

Madras High Court

Madhava Ramachandra Kamath, Son ... vs The Canara, Banking Corporation ... on 26 July, 1940

Equivalent citations: (1940) 2 MLJ 721

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JUDGMENT Gentle, J.

1 This is a petition by a shareholder of the Canara Banking Corporation, Ltd., under Section 38 (1) of the Companies Act. This section, so far as it is material, provides that if the name of any person is without sufficient cause entered in or omitted from the register of members of a company, the person aggrieved may apply to the Court for rectification of the register. The petitioner is the holder of one share only and (the company at a general meeting purported to act under Article 173 of the Articles of Association and expelled him from membership. This Article provides to the effect that if any shareholder unjustly or unlawfully has recourse to law in any matter whatever connected with the Corporation, he shall render himself liable to expulsion and on such expulsion he shall never again be admitted into the Corporation.

2. The petitioner preferred a complaint to the District Magistrate of South Canara seeking sanction under Section 196-A of the Code of Criminal Procedure to prosecute some Directors and ex-Directors of the company for conspiracy in the preparation of a balance sheet or balance sheets of the company. The learned Magistrate refused to grant the process sought and in the course of his order he gave the following reasons for his decision. The respondents (Directors) were all highly respectable gentlemen; the balance sheet has been accorded sanction at a general body meeting of the shareholders; petitions to the Registrar of Joint Stock Companies and to Government to initiate an enquiry into the affairs of the company had been rejected, and he had been forced to think that the petitioner was working against the Bank out of sheer malice. He added that from the attitude of the Registrar and the Government it was apparent that there was no reason to think that the respondents in the proceedings before the Magistrate had any reason whatever to conspire to cheat the shareholders. It is said and not disputed that a copy of the order of the Magistrate was circulated to all the shareholders of the company. A meeting was called on the 20th July, 1939. The petitioner attended and objected to the meeting continuing, nevertheless a resolution was passed that, in view of his conduct in filing an application before the District Magistrate of South Canara seeking sanction to prosecute some of the Directors and ex-Directors, thereby acting contrary to Article 173 as seen from the order of the District Magistrate, he be expelled from the membership of the Corporation. On the date when this resolution was passed the petitioner was undoubtedly a member of the company. There was no power for the company to deal with the share or shares which were held by a person whom the company at a general meeting purported to expel from membership. The Articles provide for forfeiture of shares by members in certain contingencies but these contingencies do not include purported ' expulsion of a member under Article 173. Ordinarily, a company is unable to sell its own shares but when shares are forfeited it can resell or dispose of them as provided in the Articles.

3. Subsequent to the passing of the resolution of expulsion the company has altered its Articles by making an addition to Article 173. - Notice of the meeting at which these Articles were changed was not given to the petitioner. Under the additional Articles provision is made by which the company

can, in effect, force an expelled member to sell his shares to any person at a price which is fixed under the provisions of the Articles and the company is enabled to authorise a Director to sign the necessary transfer instrument on behalf of such transferor if he fails to do so. Section 34(3) of the Companies Act provides that it shall not be lawful to register a transfer of shares unless a proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company. There are of course occasions when the transferor does not or cannot sign, such as when a Court sale has been held., In that event Order 21, Rule 80 of the Code of Civil Procedure provides for the Judge or an officer of Court directed by him signing the transfer instrument. Article 52(3) of the Companies Articles, it would seem, purports to confer upon the 'Directors of the company power to transfer shares in spite of the absence of an instrument of transfer. It says:

Unless sanctioned by the Board of Directors, it shall not be lawful for the Corporation to register a transfer of shares unless a proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the Corporation.

4. If this Article does purport to confer power on the Directors to transfer shares in the absence of an instrument of transfer, it is clearly ultra vires of Section 34 of the Companies Act.

5. The position at the time when the purported expulsion of the petitioner took place is this. He was a shareholder and learned Counsel on behalf of the company has conceded that so long as a person remains a shareholder he must remain a member of the company. The company purported to expel him, according to the terms of the resolution, from the membership of the company. There was no power by which it could obtain, seize or deprive him of his share. No doubt he was a holder of one share only, but the same principle would apply with a holder of a large number of shares of considerable value. The Articles did not enable the company to forfeit shares or sell them to another person as they are now empowered to do by the alteration. The alteration in the Articles effected after the date of the resolution under Article 173 cannot in any way be binding upon the petitioner. Notice was withheld from him of the meeting at which the alteration was made. The provisions of the Articles form part of the contract between a member or a shareholder and the company, and one party to a contract cannot add terms to the contract without the knowledge or consent of the other party. It is quite clear that after the position in regard to the company and the petitioner was realised, the company took steps to provide by an addition to the Articles, the necessary means to carry out what they wished to effect in regard to an expelled member. As the powers of the company at the date when the petitioner was purported to be expelled did not empower them to deprive him of his share and while he remained a shareholder he must also remain a member, it must follow that the resolution of expulsion has no effect. His purported expulsion by the resolution having no effect, the sale in law could not be carried out. Further, he could not be compelled under any provision of the Articles to transfer his share to any other person. He was entitled to keep it, the company could not authorise any one to sign an instrument of transfer on his behalf, he never signed any instrument and no valid instrument was sent to the company, as the Companies Act requires. In my view, the petitioner never ceased to remain a member of the company inasmuch as he always remained a shareholder.

6. Learned Counsel on behalf of the company raised an objection that proceedings under Section 38(1) of the Companies Act are not open to the petitioner as this section provides a remedy only when the name of any person is without sufficient cause entered in or omitted from the register of members. The name of the petitioner was included in the register of members and was struck out when his expulsion took place or when the company purported to force him to sell his share to some other person. Some two months after the resolution expelling him, the company wrote to the petitioner, on the 23rd October, 1939, that his share had that day been transferred to Mr. V. Achutha Srinivasa Kamath, and a cheque for Rs. 70 was sent to him as the price for such share. The petitioner wrote objecting to the action of the company and said that he did not propose to cash the cheque and he has not done so. This action by the company took place after the addition to the Articles had been made to which I have referred earlier. The striking out of the name of the petitioner from the register containing the names of the members apparently would have taken place at or about the date when the company wrote to the petitioner that his share had been sold to the transferee. Learned Counsel on behalf of the company contended that the word 'omitted' in Section 38(1)(a) does not include the striking out of the name of a member which had been previously in the register. When the name of a person, who is a member of the company, has been struck out, the effect is the same as if his name had never been entered. The striking out of his name in the register thus causes his name to be omitted from it and I hold that, when a person's name has been struck out or expunged, then it is an omission of his name within the meaning of the section.

7. A further point was taken on behalf of the company by learned Counsel that the present petition is abortive inasmuch as the name of the transferee has not been added as a party. In my view there has been no valid or legal transfer of the share which the petitioner held in the company to any transferee and he is still the holder of the share; therefore his name must be included in the list of members. The petitioner still holds the certificate recording that he is the holder of one share in the company and I direct that there be a rectification of the register and the company will add to the names of members that of the petitioner. The relief which I am granting in this petition is to place the petitioner in the position in which he has always been - a shareholder of the company. The petitioner is entitled to his costs against the company.

8. Learned Counsel for the petitioner has asked me to fix the amount of costs. He has spent Rs. 40 as out of pockets. I fix the total costs including the out of pocket expenses at Rs. 150.