. 33-B limitation to the exercise of—Whether such power can be exercised where order of Income-tax Officer is confirmed on appeal.

Section 33-B of the Indian Income-tax Act, 1922, confers upon the Commissioner of Income-tax the power to revise the assessment order

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