CIVIL ORIGINAL.

... *Before Tek Chand, J.*

FIRST *NATIONAL BANK LTD. (IN LIQN.),—Petitioner.*

versus

SETH SANT LAL PROPRIETOR M/S GANPAT RAI SANT LAL—DEBTOR,—*Respondent.*

Case No. 83 of 1954

In Civil Original No. 48 of 1954

1958

May, 23rd

Indian Companies Act (VII of 1913)—Sections 186 and 187—Respective scope of—Call made by the Directors—Whether becomes a debt after the date for payment has passed—Right of the Liquidator to recover—Winding up order—Effect of on powers of the directors...Call after winding up order—Power of the Court to make—Contributory—Liability of—Forfeiture of shares—Laibility of the share-holder whose shares have been forfeited for unpaid calls—Period of limitation for proceedings to recover the amount due on forfeiture of shares—Limitation Act (IX of 1908)—Article applicable—Whether 112 or 115—Recovery of call time-barred on the date of forfeiture—Whether the

amount of that call can be recovered after forfeiture—Expiry of period of limitation prescribed for a suit—Effect of—Whether the debt is extinguished—Other remedies, whether can be availed of—Words and Phrases—"Liability", "owing" and "Due"- Meaning of—

Held, that the privisions of section 186 of the Indian Companies Act, 1913, are not mandatory and the Act gives discretion to the Court to allow or refuse an application under this section. No new rights are created and the Court may decline to act under this section and leave the Liquidator to institute a suit in the company's name. Under this section where a call has been made by the Directors before the liquidation of the Company and when the date for payment has passed, it becomes a debt like any other debt due from the share-holder of the Company. If, later on, the Company is wound up, the debt owed by the share-holder becomes an asset of the Company and it has to be realised by the Liquidator. Under section 186, the Court is not given any discretion to ask the Liquidator not to realise the debt or to reduce the amount of the claim. Under section 187, however, the powers of the court are more extensive. After the winding up order has been passed, the authority of the Directors comes to an end. After the Company goes into liquidation, the Court alone can make calls from the contributories. It has, however, a discretion whether to pass an order demanding the entire money due from the contributory, or a lesser amount, in case, it considers that to be sufficient to satisfy the debts and liabilities, etc., of the company.

Held, that the liability of a contributory to contribute to the assets of the Company to the extent of an amount sufficient for payment of its debts, liabilities and costs, etc., arises under section 156 of the Indian Companies Act, 1913.

Held, that after forfeiture of the shares of quondam share-holders, the debt changes its character, giving rise to a fresh cause of action, and a new liability is imposed in such a case on the share-holder. A share-holder, after the forfeiture of his shares, ceases to be a member of the Company. His liability to pay any further monies in his capacity as share-holder comes to an end, but he becomes liable to pay the balance due under a separate contract, that is, under Articles of Association providing for forfeiture of shares in certain eventualities. Article 112 of the Limitation Act does not apply to a claim for the amount forfeited. As such a claim cannot be said to be "for a call by a company registered under any statute or Act". The Article

applicable is Article 115 and the *terminus a quo* is the date of forfeiture. The right of forfeiting shares is given under the Articles of Association of a Company which are in the nature of a contract, not only between the Company and its members but also between the members *inter se*.

Held, that on the forfeiture of the shares a new remedy is provided under a new cause of action and a claim by a Company made within three years of the date of forfeiture will be within limitation in view of the provisions of Article 115 of the Limitation Act, despite the fact that a suit, if it had been instituted on the date of the claim for the recovery of the money due on the first call would have become barred by limitation under Article 112 of the Limitation Act. It is so for the reason that although the remedy by way of suit for the recovery of the money due on the first call had been extinguished by efflux of time, the right of the Company to the amount had not been destroyed. The sum in question was owing at the time of the forfeiture, though time-barred and the liability of the respondents had not become extinct.

Held, that the Limitation Act, with regard to personal actions, bars the remedy without extinguishing the rights. It is only in the case of a suit for possession of any property that on the determination of the period of limitation not only the remedy but the right also, is extinguished under section 28 of the Limitation Act. But a debt does not cease to be due, because it cannot be recovered, after the expiration of the period of limitation provided for instituting a suit for its recovery. In all personal actions, the right subsists although the remedy is no longer available. If, therefore, a creditor whose debt becomes statute-barred, has any means of realising and enforcing his claim by any method except by a suit, the Limitation Act does not prevent him from recovering his debt by such means. After a debt becomes barred a person is still deemed to owe. In case he pays the amount after the expiration of the period of limitation, he cannot, after having paid his debt, claim to be entitled to recover it back, on the ground, that the time-barred debt was not "money due" or "owing". It is well established proposition that payment of a time-barred debt, is a valid consideration for transfer of property. Similarly an agreement in writing undertaking to pay a time-barred debt is lawful and binding. Again a creditor can adjust a payment made by a

debtor who owes several debts, towards a debt which had become time-barred.

Held, that the term "Liability" is of large and comprehensive significance, and when construed in its usual and ordinary sense, in which it is commonly employed, it expresses the state of being under obligation in law or in justice. The word "owing" is synonymous with "due". These terms have no reference to the time of payment or the fulfilment of an obligation. The term "owing" includes all debts whether payable in *praesenti* or in *futuro*. It does not necessarily imply an enforceable obligation. The word "due" or "owing" in its ordinary sense means something which is justly owed; that which the law or justice requires to be paid or done.

Petition under Section 45-D of the Banking Companies Act for the settlement of list of debtors.

Claim for Rs. 6603/4/9 with costs and future interest.

B. R. TULI, for Petitioners.

D. N. AWASTHY, for Respondent.

ORDER.

TEK CHAND, J. These are three applications (Case No. 83 in Civil Original No. 48 of 1954, Case No. 84 in Civil Original No. 48 of 1954 and Case No. 87 in Civil Original No. 48 of 1954) involving a common question of law and may be disposed of by one judgment. Tek Chand, J.

The undisputed facts of these cases are that the respective petitioners were past share-holders of the First National Bank, Limited, in liquidation, whose respective shares of Rs. 100 each were partly paid up to the extent of 75 per cent. The Bank at first submitted a scheme of arrangement in this court and on 19th April, 1948, that scheme was sanctioned: In accordance with the scheme a call of Rs. 12-8-0 per share was made on 15th

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October, 1948, and a notice of the call was sent to the respondents which was followed by two reminders. A second call of Rs. 12-8-0 was made on 24th March, 1953, and a notice of this call was sent to the respondents by registered post. On the above calls, the respondents did not make any payment. On 22nd September, 1953, a notice was sent by registered post, informing each respondent that the shares would be forfeited if the amount was not paid by 10th October, 1953. On 24th March, 1954, the Directors passed a resolution forfeiting the shares of the share-holders, who had not paid the call money, and they included the three respondents in these cases. Letters were sent to the respondents informing them that their shares had been forfeited by the Bank. The Bank filed the claim in this Court on 24th June, 1954. The Bank was ordered to be wound up by this Court on 17th May, 1957, as an insolvent Bank.

Against Seth Sant Lal, respondent in case No. 83 in Civil Original No. 48 of 1954, there is a claim made by the Bank for Rs. 6,603-4-9 on account of the two calls of Rs. 12-8-0 per share—each dated 15th October, 1948, and 24th March, 1953.

Against Shri Girdhari Lal, respondent (Case No. 84 in Civil Original No. 48 of 1954), for similar reasons as in the earlier case the Bank has made a claim of Rs. 5,908-3-0, in respect of the two calls.

Against Shri Kishori Lal, respondent (Case No. 87 in Civil Original No. 48 of 1954), the Bank for similar reasons had made a claim for Rs. 347-8-9.

In their written statements the respondents contended that they were not liable as the claim was barred by time. They also alleged that the

calls made were mala fide and were not justified. The following issues were framed in all three cases:—

1. Whether the claim is within time.

2. Whether the call is not justified.

The second issue has been given up by the counsel for the respondents and no arguments have been addressed before me as to the justifiability of the calls. What has been contended before me now, on behalf of the respondents, is, that the claim, which was made on 24th June, 1954, by the Bank, is barred by time in respect of the first call, dated 15th October, 1948, but it is not now denied that the claim is within time with respect to the second call in view of the provisions of Article 112 of the Limitation Act, which provides a period of three years for a call by a registered company starting from the day when the call is payable. If this Article is applicable, then there is no doubt that the claim is time barred. The argument raised by the learned counsel for the Bank is, that Article 112 is not applicable and the period of limitation in such cases is determined by Article 115 of the Limitation Act, which provides a period of three years for a suit for compensation for breach of any contract, express or implied, not in writing or registered and not specifically provided by the Act. The period of three years begins to run when the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

I cannot sustain the contention of the respondents as, in my opinion, Article 112 of the Limitation Act has no applicability.

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Under section 186(1) of the Indian Companies Act of 1913, "the Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories, to pay, in the manner directed by the order, any money due from him or from the estate of the person whom he represents, to the Company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act."

The above provisions, as appears from the use of the word "may", are not mandatory, and the Act gives discretion to the Court to allow or refuse an application under this section. No new rights are created and the Court may decline to act under this section and leave the Liquidator to institute a suit in the company's name,—*vide Hans Raj Gupta* v. *Mussoorie Electric Tramway Company, Ltd.* (1). Under section 186 of the Indian Companies Act, where a call has been made by the Directors before the liquidation of the Company and when the date for payment has passed, it becomes a debt like any other debt due from the share-holder of the Company. If, later on, the Company is wound up, the debt owed by the share-holder becomes an asset of the Company and it has to be realised by the Liquidator. Under section 186, the Court is not given any discretion to ask the Liquidator not to realise the debt or to reduce the amount of the claim. Under section 187 which is reproduced below, the powers of the Court are more extensive—

> "187(1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the

(1) A.I.R. 1933 P.C. 63

sufficiency of the assets of the company, -

(a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and

(b) make an order for payment of any calls so made.

(2) In making a call, the Court may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call."

After the winding up order has been passed, the authority of the Directors comes to an end. After the Company goes into liquidation, the Court alone can make calls from the contributories. It has, however, a discretion whether to pass an order demanding the entire money due from the contributory, or a lesser amount, in case, it considers that to be sufficient to satisfy the debts and liabilities, etc., of the company. The liability of a contributory, to contribute to the assets of the Company, to the extent of an amount sufficient for payment of its debts, liabilities and costs, etc. arises under section 156. Article 112 of the Limitation Act does not apply to a claim for the amount forfeited, as such a claim cannot be said to be "for a call by a Company registered under any statute or Act".

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After forfeiture of the shares of quondam share-holders, the debt changes its character, giving rise to a fresh cause of action, and a new liability is imposed in such a case on the share-holder. A share-holder, after the forfeiture of his shares, ceases to be a member of the Company. His liability to pay any further monies in his capacity as share-holder comes to an end, but he becomes liable to pay the balance due under a separate contract, that is, under Articles of Association providing for forfeiture of shares in certain eventualities. This view as to the quondam share-holder's status, after the forfeiture of his shares, was expressed in *Stocken's Case in re Balakely Ordinance Company* (1), and has been followed in India in *Habib Rowji* v. *The Standard Aluminium and Brass Works, Limited* (2), *Maneklal Mansukhbhai* v. *The Suryapur Mills Co., Ltd.* (3) and *The Indian Co-operative Navigation and Trading Company, Limited* v. *Padamsey Premji* (4). The right of forfeiting shares is given in this case under the Articles of Association, which are in the nature of a contract, not only between the Company and the members, but also between members *inter se*. In *Wood* v. *Odessa Waterworks Company* (5), Stirling, J., said:—

> "The articles of association constitute a contract not merely between the share-holders and the Company, but between each individual share-holder and every other."

and

See also *Sardar Gulab Singh* v. *Punjab Zamindara Bank, Limited, Lyallpur* (6), *Eley* v. *The Positive*

(1) (1868) 3 Ch. App. 412
(2) I.L.R. (1925) 49 Bom. 715
(3) I.L.R. (1927) 52 Bom. 477
(4) (1934) 36 Bom. L.R. 32 (38)
(5) (1889) 42 Ch. D. 636 (642)
(6) A.I.R. 1940 Lah. 243

Government Security Life Assurance Company, Limited (1), *and Salmon* v. *Quin Axtens* (2). To a claim for compensation arising out of the breach of any contract, express or implied, Article 115 applies and the starting point of the above period of limitation is the breach of contract. In this case the breach must naturally be after the forfeiture, i.e., on 24th March, 1954, and the claim was instituted by the Bank three months later. Under Article 115, therefore, this claim is well within time. Articles 29 to 40 of the Articles of Association of the First National Bank provided for forfeiture of the shares and for the Bank's lien on them. Article 35 may be reproduced with advantage—

> "Any member whose shares have been forfeited shall notwithstanding the forfeiture, be liable to pay, and shall forthwith pay to the Company all calls or instalments, interest and expenses, owing upon or in respect of such shares at the time of forfeiture together ~~wtih~~ with interest thereon from the time of forfeiture until payment, at 12 per cent. per annum, and ~~he~~ the Directors may enforce the payment thereof, without any such deduction or allowance for the value of the shares at the time of forfeiture."

It was strenuously urged by Mr. Awasthy on behalf of the respondents, that the Bank's claim in regard to the first call made on 15th October, 1948, had become time-barred after three years as against the respondents, who could not be said to be "liable to pay" to the Company, any amount, in respect of the time-barred calls. Such an amount,

(1) (1875) 1 Ex. D. 20
(2) (1909) 1 Ch. 311

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he said, could not be deemed as "owing upon or in respect of such shares at the time of forfeiture". His contention, in brief, was, that a debtor ceases to be liable to pay, the moment the debt became time-barred. Such a debt, according to him, is no longer "due" after the efflux of time, as provided under Aricle 112.

It is well known that the Limitation Act, with regard to personal actions, bars the remedy without extinguishing the rights. It is only in the case of a suit for possession of any property that on the determination of the period of limitation not only the remedy, but the right also, is extinguished under section 28 of the Limitation Act. But a debt does not cease to be a due, because it cannot be re covered, after the expiration of the period of limitation provided for instituting a suit for its recovery. In all personal actions, the right subsists although the remedy is no longer available. If therefore, a creditor, whose debt becomes statute barred, has any means of realising and enforcing his claim by any method except by a suit, the Limitation Act does not prevent him from recovering his debt by such means. After a debt becomes barred a person is still deemed to owe. In case he pays the amount after the expiration of the period of limitation, he cannot, after having paid his debt, claim to be entitled to recover it back, on the ground, that the time-barred debt was not "money due" or "owing". It is a well established proposition that payment of a time-barred debt, is a valid consideration for transfer of property. Similarly, an agreement in writing undertaking to pay a time-barred debt is lawful and binding. Again, a creditor can adjust a payment made by a debtor who owes several debts, towards a debt which had become time-barred. Sir Shadi Lal, Chief Justice

held in *Nur Din* v. *Allah Ditta and others* (1)—

> "The rule of law is firmly established that a debt does not cease to be a debt because its recovery is barred by the Statute of Limitation."

See also *Jokhu Bhunja* v. *Sitla Bakhsh Singh and others* (2), *Mohesh Lal* v. *Busunt Kumaree* (3), and *Bhagwati Prasad* v. *Shromani Sugar Mills, Limited* (4).

The next question, which may now be examined. is, whether the language of Article 35 of the Articles of Association, in any manner, restricts the liability of a share-holder, on the forfeiture of his shares, to debts, with respect to which, the period of limitation had not run out. In other words, regarding time-barred debt, can it be said, that the debtor is "liable to pay" all calls, etc., "owing upon or in respect of such shares at the time of forfeiture" ?

According to Bouvier's Law Dictionary, "Liability" is "the state of being bound or obliged in law or justice."

According to Oxford English Dictionary, "liability" means "the condition of being liable or answerable by law or equity".

"Liability" as defined in Black's Law Dictionary means, "the state of being bound or obliged

(1) I.L.R. 13 Lah. 817
(2) A.I.R. 1930 All. 416
(3) I.L.R. 6 Cal. 340
(4) A.I.R. 1949 All. 195

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in law or justice to do, pay or make good something; legal responsibility."

Webster defines liability to be the state of being bound or obliged in law or justice; responsibility.

The term "liability" is of large and comprehensive significance, and when construed in its usual and ordinary sense, in which it is commonly employed, it expresses the state of being under obligation in law or in justice: see also *FEIL* v. *COEUR D'ALENE* (1), *BENGE'S ADM'R* v. *BOWLING* (2).

The word "owing" is synonymous with "due". These terms have no reference to the time of payment or the fulfilment of an obligation. The term "owing" includes all debts whether payable in *praesenti* or in *futuro*. It does not necessarily imply an enforceable obligation. The word "due" or "owing" in its ordinary sense means something which is justly owed; that which the law or justice requires to be paid or done: *vide Griffith* v. *Speaks* (3). *In Re Gillingham's Estate* (4), the following opinion was expressed—

> "A debt may be due that is justly and honestly owing, and yet the creditor be without remedy to enforce payment because of the plea of the statute of limitations. Still the debt is due. It is owing. The word 'due' is used by Judges, legislators, and lexicographers as synonymous with "owing".

In *The Indian Co-operative Navigation and Trading Company Limited* v. *Padmsey Premji* (5),

(1) 43 Lawyers Reports Annotated [N.S. 1095 (1103)]
(2) 51 South Western Reporter 151
(3) 63 South Western Reporter 465, 466-467
(4) 69 Atlantic Reporter 809, 810
(5) (1934) 36 Bom. L.R. 32

Article 45 of the Articles of Association of the Company provided that any share-holder whose shares were forfeited, was, notwithstanding the forfeiture, liable to pay to the Company "all money owing upon the shares at the time of the forfeiture". It was held that even if Article 45 be treated as such special contract, the term "money owing" in the article denoted in its primary sense an existing debt, whether or not, the right to recover the same was barred under the Indian Limitation Act, 1908. Beaumont, C. J., observed at page 38—

> "In my opinion the terms 'money owing' or 'money due' in their primary sense denote an existing debt, whether or not the right to recover the same is barred under the Indian Limitation Act, though no doubt either expression may bear the secondary meaning of 'recoverable in law if the context so requires. It has been held in England that a call is owing from the date when it is made, although it may be payable at a future date. It is of course well settled that under the Indian Limitation Act, as under the English Limitation Acts, a debt is not destroyed, only the remedy to recover it is barred. The case in the Privy Council on which the learned Judge relied was a case arising under section 186 of the Indian Companies Act. That section provides that the Court may at any time after making a winding-up order make an order on any contributory for the time being settled on the list of contributories to pay in manner directed by the order any money due from him. I agree with the

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learned Judge that the expression 'money due' has the same meaning as 'money owing', but the basis of the decision of the Privy Council was that section 186 deals only with procedure for enforcing payment and does not purport to impose any liability. On that view of the section the Privy Council gave to the expression 'money due' the meaning 'due and recoverable in law'. I agree that if the context so required, a similar construction should be placed on the expression 'money owing', but in my view there is no sufficient context in these articles to induce us to give that meaning to the expression in Article 45. Article 45, unlike section 186 of the Indian Companies Act, does undoubtedly impose a new liability. Article 42, which provides that if any share-holder fails to pay any money due from him in respect of any share on the appointed day, the shares, in respect of which any money is owing, will be liable to be forfeited without any further notice, has some bearing on the matter. I think clearly in that article 'money owing' is used in the sense of money due which need not necessarily be recoverable in law."

The decision of the Privy Council referred to in the above passage is *Hans Raj v. The Official Liquidator* (1). The observations of Blackwell, J., in the above Bombay decision, may also be quoted with advantage—

"In my opinion that decision (*Hans Raj Gupta's case*) (1), has no application to the

(1) (1932) 35 Bom. L.R. 319

case before us, because in the present case the suit is based upon an independent contractual liability arising out of Article 45 of the Articles of association of the company. Taking the words 'money owing' in their natural significance they appear to me to mean 'money owing whether recoverable or not'. Although the right to recover money due or money owing may be barred by a statute of limitation, the money still remains due or owing, and I see no reason at all why a share-holder should not enter into an independent contract in the articles providing that if he should cease to be a share-holder by reason of the forfeiture of his shares he should nevertheless be bound to pay as a debt independent of his liability as a share-holer moneys which were owing by him at the date of the forfeiture in the sense in which I read those words. Article 42 clearly requires us to treat the expressions 'money due' and 'money owing' in that Article in the sense of money due or money owing whether recoverable or not. Mr. Khergamwala has strongly relied upon the expression 'liable to pay' in Article 45, but that in my view is an expression which is ambiguous, and which may mean either legally liable or liable independently of any enforceable legal obligation. Seeing that the words are capable in my view of that double meaning, I see no reason why one should read into the expression in Article 48 the word 'legally' before the word 'liable'. Taking the articles together, in my opinion, the

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expression 'money owing' means money owing although not enforceable by action."

Mr. Awasthy has drawn my attention to two Division Bench decisions of this Court reported in *Firm Sahib Dayal Bakhshi Ram* v. *Assistant Custodian of Evacuees' Property, Amritsar and another* (1), and *Firm Priteshah Sadashiv* v. *Assistant Custodian of Evacuee Property, Amritsar and another* (2). They were decisions under section 48 of the Administration of Evacuee Property Act, 1950. It was held in those decisions that the Custodian had no power to decide the question, whether the debt is or is not barred by time or to order the recovery of such a debt. Mr. Awasthy relied upon the following observations of Weston, C. J., in *Sahib Dayal's case* (1)—

> "I find that the Custodian has no power to proceed against the applicant under section 48 of the Act for the recovery of the debts when the applicant objects to the recovery of those debts *inter alia* on the ground that the debts are barred by time."

The learned Chief Justice was of the view that sections 7 and 48 of the Administration of Evacuee Property Act, 1950, did not empower the Custodian to revive remedies barred by limitation or to create new remedies. I do not think, that the learned counsel for the respondents, in the case before me, can derive any assistance from the above dictum. In the case before me, there is no question of the revival of the remedies barred by limitation. After forfeiture the cause of action for the claim

(1) A.I.R. 1952 Pun. 389
(2) A.I.R. 1953 Pun. 21

has totally changed. On forfeiture of the shares a new remedy is provided under a new cause of action. The proposition of law expounded in the above authorities in no way runs counter to the principle which I am called upon to apply in this case.

Mr. Awasthy has then cited a Bench decision reported in *Shri Mahalakshmi Sugar Corporation* v. *Jasjit Signh* (1). It was held in that case, that when a suit to recover the call money is barred by time, the fact that simply because the name is kept in the register as a share-holder, and the share is forfeited only subsequently, does not revive the debt, and the company cannot claim the limitation should run from the date of forfeiture. In the judgment in that case, it was observed—

> "The phrase 'owing upon or in respect of such shares at the time of the forfeiture' which occurs in Article 39 of the Articles of Association, clearly refers to such sums of money as are legally due to and legally recoverable by the plaintiff company from the share-holder. * *
>
> It is clear that the forfeiture of the shares of the defendant by the plaintiff company cannot revive debts which had become time barred."

The exact terms of Article 39 of the Articles of Association in that case have not been quoted in the judgment. Assuming that Article 39 was in similar language, as Article 35 of Articles of Association of the petitioner Bank before me, I cannot induce myself to interpolate the words "legally due" and "legally recoverable" when referring to the sums claimed by the Company from the shareholders on forfeiture.

(1) A.I.R. 1933 Oudh 285

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The interpretation put by Blackwell, J., in the case of the *Indian Corporation Navigation and Trading Co.* (1) commends itself to me, when he said with reference to the meaning of expressions 'money due' and 'money owing' occurring in Article 42 of the Articles of Association, that he saw no reason why one should read into the expression in Article 48 the word "legally" before the word 'liable'. The interpretation placed by the learned Judges of the Oudh. Chief Court is strained and cannot be accepted in preference to the view expressed in the afore-mentioned Bombay decision.

This matter was also examined by a Bench of the Allahabad High Court in *Bhagwati Parshad* v. *Shiromani Sugar Mills, Ltd.* (2), where the facts were similar to the case before me. It was held—

> "We are satisfied that it was open to the company to validly forfeit the shares and that it could exercise its powers in respect of the dues which were time barred."

That decision also endorsed the principle, that in a case to which section 28 of the Limitation Act did not apply, on the determination of the period of limitation, the right itself was not extinguished, though the remedy was not enforceable in a Court of law by a suit.

A Single Judge of the Nagpur High Court in *J. B. Mudholkar* v. *M .E. R .Malak* (3), also followed the view of the High Courts of Bombay and

(1) (1934) 36 Bom. L.R. 32
(2) A.I.R. 1949 All. 195
(3) A.I.R. 1940 Nag. 235

Allahabad and held that a fresh cause of action arose on the date of the forfeiture of the shares, in accordance with the Articles of Association of a Comapny, and the suit for recovery of unpaid balance on shares, being within three years from the date of forfeiture, was within limitation.

The same principle was endorsed in *Habib Rowji* v. *Standard Aluminium and Brass Works, Limited* (1), *and in Maneklal Mansukhbhai* v. *Suryapur Mills Co., Ltd.* (2).

In view of the above discussion, I am of the view that the forfeiture of the shares of the respective respondents on 24th March, 1954, gave rise to a new cause of action and that the claim of the Banking Company was within limitation in view of the provisions of Article 115 of the Limitation Act, despite the fact, that a suit, if it had been instituted on ~~he~~ date of the claim for the recovery of the money due on the first call made on 15th October, 1948, would have become barred by limitation under Article 112 of the Limitation Act. I also think, that although the remedy by way of suit for the recovery of the money due on the first call had been extinguished by efflux of time, the right of the Company to the amount had not been destroyed. The sum in question was owing at the time of the forfeiture, though time-barred, and the liability of the respondents had not become extinct.

The objections of the respondents are without force and they are dismissed. In case No. 83 in C.O. No. 48 of 1954, I pass payment order against Seth Sant Lal for Rs. 5,676-10-0 inclusive of interest at the rate of 6 per cent per annum up to the 31st of May, 1954. I also allow future interest at the rate of 3 per cent per annum till realisation. There will be no order as to costs.

B.R.T.

(1) A.I.R. 1925 Bom. 321
(2) A.I.R. 1928 Bom. 252