*Privy Council Appeal No. 32 of 1931.*

**The Guntur Cotton, Jute and Paper Mills Company, Limited, Guntur** *Appellants*

*v.*

**Rao Bahadur Pydah Venkatachalapati and another** - - *Respondents*

FROM

## THE HIGH COURT OF JUDICATURE AT MADRAS.

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## JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH JULY, 1932.

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*Present at the Hearing*:

LORD TOMLIN.
LORD THANKERTON.
LORD MACMILLAN.
LORD WRIGHT.
SIR GEORGE LOWNDES.

[*Delivered by* SIR GEORGE LOWNDES.]

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These consolidated appeals arise out of prolonged disputes over the management of a Madras manufacturing company which seems to have had an unusually troubled existence. The company was promoted in 1904 by the two respondents and one Majeti Subba Rao, since deceased, who were its first secretaries, treasurers and *ex officio* directors. Heavy litigation with its subscribers in respect of unpaid calls characterised its early years, no less than 500 suits, so their Lordships are told, being necessitated. The capital subscribed was insufficient, and loans from the local bank were required for the erection of buildings and the equipment of the mill, which seems to have proceeded at a somewhat leisurely pace during the succeeding decade; and it was not until August, 1914, that it was ready to commence the manufacture of jute bags for which it was intended. By that time it appears to have been heavily indebted. The bank refused further advances and the necessary finance

was provided by borrowing from the wives of the respondents who were ladies of means. For these loans, which began in 1913, promissory notes were given to the ladies. Subsequently a mortgage of the mill properties was executed in favour of Sathirazu, the wife of the first respondent, whose advances amounted to Rs. 78,000. This mortgage, which is dated the 2nd June, 1918, is the focus of one of the principal disputes in the present appeals.

In 1915 the tenure of the respondents as secretaries and treasurers of the company was enlarged to a life appointment and from that time onward there seems to have been open war between them and the shareholders. The auditor reported mismanagement; the balance sheet for 1915 was thrown out at the general meeting; a request to call an extraordinary meeting was refused; criminal proceedings followed; rival meetings were held at which rival directors were elected. Eventually the appointment of the respondents was cancelled as from the 31st March, 1918, but no new appointment was actually made until the 19th December following and the respondents continued as *de facto* managers until that date.

On the 30th April, 1919, the suit out of which these appeals arose was instituted in the District Court of Guntur, in the name of the company, by the new secretaries and treasurers, and further litigation is, so their Lordships are told, still pending in India. The principal reliefs prayed in the suit were a declaration that the respondents were no longer entitled to take part in the management of the company, an injunction restraining them from so doing, an account of their stewardship from 1904, and an indemnity against loss suffered by the company in respect of "acts of misappropriation and fraud and other acts of non-feasance misfeasance and malfeasance" during the period of their management.

The suit was defended by both the respondents. Issues were raised, and after a trial which extended to some 60 hearings, and has produced a record of over a thousand pages, only a fraction of which has been found material in the present appeals, the learned District Judge on the 24th April, 1922, delivered his judgment and passed a preliminary decree. By this the declaration, injunction and account prayed for were granted, and the respondents were ordered to pay to the company Rs. 18,000 by way of damages in respect of a certain lease of the mill premises which will be referred to in greater detail hereafter, together with a small sum for rent (not now in dispute) and Rs. 7,039.10.8 in respect of commission received by them to which they were held to be not entitled. The first respondent was also ordered to refund to the company a sum of Rs. 2,200.4.3 received by him under a subsequent lease by way of secret profit.

The account was ordered to be taken by a commissioner, and was to include the amount payable to the plaintiff company in respect of any of certain decrees which he should find to have

been allowed to have become time-barred by the neglect or collusive act of the respondents.

Against this decree both the company and the first respondent appealed to the High Court. In the meantime the commissioner made two reports which were considered by the successor of the trial Judge and on the 4th April, 1924, he made a final decree in the case embodying the material terms of the preliminary decree and, as a result of the commissioner's reports, ordered the respondents to pay further sums of Rs. 46,011.10.0 in respect of interest debited to the company on the loans before referred to, and Rs. 4,430.9.7 on account of barred decrees. The respondents were also ordered to pay the costs.

Further appeals against the final decree were lodged by the company and the first respondent and all the four appeals were heard together. Judgment was delivered on the 3rd February, 1928, with the result that the company's appeals were dismissed, and on the first respondent's appeals both the preliminary and final decree of the District Court were varied. The Rs. 18,000 damages were reduced to Rs. 12,370.8.0; the Rs. 7,039.10.8 for commission, and the Rs. 46,011.10.0 in respect of interest on loans were eliminated; the Rs. 4,430.9.7 on account of barred decrees was reduced to Rs. 484.5.4, and the costs were to a large extent laid upon the present appellants.

The company now appeals to His Majesty in Council, complaining not only of these variations but seeking also wider relief than was accorded to it by the District Judge. On the other side only the first respondent (who was the second defendant in the suit) has been represented before the Board.

Their Lordships have not thought it necessary in this case to hear counsel for the first respondent as they are satisfied that the conclusions come to by the learned Judges of the High Court cannot be attacked by the appellant company. They will give their reasons briefly under the four heads of complaint which have been argued before them.

On the first head the main contentions of the company were concerned with the mortgage in favour of Sathirazu, the wife of the first respondent. It was executed, as already stated, on the 2nd January, 1918, and was for Rs. 1,23,354.11.9 which was said to be the amount due for principal and interest in respect of the ladies' advances up to the 2nd January, 1918. Inasmuch as the mortgagee was not made a party to the suit it is manifest that the company's contention that the Courts in India should have held the mortgage to be void cannot be supported. There is apparently still pending in the local Courts a suit by the mortgagee for the enforcement of her security in which all questions as to the validity of the transactions can be decided between the proper parties.

But it is further contended that a sum of Rs. 74,000 which was repaid to Sathirazu by the respondents, in part after the

date when their activities as secretaries and treasurers should have ceased, ought to have been ordered to be refunded by them. Both the District Judge and the High Court refused to accede to this contention and their Lordships have no doubt they were right. It is not now at all events disputed that a sum of Rs. 78,000 was in fact advanced by the lady and was utilised for the proper purposes of the company. There is no ground therefore upon which the repayment of the smaller sum out of the funds of the company can be impugned.

There remains under this head only the question of the Rs. 46,011.10.0 in respect of interest which the District Judge ordered to be repaid but which the High Court disallowed. The ground of this claim was that the rate of interest on Sathirazu's advances to which the respondents had committed the company was excessive. It is, their Lordships think, a sufficient answer to this contention to say that no attempt was made on behalf of the company to prove that the money, of which it is clear the company was in urgent need, could have been raised at any lower rate. It was suggested in the trial Court that the real lenders were the respondents, but this was not established and no charge of this nature has been made before the Board.

Turning next to the question of the leases, the matter stands as follows. The mill as already stated was completed in 1914. The respondents however soon found that they could not work it on the company's account at a profit and a system of so-called "leasing" was adopted. The method as explained to their Lordships was to make a contract with the "lessee" for the supply of a certain quantity of jute which the company was to manufacture into bags for him at a fixed rate, the company's profit on the transaction being the difference between the actual cost to them of the process of manufacture and the rate agreed on.

The lease in 1915 was advertised and the tender of one Nalam was accepted. He agreed to supply 4,000 *puttis* of jute and to pay Rs. 22 per *putti* for the cost of manufacture (a *putti* being the equivalent of 500 lbs.), and at this price the company apparently made a profit. Subsequently to the acceptance of his tender a partnership was formed under which Nalam agreed to share the profits of his contract with one Chennaya and Satyanarayanamurthy, the first respondent's son, whose share was to be 6-annas in the rupee. The appellant company charged that the son's name was merely a cloak for the two respondents who were thus secret sharers, and that the lease was a fraud on the company. The trial Judge held this charge to be unsustained. He was, however, of opinion that the respondents could and ought to have secured the rate of Rs. 26.8.0 per *putti* instead of Rs. 22, and he held them responsible for the difference of Rs. 4.8.0 in respect of the 4,000 *puttis*, *i.e.*, the sum of Rs. 18,000 which was included in the preliminary decree.

In the High Court Wallace J. agreed with the Lower Court that there was no evidence that the respondents were interested

in or had made a secret profit from the lease, and he thought that there was no evidence to support the higher rate of Rs. 26.8.0. He also pointed out that in any case the Rs. 18,000 awarded was wrong as in fact the whole of the 4,000 *puttis* had not been manufactured but only 2,749. His colleague, Shrinivasa Ayyangar J., disagreed on the main question of liability. The reasoning of his judgment on this point is not very clear, but he seems to have thought that there was evidence to support both the higher rate of Rs. 26.8.0 and a secret interest of at all events the first respondent in the lease. He therefore affirmed the finding of the trial Judge as to the liability of the respondents for the difference of Rs. 4.8.0 per *putti*, but he agreed with his learned colleague that it could only be charged upon the 2,749 *puttis* actually manufactured. In the result, by the decree of the High Court the Rs. 18,000 was as above stated reduced to Rs. 12,370.8.0. Their Lordships are told that a further appeal upon this point under the provisions of the Letters Patent, based upon the difference of opinion between the learned Judges, is still pending in the High Court, but there is no appeal by the first respondent before this Board and the decree for Rs. 12,370.8.0, so far as the Board is concerned, stands.

The appellant company now seeks to restore the figure of Rs. 18,000 awarded by the trial Judge, but their Lordships have some difficulty in understanding upon what this contention is based. Assuming in the company's favour that there was sufficient evidence to support the higher rate of Rs. 26.8.0 and that the respondents were guilty of a breach of their duty to the company in accepting the Rs. 22, it clearly does not follow that they were responsible for any loss in respect of the unmanufactured *puttis*. The raw material for the balance was not supplied by the lessee, and there is no evidence that this was in any way the fault of the respondents, or that damages could have been recovered from the lessee. They think therefore that this claim must necessarily fail.

The only other question raised under this head was as to the subsequent lease for 1918–1919. It was put up to auction and knocked down to one Varadaraghaviah, the brother of the second respondent. It is the company's case that this auction was collusive, but both Courts in India have negatived the contention and this point has not been pressed. It was, however, concurrently found that after the auction the first respondent was given a 2-anna share in the proceeds of the contract which worked out at Rs. 2,200.4.3 and for this sum he has been made liable. He has not appealed and his liability stands. The contention of the company before their Lordships is that he should have been charged with the whole profits of the partnership and not merely with his individual share. In the trial Court this claim was supported by reference to the case of *Liquidators of Imperial Mercantile Credit Association* v. *Coleman* (L.R. 6 H.L. 189). The contention does not appear to have been pressed in the

High Court, and under the circumstances their Lordships think it sufficient to say that the case in question was rightly distinguished by the trial Judge, and that upon the facts proved the liability of the first respondent could not be held to extend beyond his 2-anna share.

The third head of complaint concerns the commission. Under the Articles of Association of the company the respondents as secretaries and treasurers were jointly entitled to a commission of 12 per cent. upon the profits of the company, and they drew on this account during the years 1915–1917 sums amounting to Rs. 7,039.10.8. At the trial it seems to have been contended that owing to their mismanagement of the business of the company they were not entitled to any remuneration and that this sum should be refunded. To this contention the trial Judge acceded, basing his decision upon section 220 of the Indian Contract Act. This item was struck out of the decree by the High Court. It was pointed out in the judgment that the only claim made in the plaint was that the respondents were not entitled to any commission after the 31st March, 1918, when their appointment as secretaries and treasurers was said to have been determined, and that therefore the company's contention on this head was not open. The learned Judges were also of opinion that it had not been proved that the respondents had been guilty of any misconduct during the years in question. Their Lordships see no reason to differ from the conclusions so come to, and they think that this item was rightly disallowed.

It only remains to deal with the claim in regard to the time-barred decrees. Of these a detailed list of 144 decrees was laid before the Commissioner upon which he found the respondent liable on the ground of negligence for Rs. 9,897.15.6 in respect of 39 decrees. This was reduced by the District Judge to Rs. 4,430.9.7 upon 16 decrees. The High Court allowed only Rs. 484.5.4. Under this head the claim of the appellant company before the Board was for the restoration of the amount allowed by the Commissioner, but the argument was in effect confined to certain items in respect of which it was said that the respondents had admitted liability before the District Judge.

There was their Lordships think no possible ground upon which the Commissioner's figure could be supported. In order to debit the respondents with the unrealised amounts of these decrees it was necessary for the appellant company to show that the amount in each case could have been recovered from the decretal debtors and that the failure to do this was due to the negligence of the respondents, but no attempt seems to have been made to establish either branch of the charge.

Their Lordships are also unable to accede to the argument as to the so-called admissions. The District Judge no doubt says in his judgment that as to 13 items of which the numbers are specified "the defendants' pleader states that he has no objection," and that item 79 was also given up on a scrutiny of

the records. In the judgment of the High Court, however, only 2 of the 13 items and item 79 are said not to have been contested. Their Lordships are asked to hold on the state of the record that the learned Judges of the High Court had overlooked the admission as to the other 11 items. This in the absence of clear evidence on the point their Lordships are unable to do. It is quite possible that the admission was disputed in the High Court or it may have been allowed to be withdrawn. If such a slip had been made the attention of the Court should have been called to it in India. So far from this having been done, their Lordships find that in the company's petitions for leave to appeal to His Majesty in Council no suggestion that anything of the kind had occurred, though other grounds of complaint are set out in great detail.

For the reasons given their Lordships are of opinion that the appeals must fail and should be dismissed with costs. They will humbly advise His Majesty accordingly.

**In the Privy Council.**

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THE GUNTUR COTTON, JUTE AND PAPER MILLS COMPANY, LIMITED, GUNTUR

*v.*

RAO BAHADUR PYDAH VENKATACHALAPATI AND ANOTHER.

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DELIVERED BY SIR GEORGE LOWNDES.

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