APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

DAYAL SINGH AND OTHERS,—*Appellants.*

versus

DES RAJ VIJ AND OTHERS,—*Respondents.*

Regular Second Appeal No. 7 of 1953.

1962

October, 16th

Companies Act (I of 1956)—S. 11(2)—Association of more than 20 persons engaged in business—Whether requires registration—Non-registration—Whether makes the association illegal—Association obtaining quota of steel from Government for the purpose of selling it—Whether engaged in business for gain—Business—Meaning of—Code of Civil Procedure (V of 1908)—O.41 R. 27—Additional evidence—When to be admitted.

Held, that any association of persons exceeding 20, which is engaged in business, the object of which business is a gain to the association or any of its individual members require registration under section 11(2) of the Companies Act, 1956 and if it is not registered, it is an illegal body. (*Note.*—S, 11(2) of the Companies Act, 1956 is the equivalent of section 4(2) of the Indian Companies Act, 1913. (Editor).

Held, that business is a term of a very wide import and embraces a variety of activities which normally are carried on for profit and need not necessarily be the activities of buying and selling. The business of an association which consists of obtaining quota of steel from the Government or Controller for distribution amongst its members is a business activity the object of which is the gain for its members. Such an association is hit by section 4 of the Indian Companies Act, 1913, which makes its registration compulsory.

Held, that under Order 41, Rule 27 of the Code of Civil Procedure additional evidence is to be admitted only when the Court is unable to pronounce judgment without it. It is the requirement of the Court alone which is the guiding principle in coming to the conclusion whether additional evidence should or should not be admitted.

Regular Second Appeal from the decree of the Court of Shri Sultan Singh Jain, Senior Sub-Judge, Delhi, dated the 21st day of October, 1952, affirming with costs that of Shri Y. L. Taneja, Commercial Sub-Judge, Delhi, dated the 1st August, 1951, dismissing the plaintiffs' suit but leaving the parties to bear their own costs.

B. C. Misra, Advocate,—for the Petitioners.

Ram Lal Kumar, Advocate,—for the Respondents.

JUDGMENT

Mahajan, J. MAHAJAN, J.—This order will dispose of Regular Second Appeals Nos. 7-D and 8-D of 1953. The point involved in both these appeals is the same though they arise out of two different suits. Both these suits, out of which these appeals have arisen, were dismissed on the short ground that the parties to the suits were members of an illegal association. The undisputed facts are as follows: There were 87 persons who were engaged in the business of trunk manufacturing and other material in the business of trunk manufacturing. For that purpose they used to obtain quota of steel and other material from the Controller. After the coming into force of the Steel Control Order, it appears, though there is no evidence one way or the other on the record, that the Controller issued instructions that all persons who were getting quota before the year 1945 should form themselves into an association and applications for quota be made by the association. It was in this view of the matter that all these 87 persons joined together and formed themselves into an association. The association

was then applying and getting the quota of steel and was distributing the same to its members. This association elected a President, a Secretary, and a Treasurer. Each individual member was to contribute his share to the association for the obtaining of the quota. The association used to deduct the expenses in connection with the quota and thereafter adjust the contribution towards the price of the same. As disputes arose between the members the present suits were filed by Dayal Singh and others against the President, the Secretary and the Treasurer of the association and the other members who did not join the plaintiffs. The suits were filed under order I, rule 8, of the Code of Civil Procedure. The defence raised by the office bearers as well as the other members, who contested the suits was that the association was an illegal body in view of the provisions of section 4 of the Indian Companies Act and, therefore, could not be sued. It may be mentioned that the suits were for accounts. It will be appropriate at this stage to quote *in extenso* paragraphs 2, 3 and 4 of the plaint:—

> "2. That the object of the said association was to get quota from the said Department and to issue to all the members in accordance with the quantity of quota allocated to each member, as approved by the Civil Supplies Department. To carry on the said business investment of capital was necessary and thus the constituents thereof had to pay for the required quota in advance.
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> 3. That to carry on the business of the said body and objects of the association efficiently, it was decided in a meeting held in Delhi to have a Cashier, Secretary and General Supervisors of the Association.

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The said body thus elected defendant No. 1 as Cashier, defendants Nos. 2 and 3 as General Supervisors and defendant No. 4 as the Secretary thereof.

4. That the said four defendants were entrusted with the duty to collect quota from the Civil Supplies Department, store it in their own custody, receive money from the plaintiffs and issue to each of them steel and iron. To carry on the said object, they had to keep regular, full and upto date accounts and were thus accounting party to all the members individually and collectively."

These paragraphs clearly disclose the relationship of the plaintiffs *vis-a-vis* the association. As has already been said, various pleas in defence were taken but we are here principally concerned with one of the pleas, namely, that no such suit was competent as the association was an illegal body. This objection prevailed with the trial Court and in appeal was upheld by the lower appellate court. That is why the plaintiffs have come up in second appeal to this Court.

Before dealing with the various contentions of the learned counsel for the plaintiff-appellants it will be proper to quote sub-section (2) of section 4 of the Indian Companies Act which is in these terms:—

"(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an

Act, 'of Parliament of the United Kingdom' or some other (Indian Law) or of Royal Charter or Letters Patent."

It will be obvious from this provisions that any association of persons exceeding 20, which is engaged in business and the object of that business is a gain to the association or any of its individual members, requires registration and if it is not registered it is an illegal body and it is on this basis that the suits have failed.

The contention of the learned counsel for the plaintiff-appellants is that the association is not an illegal body inasmuch as it is neither engaged in business nor its object is a gain to itself or to any of its individual members. It is no doubt true that in order that the association is hit by section 4 of the Indian Companies Act two things must co-exist, that is, there must be a business, and the business must be carried on for gain. If either of these elements is missing the association would not be hit by section 4 of the Act. In my view, in the present cases, both these elements are present. The business of the association is to apply to the Controller to get quota and this activity is a continuous activity. So long as the association was in existence it applied to the Controller and got the quota. After it got the quota it distributed the same to the members and the members thereafter disposed of the quota and that they would do only for profit. In any case, the obtaining of quota by the members through the association was a gain to the members. The term 'gain' was interpreted by the Rangoon High Court in *Tan Waing and another* v. *Bo Hein* (1). Chief Justice Page, who delivered the judgment, observed as under:—

"The word 'gain' means acquisition. It has no other meaning. Gain is something

(1) A.I.R. 1932 Rang. 167.

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obtained or acquired. It is not limited to pecuniary gain. The word 'pecuniary' will have to be added to limit it so. And still less is it limited to commercial profits. Commercial profits, no doubt, are gain, but there is nothing limiting gain simply to a commercial profit. The words may be taken as referring to a company which is formed to acquire something, or in which the individual members are to acquire something, as distinguished from a company formed for spending something, and in which the individual members are simply to give something away or to spend something, and not to gain anything."

In my view this interpretation is fully in consonance with the scheme and purpose of the Act and it cannot be said, keeping in view what the association had been doing, that it was not formed to do a business the object of which was to bring forth some gain to its members, the gain in the instant cases being the steel quota to the members. Mr. Misra, who appears for the appellants, relies on a number of decisions in support of his contention that either the association was carrying on no business or the business that it was carrying on did not result in any gain to the members. His chief contention seems to be that in order that there should be a business there should be actual buying and selling of goods for profit. He cannot contemplate of business other than this. I am unable to agree with this interpretation of business. Business is a term of a very wide import and would embrace a variety of activities which normally are carried on for profit and need not necessarily be the activities of buying and selling. In my view

the activity which is being carried on by the present association is a business activity resulting in gain to its members. Coming to the cases cited by the learned counsel for the appellants it will be proper to deal with them in the order in which they have been cited. The first case cited by the learned counsel is *The New Mofussil Company, Limited* v. *Rustomji Dhanjisha* (2). This is a case where a pooling arrangement was done by different people carrying on a similar business and the profits were to be shared by them and it was held in this case that the persons joining the pool could not be said to be an association of persons falling within the meaning of section 4 of the Indian Companies Act. It would be obvious from this decision that the persons who had joined to share the profits were not associated for carrying on any business. Each one of them was carrying on his individual business. It was only the resulting profit from the business that they were carrying on which was pooled together and thereafter distributed. Therefore the element of business was lacking in this case and it was, therefore, rightly held that the association in this case was not hit by the provisions of section 4 of the Act. The next decision relied upon was *Madan Gopal and another* v. *Shewak Dass* (3). That also is a similar case as *The New Mofussil Company Ltd.* v. *Rustomji Dhanjisha* (2). The next case was *Wigfield and another* v. *Potter* (4). In this case also no business was carried on. A number of persons joined together to acquire land and divided the same for building houses and it was held that such an association was not hit by a similar provision in the English Companies Act. This decision also is of no assistance to the learned counsel because a solitary transaction was entered into. There was no continuous or repeated activity so as

(2) I.L.R. 60 Bom. 809.
(3) A.I.R. 1934 Lah. 882.
(4) 45 L.T. 612.

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to amount to business. Moreover, on another reason this decision would be correct, namely, that the purchase of land was not for gain. I put it to the learned counsel that if an individual was to buy a plot of land to build his own house could such a buying be called business ? His reply was, no. Therefore, if instead of one individual ten joined together for the same purpose that would not on the parity of reasoning be business. The next case relied upon is *Moore and Others* v. *Rawlins* (5). This case is also parallel to *Wigfield's case* (4). The only difference, however, was that the building activity was repeated but the object was to acquire building sites for houses for its members. Therefore, there was not business activity as such which would be hit by the relevant provisions of the English Companies Act. The last decision cited is *W.H. Kraal and others* v. *H. J. Whymper* (6). In this case the substantial purpose of the association was not to carry on a business and the mere fact that gain was to arise incidentally would not make the association as one formed for profit. This case also is of no assistance to the learned counsel.

After giving the matter my careful consideration I am of the view that both the Courts below were right in holding that the association in the present cases is hit by section 4 of the Indian Companies Act and is an illegal association and, therefore, the present suits were not competent.

Faced with this difficulty the learned counsel then sought to urge that the present association is registered under section 26 of the Indian Companies Act and in support thereof he has produced a certificate which is signed by one B. K. Chatterjee, Assistant Registrar of Companies, Delhi, along

(5) 141 E.R. 467.
(6) I.L.R. 17 Cal. 786.

with an application under Order 41, rule 27 of the Code of Civil Procedure. There is no ground made out for the reception of the additional evidence in second appeal. The document does not bear the seal of the Registrar. The affidavit filed with the petition under Order 41, rule 27, Civil Procedure Code, is silent as to why this document, was not produced at an earlier stage. All that the affidavit states is that the certificate could not be produced in the lower Court as Dayal Singh, appellant, was not literate and was not aware of its existence or its importance. No facts are stated as to on what date he actually came to know of the existence of the document and how. Moreover, the trial Court decided the suits on the basis of this objection in the year 1951 and for the first time in the year 1957 an application had been made to this Court, nearly after six years, for admitting this certificate into evidence and even if I had discretion in the matter I would not admit it into evidence on the ground of laches. Moreover, this certificate cannot be admitted into evidence in view of the decision of the Supreme Court in *Arjan Singh* v. *Kartar Singh and others* (7), wherein their Lordships of the Supreme Court while interpreting Order 41, rule 27, held that additional evidence was only to be admitted when the Court was unable to pronounce its judgment without it. Therefore, it is the requirement of the Court alone which is the guiding principle in coming to the conclusion whether additional evidence should or should not be admitted. In the case before the Supreme Court, certified copies of the revenue record were not admitted as additional evidence and in my view the same consideration will apply to the present certificate. Therefore, I refuse to allow additional evidence at this stage and reject the prayer in that behalf.

(7) A.I.R. (38) 1951 S.C. 193.

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For the reasons given above, both these appeals fail and are dismissed with costs.

An oral prayer has been made for leave to appeal under clause 10 of the Letters Patent, and I grant the same.

R.S.

REVISIONAL CIVIL

Before Daya Krishan Mahajan, J.

GIAN SINGH,—*Petitioner.*

versus

SURRINDER LAL AND OTHERS,—*Respondents.*

Civil Revision No. 540 of 1961.

1962

Nov., 19th

Delhi and Ajmer Rent Conrol Act (XXXVIII of 1952)—S. 13(h)—Premises built by a tenant before becoming tenant—Landlord—Whether can evict him on the ground that the tenant has built premises of his own—Code of Civil Procedure (V of 1908)—S. 149—Appeal filed within limitation with copies of judgments and decree insufficiently stamped—Deficiency in court fee allowed to be made good after limitation—Whether makes the appeal within limitation.

Held, that a landlord can maintain a suit for eviction against his tenant on the ground that the tenant has built premises of his own, even if he had built the same when he was not the tenant of the landlord who is seeking his eviction.

Held, that when an appeal is filed with copies of judgment insufficiently stamped, the appellate Court has the power to allow time to the appellant to make good the deficiency in courtfee under section 149 of the Code of Civil Procedure. Such an order can be made at any stage of the proceedings and in case the deficiency in courtfee is made good, the appeal would be taken to have been filed on the date when it was originally filed though with deficient courtfee.