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FACULTY OF JURIDICAL SCIENCES

Course : B.A.LL.B./BBALL.B IInd Semester

SUBJECT: COMPANY LAW
SUBJECT CODE: BAL 406/BBL 406

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LECTURE-16

What Is Constructive Notice?

Firstly, the meaning of constructive notice, constructive notice is implied or indirect notice, which is not received in reality but in the eyes of law it is been served. Which means law is putting obligations, it is been presumed that you have the knowledge regarding that particular fact. Or the notice is been served to you. For e.g. AIRTEL when you log in to the site of Airtel, on that site every information regarding the Memorandum or Articles or certificate of incorporation is been clearly stated if anybody who is interested in the deal with the company should read all the particulars, if any problems arises after dealing with the company you cannot

say that you have not been told earlier it is the duty of the outsider to read the memorandum or articles of that particular company in which you are dealing.

What Is Actual Notice

In reality you are getting the information Or firsthand information a person is getting. The information in personal is given to him or her. For e.g. a summon which is issued to the defendant for his appearance in the court. Or any particular information given to a person about any particular area.

What Is The Connection Of Doctrine Of Constructive Notice With The Company.

In company law or in company when we say about the public documents that is Memorandum of association and Articles of association, the person who is dealing with any company it has been presumed that he person who is dealing has full information or he has read the public documents. If anyone want to deal with the company should go through with the public documents of the company to know better the limitations or drawbacks of the company.

That is to know that the directors will contract or not contract or till what extent they can contract.

These all are written in the memorandum or articles of the company. If you are dealing in a company and you haven't read the memorandum or articles. Then it will be considered as your fault as it is been presumed that you have read all the information in the memorandum and articles and you cannot question that you are not been told earlier or that you have not been informed. Law will presume that you have read it all as going through the public document is the primary thing a person should access through before dealing with a particular company.

Memorandum of Association which is defined under section 2(56) & section 4 of the companies Act ,2013, it is an important step in the formation of the company, it contains the following fundamental clauses which is described as the conditions of the company incorporation.

- a) Name Clause
- b) Registered Oce Clause
- c) Objects Clause

d) Liability Clause

e) Capital Clause

Articles of Association which is dened under section 2(5) & section 5 of the companies Act, 2013, it is the second document which has to be registered along with memorandum. Articles are the internal regulation and bye-laws. Articles are to contain regulations for management of The company.

A leading case under Doctrine of Constructive Notice is Kotla Venkataswamy v. Chinta Ramamurthy AIR 1934 Madras 579.

In the article of the company there was written that if the company property will be mortgaged (mortgage means loan on immovable property) then in the articles there was a provision that the company if it mortgage the company property then in the mortgage deed there will be requirement of three signatures that is of the managing director, working director and the companys secretary.

These three peoples signature is mandatory that is what the

articles provision is about of that company. But in reality what happens there was only two signatures on the mortgage deed which is of secretary and working director and there was no signature of the company's managing director. And the plaintiff (lady) accepted the deed which was only executed by the secretary and director.

Then Court held that the mortgage deed was invalid due to only two signatures over it, but the plaintiff cannot claim under this deed. As it was presumed that the lady was known about that fact that in the articles this provision of three signatures is there so, court held that it is been presumed that you have gone through the articles of the company or read the articles before dealing with the company.

And hence she was not entitled to claim from the company. She was liable for her own wrong that she have not gone through the articles of the company. Company is not made liable. So, from this case we have correlated the Doctrine Of Constructive Notice.

So, we can say that this doctrine of constructive notice works in the favor of the company not the outsiders as, it has been presumed that the outsiders before dealing with the company has read the articles and memorandum of the company. So if any mischief happens then company is not liable for that as the in the eyes of law it is the presumption of the knowledge before dealing with the company.

In a case of - Dehra Dun Mussorie Electric Tramway Co. Ltd v. Jagmandar Das AIR 1932 All 141

The articles of the company provided that the directors could delegate all the powers except the power to borrow but the managing agents took the overdraft (that is cash is less but withdrawal is more) without the approval of the board was held binding the court saying that such temporary loans must be kept outside the purview of the relevant provisions.

Memorandum and Articles of the association are the public documents section 117 of the companies Act, 2013 denes resolutions and agreements to be led. The memorandum and articles should be read by the outsiders who are going

to deal with that company so that if any problem there afterwards occur to the outsider then the company will not be held liable as it is been presumed that they being dealing with the company has read the articles and memorandum of the company because these two documents are the first and foremost thing to be read before dealing with the company and there is no as such procedure to go through the public documents of the company there by.

As this doctrine is made to protect the insiders not the outsiders to the company. As this is been presumed or he is presumption of knowledge that the outsiders have gone through the public documents in which internal management and the special clauses and incorporation of the company has been discussed.

As a wise and prudent man a person should gone through or read these important provisions or documents so that rescue himself or herself to indulge in any bad circumstance after dealing with company because it is the presumption that the outsider has the knowledge of the information beforehand or before dealing with the company.

Memorandum of association and articles of association which is the primary and secondary source which is to be read properly by the person dealing as a prudent man he or she should gone through it , if any problem afterward arises he or she cannot say that he was not known about this or that, he or she has not been told about this provision or clause so to eliminate the danger which is on the outsider to the company he or she should must gone through it and read the provisions and the memorandum and articles of the company properly to not to get trapped in problem afterwards and to make a right decision and contract with the company should read the memorandum and articles of the company.

Because afterwards he or she can not shift the burden or make the company liable of their fault. And the outsider cannot plead guilty of ignorance of not reading the documents (memorandum and articles) because it is already been presumed by law that outsider have read the articles and memorandum of the company before dealing with the company.

MCQs

1. Memorandum of Association which is defined under section 2(56) & section 4 of the companies Act ,2013 and it is an important step in the formation of the company,

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

2. Articles of Association which is defined under section 2(5) & section 5 of the companies Act, 2013, it is the second document which has to be registered along with memorandum.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

3. Articles are to contain regulations for management of The company.

- i. True
- ii. False
- iii. Can not say

iv. None of the above

4. constructive notice is implied or indirect notice, which is not received in reality but in the eyes of law it is been served.

i. True

ii. False

iii. Can not say

iv. None of the above

5. In reality you are getting the information Or firsthand information a person is getting that is called actual notice.

i. True

ii. False

iii. Can not say

iv. None of the above

