1936 *Present :* **Akbar and Koch JJ.**

NADARAJAH *v.* H. DON CAROLIS & SONS, LTD.

156—D. C. (Inty.) Colombo.

Joint stock company—Application to register shares—Shares sold in execution of mortgage decree—Right of Directors to register sale—Appeal—Security for costs.

Where the articles of association of a joint stock company gave a discretion to the directors to refuse to register a transfer of shares by a shareholder, who is indebted to the company,—

Held, that the directors were not entitled to refuse to register a transfer consequent on a forced sale of the shares.

Quœre, whether in appeal governed by section 110 of the Joint Stock Companies' Ordinance the appellant is bound to give security for respondents' costs ?

Where the appellant has given security in cash but has failed to give notice of security to the respondent the Supreme Court may grant relief under section 2 of Ordinance No. 42 of 1921.

APPEAL from an order of the District Judge of Colombo.

N. K. Choksy (with him *D. W. Fernando*), for respondent, appellant.

H. V. Perera, for petitioner, respondent.

Cur. adv. vult.

June 15, 1936. AKBAR J.—

This is an appeal under section 110 of the Joint Stock Companies' Ordinance, No. 4 of 1861, against the order of the District Judge made under section 32 of the same Ordinance, by which the Court allowed the application of the petitioner-respondent to have his name inserted as a shareholder in the register of the company of the respondent-appellant.

Mr. H. V. Perera, for the respondent, took the preliminary objection that this appeal was not properly constituted, because no notice had been given of the security offered for the due prosecution of the appeal as required by section 756 of the Civil Procedure Code.

We thought that this objection should not be upheld for several reasons. In the first place when we looked at the facts we found that as a matter of fact the appellant had deposited a sum of Rs. 100 in cash which had been secured by a bond. It is true that no formal notice was given as required by section 756, but the section was amended by an addition made by section 2 of Ordinance No. 42 of 1921 under which this Court is given a wide discretion to correct any mistake, omission, or defect on the part of an appellant in complying with the provisions of that section, if the Supreme Court should be of opinion that the respondent has not been materially prejudiced, and relief may be granted on such terms as it may deem just. Mr. Perera quoted a case of this Court, namely, *Silva v. Goonesekera* [1]. It will be seen from that case that the omission was a gross one, because not only had the security bond not been signed, but notice of appeal had not been given when the petition was filed on November 14, 1928, and the record remained in the District Court till May, 1929. It seems to us that this case is a fit one in which relief should be granted under the amendment I have quoted above.

Apart from this, as Mr. Choksy has pointed out, these appeals are regulated by section 110 of the Joint Stock Companies' Ordinance, and it is stated in that section that every appeal shall be brought and prosecuted in such manner and shall be subject to such regulations as now exist, or shall be hereafter made by any rule or order of this Court. These are exactly the same words as appear in the Insolvency Ordinance, 1853, section 6, and the Supreme Court in two cases, namely, the Full Court decision in the case of *In re Goonewardene* [2] and the latter case of *Dias v. Palaniappa Chettiar* [3], held that in Insolvency appeals there were no Civil Appellate Rules regulating such appeals, and that in the former case the appellant need not give security for costs of any appeal at all. For these reasons we decided to hear the appeal.

As regards the main point raised in appeal, I think it could be decided on a simple question. It appears that one C. Moonesinghe was the owner of 1,500 shares in the appellant company. He had mortgaged these shares on July 18, 1929, of which mortgage apparently notice was given by the proctor for the mortgagee (see documents P1 and P2). The mortgagee sued Moonesinghe on this bond and the shares were sold in execution in favour of one Suppiah Pillai, the document of transfer being executed by the Secretary of the District Court. This was on

[1] *31 N. L. R. 185.* [2] *34 N. L. R. 431.*

[3] *34 N. L. R. 195.*

October 31, 1933, and on deed 728 dated November 6, 1933, Suppiah Pillai sold, conveyed, and assigned these shares to the respondent R. A. Nadarajah. On April 27, 1934, the proctor for Nadarajah wrote to the company, narrating the devolution of title of the shares to his client, and asking the company to register the name of Nadarajah as the holder of the shares in question. To this letter the Company wrote by letter P4 dated May 4, 1934, declining to transfer these shares under article 29 of the articles of association of the company "as the shareholder is indebted to the company".

The learned Judge in his order has made a slight mistake in thinking that the petitioner-respondent Nadarajah was the original purchaser at the execution sale. As I have stated, the original purchaser was Suppiah Pillai, and Nadarajah was a voluntary transferee from Suppiah Pillai. This mistake however does not in our opinion affect the question of law which has been raised on this aspect of the appeal, namely, whether article 29 applies, and whether the directors had the discretion to refuse to register the name of Nadarajah as a shareholder.

We do not decide in this appeal the question whether the Company was a creditor of S. Moonesinghe, nor whether the company had a lien on the shares belonging to S. Moonesinghe. The bare point of law we decide in this appeal is whether article 29 applies. It will be seen from the terms of that article that the board of directors has got "a discretion to decline to register any transfer of shares by a shareholder who is indebted to the company, or upon whose shares the company has a lien or otherwise". It will be seen that in this case Suppiah Pillai was not a transferee who derived his title on a transfer voluntarily executed by the shareholder S. Moonesinghe on the register of the company. This was a forced sale, and therefore article 29 cannot apply to the case of Suppiah Pillai. If it does not apply to the case of Suppiah Pillai it cannot equally apply to his successor in title Nadarajah who got all the right, title, and interest of Suppiah Pillai transferred to him by the sale. Apart from this, the word "shareholder" referred to in article 29 can only mean a shareholder on the books of the company, and therefore it could only refer to a transfer effected by Moonesinghe voluntarily. This opinion of ours concludes the appeal on the main point raised in the argument before us.

Mr. Choksy however raised another point, namely, that the petitioner-respondent had not complied with article 30 of the articles of association. That article requires that "every instrument of transfer which is to be registered in the books of the company should be left at the office of the company, accompanied by the certificate of the share to be transferred, together with evidence to prove the title of the transferee, and a fee of Rs. 2.50 to be paid to the company for the registration of every transfer." Mr. Choksy argued that as the petitioner-respondent had not complied with the terms of this article the respondent was bound to fail in these proceedings before us.

There are two objections to this argument. The first objection is to be found in the correspondence which passed between the company and the respondent. When by letter P3 the proctor for the respondent asked that he be registered as the shareholder of the shares in question,

the reply that was sent to him was, not that he had not compiied with article 30, but that the director declined to register the transfer under article 29, on the ground that the shareholder, namely, S. Moonesinghe, was indebted to the company. This objection was not even taken in the proceedings before the District Court. The parties went on with the inquiry solely on the one question whether article 29 applied or not. In the second place it seems clear to me that article 30 can only apply when the directors have made up their minds to effect the registration of the shares, and it cannot therefore operate in this case, where the directors expressed their opinion that they were not prepared to entertain any application for registration on the ground that article 29 gave them a discretion to do so. I therefore fail to see how article 30 can be made to apply to a case like this, where the first question that has to be decided is whether the directors had the right to decline to register as they claimed to do.

We have come therefore to the conclusion that the appellant is bound to fail in the argument that has been placed before me, and the appeal must therefore be dismissed with costs.

KOCH J.—I agree.

Appeal dismissed.