

LIFE INSURANCE CORPORATION OF INDIA

v.

RAJMATA SAHEB CHOWHANJI & ORS.

August 2, 1978

[S. MURTAZA FAZAL ALI, P. N. SHINGHAL AND A. D. KOSHAL, JJ.]

Life Insurance Corporation Act, 1956 Section 7(2)—Scope of vis-a-vis obligation to restitute the benefit under s. 65 of the Contract Act.

The plaintiff-respondent filed a suit for recovery of a sum of Rs. 2 lakhs invested by him in the Adarsh Bima Company, which was taken over by the appellant, (defendant no. 3) herein, on the basis that the managing director of the Adarsh Bima Company by practising fraud and misrepresentation on the plaintiff that the plaintiff would be entitled to an assured dividend of 4% that too contrary to the statute of the company induced him to part with the said sum by purchasing 200 shares of Rs. 100/- each. The suit was contested by the appellant mainly on the ground that after the appellant took over the Adarsh Bima Company he was not liable for any act of the company which was *ultra-vires* of the statutes of the company. The trial Court passed a decree in favour of the respondents and the High Court affirmed it by dismissing the appeal by the appellant.

In appeal by certificate, the appellant contended (a) that on the finding that a fraud was committed on the plaintiff and the act of the managing director being *ultra vires* of the statutes of the company, the company would not be liable although the managing director may be personally liable; and (b) assuming that the company was liable, but in view of the provisions of s. 7(2) of the Life Insurance Corporation Act, 1956, the liability of the appellant would extend only to matters appertaining to the controlled business as defined in the Act.

Dismissing the appeal the Court,

HELD : (1) The words of s. 7(2) of the Life Insurance Corporation Act are of the widest amplitude and the section includes all debts, liabilities, obligations of whatever kind then existing and appertaining to the controlled business of the insurer. There can be no doubt that at the time when the appellant took over the Adarsh Bima Company, the obligation to restitute the benefit received by the company from the plaintiff had been fastened and the appellant was legally bound to return the same to the plaintiff under section 65 of the Contract Act, in view of the findings of the Courts below that the contract was void. [15G-H, 16A-I]

(2) The question as to whether or not the transaction was *ultra vires* of the statutes of the company was wholly irrelevant because that was the reason why the contract was void and not a ground for exempting the appellant from its liability to pay. [16A]

(3) The words "of whatever kind" in s. 7(2) are wide enough to take within its sweep all kinds of transactions entered into by the predecessor company. The present transaction was undoubtedly entered into by the predecessor

A company which had received the sum of Rs. 2 lakhs from the plaintiff and had issued share slips and the appellant, therefore, cannot escape his liability even under S. 7(2). [16 A-C]

(4) As the plaintiff will be entitled to restitution of the benefits under section 65 of the Contract Act, he can get only the amount which he had paid to the appellant company and not any interest upto the date of the suit. [16C]

B [However the Court awarded interest at six percent per annum from the date of the suit, to the date of payment under S. 34 of the C.P.C.]

(5) The contention that on the finding that a fraud was committed on the plaintiff and the act of the managing director being *ultra vires* of the statutes of the company, the company would not be liable although the managing director may be personally liable is wrong. There was absolutely no pleading by the defendants that the monies were received by the managing director personally and in fact the same did not go to the coffers of the company. From the issue of the share scrips to the plaintiff, it must be presumed that the money was received by the company. Moreover this question not having being raised before any Courts below and also being a question of fact cannot be gone into. [13C, E, F, 14D-E]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2371 of 1968.

From the Judgment and Decree dated 20th April, 1967 of the Madhya Pradesh High Court in First Appeal No. 1 of 1960.

S. N. Kacker, Sol. Genl. K. L. Hathi, Rajiv Datta and P. C. Kapur, for the Appellant.

E L. N. Sinha, H. K. Puri, Vivek Seth, P. P. Singh and M. C. Dhingra for Respondents Nos. 1-4.

The Judgment of the Court was delivered by

F FAZAL ALI, J. This appeal by certificate is directed against the judgment of the High Court of Madhya Pradesh dated 20th April, 1967 affirming the decree passed by the Additional District Judge, Indore decreeing the plaintiff's suit.

The facts of the case are detailed in the judgment of the High Court and that of the District Judge and it is not necessary for us to repeat the same all over again.

G Briefly, the present action was brought by the plaintiff for recovery of a sum of Rs. 2,00,000 invested by the plaintiff in the Adarsh Bima Company being defendant No. 1 and the predecessor of the appellant, who is defendant No. 3 (Life Insurance Corporation of India). The action was brought on the basis that the Managing Director of the Adarsh Bima Company by practising fraud and misrepresentation on the plaintiff induced him to part with a sum of Rs. 2,00,000 by purchasing 2000 shares of Rs. 100/- each. The courts

below have recorded clear findings of fact that the fraud alleged by the plaintiff has been clearly proved and that the plaintiff had parted with a sum of Rs. 2,00,000 by investing the same in purchase of 2000 shares as a result of which the shares scrips were handed over to the plaintiff and he was assured of a dividend of 4%. It has also been found as a fact that such a resolution was contrary to the statute of the company.

The suit was contested by the appellant who is defendant No. 3 in the courts below mainly on the ground that after the appellant took over the Adarsh Bima Company, he was not liable for any act of the company which was *ultra vires* the statutes of the company.

In support of the appeal the Solicitor General submitted two points before us. In the first place it was contended that on the finding that a fraud was committed on the plaintiff and the act of the Managing Director being *ultra vires* of the statutes of the company, the company would not be liable although the Managing Director may be personally liable. Secondly, it was argued that assuming that the company was liable but in view of the provisions of section 7(2) of the Life Insurance Corporation Act, 1956 (hereinafter called the Act), the liability of the appellant would extend only to matters appertaining to the controlled business as defined in the Act.

As regards the first contention we find absolutely no substance in the same. There was absolutely no pleading by the defendants that the monies were received by the Managing Director personally and that the same did not go to the coffers of the company. On the other hand, the plaintiff clearly pleaded in paragraphs 3(b), 8(a) and 8(b) of the plaint that the money was paid to defendant No. 1 company which after receiving the amount issued share scrips to the plaintiff. The relevant portions of the aforesaid statements may be extracted thus :—

“3(b) Relying upon the said guarantee and promise given by the defendant No. 2 on the Company’s behalf Plaintiff No. 1 on 11th June, 1947 gave at Jhabua to Defendant No. 1 Company through Defendant No. 2, Government of India 3 percent Loan Bonds of 1953-55 of the value of Rs. 1,00,000 duly endorsed in favour of Defendant No. 1 company.....
The company addressed a letter acknowledging receipt of the application for 1000 shares and the full consideration of the said shares at the rate of Rs. 100 per share and agreed to allot the said 1000 shares to plaintiff No. 4”.

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“8(a)

The plaintiffs submit that the transaction of selling the said 2000 shares of defendant No. 1 Company and registering the same as aforesaid in the names of plaintiffs No. 2 to 4 with a guarantee of minimum return is *ultra vires* the defendant No. 1 Company and is found to be void and in-operative in law.

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8(b) The said 2000 shares of defendant No. 1 Company are as aforesaid applied for and registered in the names of plaintiffs No. 2 to 4. At all material times when the said shares were registered in the name of plaintiffs No. 2 to 4, the plaintiffs No. 2 to 4 were minors. The plaintiffs submit that the transaction of issuing the said 2000 shares to plaintiffs No. 2 to 4 who were then minors and registering them as share-holders in the Register of defendant No. 1 Company is void in law”.

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Thus, the plaintiff has clearly alleged that the monies were paid to the defendant company and not to the Managing Director personally. If the share scrips were issued, to the plaintiff then it must be presumed that the money was received by the company. This fact has not been denied by the defendant-appellant. In these circumstances, therefore, it is absolutely clear that there is nothing to show that the money was paid to the Managing Director personally and not to the company. Moreover, this is essentially a question of fact and it does not appear to have been raised before any of the courts below. For these reasons, therefore, the first contention put forward by the Solicitor General is hereby over-ruled.

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Coming to the next contention the same undoubtedly merits serious consideration. Before however examining this contention the following admitted facts may be stated thus :

1. That the Bima Company was doing merely the business of life insurance and no other;

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2. That on the coming into force of the Act the entire interest of the Company vested in the Government :

Section 7(2) of the Act runs thus :—

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“7(2) The assets appertaining to the controlled business of an insurer shall be deemed to include all rights and powers, and all property, whether movable and immovable, appertaining to his controlled business, including, in particular, cash balances, reserve funds, investments, deposits

and all other interest and rights in or arising out of such property as may be in the possession of the insurer and all books of account or documents relating to the controlled business of the insurer; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind then existing and appertaining to the controlled business of the insurer.

Explanation : The expression 'assets appertaining to the controlled business of an insurer'

(a) in relation to a composite insurer, includes that part of the paid-up capital of the insurer or assets representing such part which has or have been allocated to the controlled business of the insurer in accordance with the rules made in this behalf;

(b) in relation to a Government, means the amount lying to the credit of that business on the appointed day".

It is contended by the Solicitor General that the appellant was liable to discharge only those liabilities which pertained to the controlled business of the insurer. Sub-clause (3) of section 2 of the Act defines 'controlled business' thus :—

"controlled business" means—

(i) in the case of any insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 of the Insurance Act and carrying on life insurance business...."

As we have already pointed out that defendant No. 1 Adarsh Bima Company was carrying on the business of life insurance only. Thus the moment the Act was passed, the business of the Adarsh Bima Company vested in the Corporation. *Pari passu* this contention it was submitted that under section 7(2) of the Act the liability of the appellant would not extend not to any acts which are fraudulent or *ultra vires* of the statutes of the company. We are, however, unable to agree with this contention. The words of section 7(2) of the Act appear to be of the widest amplitude and the section includes all debts, liabilities, obligations of whatever kind then existing and appertaining to the controlled business of the insurer. There can be no doubt that at the time when the appellant took over the Adarsh Bima Company the obligation to restitute the benefit received by the company from the plaintiff had been fastened and the appellant was legally bound to return the same to the plaintiff under section 65 of the Contract

- A Act in view of the finding of fact recorded by the Courts below that the contract was void. The question as to whether or not the transaction was *ultra vires* of the statutes of the company was wholly irrelevant because that was the reason why the contract was void and not a ground for exempting the appellant from its liability to pay. The words "of whatever kind" are wide enough to take within their sweep all kinds of transactions entered into by the predecessor company. The present transaction was undoubtedly entered into by the predecessor company which had received the sum of Rs. 2,00,000 from the plaintiff and had issued share scrips. In these circumstances, therefore, we do not see how the defendant No. 3 can escape his liability even under section 7(2) of the Act. As however the plaintiff will be entitled to restitution of the benefits under section 65 of the Act, he can only get the amount which he had paid to the appellant company and not any interest thereon up to the date of the suit. For these reasons, we are of the opinion that the judgment of the High Court is correct and does not require any interference except a slight modification in the form of the decree.
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We, therefore, direct that the plaintiff will be entitled to the decree of Rs. 2,00,000 passed by the courts below but not to the interest of Rs. 47,000 claimed by him and to that extent the decree is hereby modified. The plaintiff will however be entitled to interest at six per cent per annum from the date of the suit to the date of the payment.

E With this modification the appeal is dismissed, but in the circumstances without any order as to costs.

S.R.

Appeal dismissed.