

**Panna Lal and
another
v.
Puj Harsh
Rishi**
—
**Harnam
Singh J.**

For the reasons given above, I am of the opinion that the cumulative effect of the evidence referred to by the learned counsel for the plaintiffs-appellants cannot lead me to the conclusion that the plaintiffs have discharged the onus of issues Nos. 2 and 3.

Finding as I do that the *Upasra* is not a public religious trust of the Jain community, that the defendant is not a trustee and that the properties described in paragraph No. 4 of the plaint are not endowed properties. I maintain the decision of the Court of first instance on issues Nos. 1 to 4 set out above.

In the result, I dismiss with costs Regular First Appeal No. 228 of 1947.

Khosla J.

KHOSLA, J. I agree.

ORIGINAL CIVIL

Before Harnam Singh, J.

**In the matter of the Indian Companies Act VII of 1913
and of the Karnal Electric Supply Co., Ltd. (in Liquidation).**

MR. AMAR NATH GOELA AND ANOTHER,—Petitioners

versus

**THE KARNAL ELECTRIC SUPPLY Co., LTD. (IN
LIQUIDATION) THROUGH ITS OFFICIAL
LIQUIDATOR,—Respondent**

Civil Original No. 181 of 1951.

Indian Companies Act (VII of 1913)—Section 33—Registered shareholder—Rights and liabilities of—Lien on shares, when can be exercised—Liability—meaning of.

Held, that a member who is entered as a shareholder in the Register of members, even if he is not the real owner of the share, is alone entitled to exercise the rights of a shareholder, viz, to vote as such or to receive the dividends payable in respect of the share and that he alone is liable for calls and other obligations of his membership though

1952

June 6th

he may be merely a trustee to the knowledge of the Company.

Held, that the lien on shares allowed by the Articles of Association can be exercised not only in respect of admitted liabilities but also in respect of disputed ones. Liability or responsibility is the bond of necessity that exists between the wrongdoer and the remedy of the wrong. This *Vinculum Juris* is not one of the mere duty or obligation; it pertains not to the sphere of ought but to that of must. It has its source in the supreme will of the state, vindicating its supremacy by way of physical force in the last resort against the unconforming will of the individual. A man's liability consists in those things which he must do or suffer, because he has already failed in doing what he ought. It is the *ultimatum* of the law.

Amar Nath
Goela and
another

v.
The Karnal
Electric Supply Co., Ltd.,
etc.,

—
Harnam
Singh J.

In *Murshidabad Loan Office, Ltd. v. Satish Chandra Chakravarty* (1), and *Salmond on Jurisprudence, Tenth Edition*, page 364, relied upon.

Petition under section 183 (5) of the Indian Companies Act and section 151, Civil Procedure Code, praying that orders may be passed directing the Official Liquidator of the respondent company to make the payment of the amount due to the petitioners with interest at 9 per cent per annum from 15th October 1951, to the date of payment and costs of this petition may also be awarded to the petitioner.

BALRAJ TULI, for Petitioners.

KUNDAN LAL GOSAIN, for Respondent.

ORDER

In Civil Original No. 181 of 1951 Mr. Amar Nath Goela and Mr. Ram Nath Goela apply that Mr. Harish Chander Bhatnagar, Official Liquidator of the Karnal Electric Supply Company, Limited, may be directed to pay them 50 per cent of the share-money with interest at 9 per cent per annum from the 15th of October, 1951, to the date of payment with costs.

Briefly summarised the facts of the case are these. Mr. Amar Nath Goela holds 220 shares bearing Nos. 201—300, 636—735, 866—875 and 1344—1353 of the

(1) A.I.R. 1943 Cal. 440.

Amar Nath
Goela and
another
v.
The Karnal
Electric Sup-
ply Co., Ltd.,
etc.,

Harnam
Singh J.

Company, while Mr Ram Nath Goela holds 115 shares bearing Nos. 301—350, 556—565, 626—635, 1219—1243, 2177—2191 and 1906—1910. In the liquidation proceedings Mr. Amar Nath Goela and Mr. Ram Nath Goela have been placed on the list of contributories by the Official Liquidator of the Company.

On the 28th of September, 1951, I directed the Liquidator of the Company to pay 50 per cent of the share-money to the contributories. In the present proceedings the applicants maintain that they have not been paid 50 per cent of the share-money in accordance with the order passed by the Court on the 28th of September, 1951.

In the answer put in by the Liquidator it is said that the payments have been withheld because of the pendency of proceedings against Mr. Amar Nath Goela, ex-Managing Director of the Company, under section 235 of the Indian Companies Act. Indeed, it is maintained that the Company has a lien on the share-money under clause 43 of the Memorandum and Articles of Association of the Company. Clause 43 reads :—

“The Company shall have a first and paramount lien upon all shares (whether fully paid or not) registered in the sole name of any member or jointly with other persons, and also on all dividends or other sums of money due to such member, for his debts, liabilities and engagements to or with the Company, whether joint with other persons or not, and notwithstanding that the time for payment, discharge or fulfilment thereof has not actually arrived.”

Admittedly, no proceedings under section 235 of the Indian Companies Act are pending against Mr. Ram Nath Goela. Mr. Ram Nath Goela is entered on the register of members and has been brought on the list of contributories in his own right. Section 33 of

the Indian Companies Act provides that no notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar. In other words, a member is liable for calls and other obligations of his membership though that member may be merely a trustee to the knowledge of the Company.

Amar Nath
Goela and
another

v.

The Karnal
Electric Sup-
ply Co., Ltd.,
etc.,

Harnam
Singh J.

In Murshidabad Loan Office, Ltd., v. Satish Chandra Chakravarty, (1) B. K. Mukherjea and Blank, JJ., said :—

‘ Assuming that the registered share-holder is not the real owner of the share but if he is the member in the books of the company it is he alone who would be entitled to exercise the rights of a share-holder, viz., to vote as such or to receive the dividend payable in respect of the share and it certainly follows that he alone is liable for share calls or to be put on the list of contributories in case the company is wound up. ’

In the circumstances of the case Mr. Ram Nath Goela whose name is registered in the register of members kept by the Company has a right to receive 50 per cent of the share-money. That being so, I find that there is no justification for the non-payment of 50 per cent of the share-money to Mr. Ram Nath Goela.

As regards the case of Mr. Amar Nath Goela, Mr. Balraj Tuli urges that clause 43 gives the Company the first and paramount lien upon all shares registered in the sole name of any member or jointly with other persons, and also on all dividends or other sums of money due to such member, for his admitted liabilities to the Company and not for disputed liabilities. As pointed out by Salmond in his Jurisprudence, Tenth Edition, at page 364 “liability or responsibility is the

Mr. Amar Nath
Goela and
another
v.
The Karnal
Electric Sup-
ply Co., Ltd.,
etc.,

Harnam
Singh J.

bond of necessity that exists between the wrongdoer and the remedy of the wrong. This *vinculum juris* is not one of the mere duty or obligation, it pertains not to the sphere of ought but to that of must. It has its source in the supreme will of the state, vindicating its supremacy by way of physical force in the last resort against the unconforming will of the individual. A man's liability consists in those things which he must do or suffer, because he has already failed in doing what he ought. It is the *ultimatum* of the law."

Judged in this light it must be conceded that it cannot be said that there is no liability of Mr Amar Nath Goela justifying the claim of lien. In case the interpretation sought to be placed upon clause 43 is accepted, any officer of the Company has only to dispute the liability and thereby defeat the lien. In my opinion, the Company has the first and paramount lien, upon shares of Mr. Amar Nath Goela described in paragraph No. 1 of the application for his liability to the Company. In these circumstances, the Liquidator is justified in not paying 50 per cent of the share-money to Mr. Amar Nath Goela.

In the result, I direct that 50 per cent of the share-money may be paid to Mr. Ram Nath Goela and that the payment of 50 per cent of the share-money to Mr. Amar Nath Goela may be withheld till the conclusion of the proceedings under section 235 of the Indian Companies Act, 1913.

No order as to costs.

APPELLATE CIVIL

Before Kapur, J.

UNION OF INDIA,—Appellant

versus

FIRM KIROO MAL-NAWAL KISHORE,—Respondents.

First Appeal from Order No. 53 of 1951.

Arbitration Act (X of 1940), Sections 20 and 41—Limitation Act (IX of 1908), Article 181—Application under sec-

1952

June 19th