

CASE NO.:
Appeal (civil) 1727(NT) of 1998

PETITIONER:
STOCK EXCHANGE, AHMEDABAD

RESPONDENT:
ASSTT. COMMISSIONER OF INCOME TAX, AHMEDABAD

DATE OF JUDGMENT: 02/03/2001

BENCH:
S.P. BHARUCHA & N. SANTOSH HEGDE & Y.K. SABHARWAL

JUDGMENT:
JUDGMENT

2001 (2) SCR 255

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J. The Stock Exchange, Ahmedabad, the appellant, admitted Rajesh Shah as its member on 19th February, 1988. He died on 7th February, 1994. On 12th February, 1994, heirs and legal representatives of Rajesh Shah wrote to the Stock Exchange that they are unable to meet the liabilities of the deceased. The Governing Board of the Stock Exchange is said to have passed a resolution dated 12th February, 1994 declaring Rajesh Shah, the deceased member, as a deemed defaulter and further resolving that his membership rights vested in Stock Exchange be disposed of by inviting offers within a minimum floor price of Rs. 25 lakhs.

A provisional attachment order dated 15th February, 1994 under Section 28 1B of the Income Tax Act, 1961 was issued by the Assistant Commissioner of Income Tax (Respondent) in respect of Stock Exchange card in the name of Rajesh Shah and margin money and security deposits kept by him with the Stock Exchange. The Stock Exchange on 16th February, 1994 issued advertisement inviting claims from the member creditors and constituents of Rajesh Shah to lodge their claims with it within 30 days of the advertisement and also invited offers for purchase of membership with a minimum floor price of Rs. 25 lakhs. In respect of the order of provisional attachment, the stand of Stock Exchange is that under its Rules, Bye-laws and Regulations on the death or default of a member, member's right of nomination ceases and it vests in the exchange and belongs absolutely to the exchange free of all rights, claims or interests of such member or any person claiming through such member and the Governing Board is entitled to deal with or dispose of such right of membership as it may think fit. On 5th December, 1994, the Governing Board of the Stock Exchange passed resolution disposing of membership right of deceased Rajesh Shah vested in the Stock Exchange in favour of UTI Security Ltd. for Rs. 27 lakhs. A garnishee notice dated 14th June, 1995 under Section 226(3) of the Income Tax Act, 1961 in the sum of Rs. 12,24,887 was also issued to the Executive Director, Stock Exchange by the respondent. In reply thereto, the Stock Exchange reiterated the stand that no amount was due from it to Rajesh Shah or his legal heirs and the exchange does not hold any money for and on behalf of Rajesh Shah or his legal heirs. The plea of the Stock Exchange was not acceptable to the respondent.

Under the aforesaid circumstances, the appellant-Stock Exchange filed a writ petition in the High Court challenging the orders of provisional attachment and the garnishee notice. The writ petition has been dismissed by the High Court which judgment is under challenge in this appeal.

Under Section 28 1B, provisional attachment for the purpose of protecting the interests of the revenue can be ordered in respect of any property belonging to the assesses. The legal representatives of the deceased shall,

for the purposes of the Income Tax Act, be deemed to be an assessee [Section 159(3)]. The question for determination is as to the nature of the rights of the deceased or his legal representatives in the Stock Exchange Card. On the facts of the case, whether the said card was the property belonging to the assessee and after his demise devolved upon his legal representatives and heirs or it was a personal permission in favour of the deceased and right of nomination of the legal representative and heirs after his death has ceased and the said right has vested in the Exchange, is the point in issue. The High Court has held that there was a property element in the right of membership of Stock Exchange and, therefore, the same could be attached and, thus, writ petition was dismissed.

In order to decide the point, it is necessary to examine the Rules relating to the membership of the Stock Exchange. The appellant-Stock Exchange is a recognised Stock Exchange under Securities Contracts (Regulations) Act, 1956 and has been established with the object, inter alia, to support and protect, in the public interest, the character and status of brokers and dealers and to further their interests and that of the public interested in securities and to maintain high standards of commercial honour and integrity. Rule 5 provides that the membership shall constitute a personal permission from the Exchange to exercise the rights and privileges attached thereto subject to the Rules, Bye-Laws and Regulations. Rule 6 provides that right of membership is inalienable. Subject to the provisions of the Rules, under Rule 7 the right of nomination has been given to a member which right is personal and non-transferable. Rule 11 provides that a member of not less than 7 years' standing who desires to resign may nominate a person eligible under the Rules for admission in his place. Under proviso to Rule 11(a), a member of less than 7 years' standing who desires to resign may with the sanction of the Governing Board nominate his own son eligible under the Rules for admission to membership of the Exchange as a candidate for admission in his place. Under Rule 11(b), however, the legal representatives of a deceased member or his heirs or the persons mentioned in Appendix C to the Rules may with the sanction of the Governing Board nominate any person eligible under the Rules for admission to membership of the exchange as a candidate for admission in place of the deceased member. In considering such nomination the Governing Board shall be guided so far as practicable by the instructions set out in Appendix C. Rajesh Shah before his death was a member of less than 7 years' standing.

Rule 9 deals with right of nomination of deceased or defaulter member. It provides that "On the death or default of a member his right of nomination shall cease and vest in the Exchange." Rule 10 provides that "When a right of membership is forfeited to or vests in the Exchange under any Rule, Bye-Law or Regulation or the Exchange for the time being in force it shall belong absolutely to the Exchange free of all rights, claims or interest of such member or any person claiming through such member and the Governing Board shall be entitled to deal with or dispose of such right of membership as it may think fit." Rule 15 stipulates that the Governing Board shall not approve a nomination unless the nominating member or in the case of a deceased member, his legal representatives or heirs or persons mentioned in Appendix C or any other person on his behalf shall have paid and satisfied in full the dues of the Exchange and liabilities relating to contracts.

Rule 16 comes into play when the Governing Board exercises right of nomination in respect of a membership vesting in the Exchange. It provides that in such a case the consideration received therefor shall be applied to the following purposes and in the following order of priority namely :

"Dues of Exchange and clearing House :

(i) first - the payment of such subscriptions, debts, fines, fees, charges and other monies as shall have been determined by the Governing Board to be due to the Exchange or to the Clearing House by the former member whose right of membership vests in the Exchange;

Liabilities relating to Contracts

(ii) second - the payment of such debts, liabilities, obligations and claims arising out of any contracts made by such former member subject to the Rules, Bye-laws and Regulations of the Exchange as shall have been admitted by the Governing Board: Provided that if the amount available be insufficient to pay and satisfy all such debts, liabilities, obligations and claims in full they shall be paid and satisfied pro rata, and

Surplus

(iii) third - the payment of the surplus if any to the funds of the Exchange : Provided that the Exchange in general meeting may all its absolute discretion direct that such surplus be disposed of or applied in such other manner as it may deem fit."

Rule 50 provides that when a member dies all subscriptions, debts, fines, fees, charges and other monies as shall have been determined by the Governing Board to be due by him to the Exchange or to the Clearing House and all debts, liabilities, obligations and claims arising out of any contracts made by him subject to Rules, Bye-laws and Regulations of the Exchange as shall have been admitted by the Governing Board shall be paid and satisfied in full before his legal representatives or heirs or the persons mentioned in Appendix C are allowed to exercise the right of nomination. Rule 51 provides that if the legal representatives of a deceased member or his heirs or the persons mentioned in Appendix C or any other person on his behalf do not or are unable to pay and satisfy his dues, debts, liabilities, obligations and claims as provided in the Rules, Bye-laws and Regulations of the Exchange, the Governing Board shall exercise the right of nomination in respect of such membership and the consideration received therefore shall be applied in the manner provided in the Rules. Rule 53 stipulates that a member who is declared a defaulter shall at once cease to be a member of the Exchange and as such cease to enjoy any of the rights and privileges of membership but the rights of his creditor members against him shall remain unimpaired and under Rule 54 a member's right of membership shall lapse to and vest in the Exchange immediately he is declared a defaulter.

The Stock Exchange Rules, Bye-laws and Regulations have been approved by the Government of India under the Securities Contracts (Regulations) Act, 1956. There is no challenge to these Rules. The question whether right of membership confers upon the member any right of property is, therefore, to be examined within the framework of the Rules, Bye-laws and Regulations of Exchange. On a plain and combined reading of the Rules, it is clear that right of membership is merely a personal privilege granted to a member, it is non-transferable and incapable of alienation by the member or his legal representatives and heirs except to the limited extent as provided in the rules on fulfillment of conditions provided therein. The nomination wherever provided for is also not automatic. It is hedged by Rules. On right of nomination vesting in the Stock exchange under the Rules, that right belongs to the Stock Exchange absolutely. The consideration received by the Stock Exchange on exercise of the right of nomination vesting in it, is to be applied in the manner provided in Rule 16.

In *Official Assignee of Bombay v. K.R.P. Shroff & Ore.*, AIR (1932) PC 186, the Privy Council considering somewhat similar rules held that a member who has lost his membership for being a defaulter loses all interests both in the property of the association and in his card. No interest is reserved in the defaulter's card except to members of the association who have suffered by his lapse or to the Association itself. The contention urged on behalf of the respondent that Rajesh Shah could not be declared a defaulter after his death and, therefore, on his purported default the question of membership vesting in the Stock Exchange would not arise need not be gone into in the present case, for that, Rule 9 stipulates that both in case of death or default of a member his right of nomination shall cease and vest

in the Exchange. In the case in hand, on the death of Rajesh Shah, his right of nomination ceased and vested in the Exchange and his legal representatives and heirs did not exercise the right of nomination by expressing their inability to meet the liabilities of the deceased.

In *Vinay Bubna v. Stock Exchange, Mumbai & Ors.*, [1999] 6 SCC 215, on consideration of similar Rules in respect of Bombay Stock Exchange this Court held that membership of the Stock Exchange is a personal permission from the Exchange to exercise the rights and privileges attached thereto. It is not a private asset. That was a case of defaulter but in principle it would make no difference as under Rules both in the case of the death or default of a member, his right of nomination ceases and vests in the Stock Exchange.

The heirs and legal representatives of Rajesh Shah, as already noticed, had informed the Stock Exchange that they were unable to meet the liabilities of the deceased and the appropriate decision in that behalf may be taken by the Stock Exchange. It is evident that they did not exercise the right of nomination under Rule 11 read with Appendix C. They did not pay or satisfy the dues and claims as required under Rule 15. Under these circumstances the Governing Board exercised the right of nomination in respect of membership of Rajesh Shah which had vested in the Stock Exchange.

In the present case Rule 16 was properly applied by the Stock Exchange. The membership right in question was not the property of the assessee and, therefore, it could not be attached under Section 28 1B of the Income Tax Act. No amount on account of Rajesh Shah was due from or held by the Stock Exchange and, therefore, Section 226(3) could not be invoked. We are unable to sustain the judgment under appeal holding that in substance the right of membership or membership card was a right of property which could be attached under Section 28 1B of the Income Tax Act.

For the aforesaid reasons, we allow the appeal, set aside the impugned judgment and quash the order of provisional attachment dated 14th February, 1994 and garnishee notice dated 14th June, 1995 issued under Section 226(3) of the Income Tax Act, 1961.

In view of the above, Civil Appeal No. 7511 of 1999 is dismissed. In the facts and circumstances of the case, the parties are left to bear their own costs.

M.P.
1727/98 allowed.

C.A. No.

C.A. No. 7511/99 dismissed.