

Atma Singh
 v.
 The State
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 Falshaw, J.

consider that the extreme penalty is called for. I would accordingly accept the appeal to the extent of setting aside the sentence of death and instead sentencing Atma Singh to transportation for life. The sentence of death is, therefore, not confirmed.

Bhandari, C. J. Bhandari, C.J. I agree.

CIVIL ORIGINAL SIDE

Before Falshaw, J.

RAJESHWAR PARSHAD, EXECUTOR & ADMINISTRATOR, R.B. LALA BENARSI DASS ESTATE, AMBALA CANTONMENT,—*Petitioner.*

versus

THE SIMLA BANKING AND INDUSTRIAL CO., LTD. (IN LIQUIDATION), SIMLA, THROUGH ITS OFFICIAL LIQUIDATOR,—*Respondent.*

Civil Original No. 21 of 1954

1955
 ———
 April, 7th

Companies Act (VII of 1913)—Section 156(1) (vii)—Company—winding up—Sum due to a member on account of unpaid dividends—Position of member, whether that of a creditor—Whether such dividends can be set off against amount due from him as contributory.

Held, that Section 156(1) (vii) of the Companies Act, was not intended to give any relief of any kind to the Contributories. On the contrary its object appears to be to impose further hardship on these persons since its effect is that they are not even permitted to rank as creditors of the Company in respect of any sums due to them on account of dividends and profits and such sums can only be claimed by them if and when all the debts of the Company have been discharged and there remains a surplus available for distribution among the Contributories when the stage contemplated by Section 192 of the Act is reached.

Held further, that a sum due to a member of a Company on account of unpaid dividends cannot be set off against the amount due to him as Contributory to the Company in its winding up.

Petition under Rule 106 of the Company Rules, praying that the name of the petitioner may not be included in the list of contributories and in case it is included the Bank may be directed to account for the dividend on the shares and claim from the petitioner such amount, if any, which may be due to the Bank after the adjustment of the amount of dividend together with its interest.

K. L. GOSAIN, for the Petitioner.

D. N. AVASTHY, for the Respondent.

ORDER

FALSHAW, J. This is a somewhat unfortunate case from the point of view of the petitioner, Rajeshwar Parshad, who has been placed by the Official Liquidator of the Simla Banking and Industrial Company, Limited (in liquidation) on the list of contributories in respect of 100 shares standing in his name in the list of members of the Company as executor and administrator of the estate of late Rai Bahadur Lala Benarsi Das of Ambala. A sum of Rs 25 remains unpaid on each of these share and his total liability is, therefore, Rs 2,500 plus Rs 353-2-0 which is claimed to be due as interest. Falshaw, J.

The facts do not appear to be seriously in dispute. The shares in question were held by Rai Bahadur Lala Benarsi Das who died on the 9th of March 1938. Under the terms of his will Rajeshwar Parshad petitioner was appointed as his executor but apparently there was a long delay in obtaining probate with regard to the will. In the meantime dividends were declared by the

Rajeshwar Parshad v. The Simla Banking and Industrial Co., Ltd. (in Liquidation), Simla. Falshaw, J.

Bank and continued to accumulate on the shares, but it does not seem that until 1948 any serious effort was made by the petitioner to claim the arrears of dividends. Sometime in 1948 the petitioner was informed by the Bank that the dividends which had accrued before the 31st of March, 1945, had been forfeited under the provisions of Article 167 of the Articles of Association of the Company but an offer was made to pay to him a sum of Rs. 1,500 which had accrued as dividend on the shares after the above date provided that the petitioner had the shares transferred to his own name. There was further delay in doing this and in fact the petitioner's name was only entered in the register of members as a holder of the shares in his capacity as executor of the estate by a resolution of the directors dated the 29th of September 1951. In the meantime in February 1949 the Bank had closed its doors and no question arose of any further dividends accruing after 1948.

In the present petition it is claimed that in law and equity the petitioner should be allowed to set off the whole amount which accrued as dividends on the shares together with interest against the amount due from him as a contributory to the Company in its winding up. The petition is opposed by the Company whose position is that in any case the petitioner cannot claim the dividends which accrued before the 31st of March 1945 and were duly forfeited by the Bank, and that even with regard to the sum of Rs. 1,500 which accrued thereafter the petitioner is not entitled to the set-off claimed. In any case no interest could be claimed from the Company.

As regards the forfeited dividends Article 167 appears to be quite clear and in fact the learned

counsel for the petitioner did not press as part of his claim and stated that the petitioner would be quite content if he were allowed to set off the sum of Rs. 1,500, which accrued in subsequent years. At the same time it may be observed that no claim for interest can be entertained in view of Article 168 which reads:—

Rajeshwar
Parshad
v.
The Simla
Banking and
Industrial Co.,
Ltd. (in Liqui-
dation), Simla.

Falshaw, J.

“Unpaid dividends shall never bear interest as against the Company.”

As regards the claim to set off Rs. 1,500 the learned counsel for the petitioner relied on the provisions of section 156 (I) (vii) of the Companies Act. The introductory portion of sub-section (1) reads:—

“In the event of a company being wound up every present and past member shall subject to the provisions of this section be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—

(vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.”

Rajeshwar
Parshad
v.
The Simla
Banking and
Industrial Co.,
Ltd. (in Liqui-
dation), Simla.

Falshaw, J.

It is conceded that if sum due to a member on account of dividends or profits could be treated as a debt due to him from the Company there could not be any question of allowing such a debt to be set off against any claim to be made from him as a contributory, but it is contended that since in view of the terms of sub-section (1) (vii) such a claim is not to be deemed to be a debt of the Company payable to a member, other principles can be applied, and in suitable cases a member can be allowed to set off a sum due to him on account of dividends or profits against the sums due from him as a contributory. However, no authority has been cited in support of this argument and a perusal of sub-section (1) (vii) and other provisions relating to contributories in this part of the Companies Act does not to my mind suggest that the object of sub-section (1) (vii) was at all what is now claimed, or indeed that it was intended to give any relief of any kind to contributories. On the contrary its object appears to be to impose further hardship on these persons since its effect is that they are not even permitted to rank as creditors of the Company in respect of any sums due to them on account of dividends or profits and that such sums can only be claimed by them if and when all the debts of the Company have been discharged and there remains a surplus available for distribution among the contributories when the stage contemplated by section 192 of the Act is reached.

In the circumstances I do not consider that the petitioner can be granted any of the reliefs claimed by him and his name must stand on the list of contributories in category B, i.e., those who represent the estates of deceased persons. However, I leave the parties to bear their own costs.