

R-130A

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 21st December, 2010*

+ **RSA No.77/2003**

SHRI RAM SAROOP NADKARNI Appellant
Through: Ms. Amisha Upadhaya, Mr.
Anish Kumar Maggo, Mr.
Saurbah Mehra & Mr. Pawan
Bhatia, Advocates.

Versus

M/S LARSON & TOUBRO LTD.& ORS. Respondents
Through: None

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 15.11.2002 which had endorsed the finding of the trial judge dated 08.02.2002, whereby, the suit of the plaintiff stood dismissed.

2. The plaintiff had filed his suit for declaration and mandatory injunction against defendant no. 1, M/s Larson & Toubro Ltd. (L & T Ltd.), the company whose shares had been purchased by the plaintiff. Averment of the plaintiff was that he had purchased 200
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equity shares of defendant no. 1 from defendant no. 2 and 100 equity shares of defendant no. 1 from defendant no. 3. The distinctive numbers of the said shares have been mentioned in the plaint. The dates of the bill of which these purchases were made have also been detailed. Further contention of the plaintiff was that on 19.06.1992, the said shares along with his other shares of other companies were stolen from his car. FIR No. 377/1992 under Section 379 of the Indian Penal Code was registered. However, the case could not be solved. On 24.06.1992, plaintiff wrote a letter to the company informing him about the loss of the shares; he requested for duplicate share certificates. This request for issuance of duplicate share certificates was reiterated on 12.08.1992, 27.08.1992, 10.10.1992, 02.12.1992, 07.01.1993, 08.01.1993 thereafter again on 12.01.1993. On 15.01.1993, the plaintiff received a communication from the defendant company requiring certain details. On 14.03.1993, defendant requested the plaintiff to send him the correct registered folio number of the said shares which were accordingly sent. In spite of reminders, the defendant no. 1, however, did not transfer the said shares in the name of the plaintiff. Suit was accordingly filed.

3. The preliminary objection in the written statement was that the suit is barred under Section 10 and 113 of the Companies Act,

1956; the Company Law Board is the only forum which could decide this controversy. The trial judge relied upon the judgment of the apex court reported in 1995, Supplementary (4) SCC 590 Shripal Jain Vs. Torrent Pharmaceuticals Ltd. to arrive at this finding.

4. The judgment of the trial judge was confirmed in appeal. The impugned judgment vide endorsing this finding had relied upon the judgment of High Court of Bombay reported in AIR 1999Bombay-240 National Insurance Co. Ltd. Vs. Glaxo India Ltd.

5. This is a second appeal. It had been admitted and the following substantial question of law was formulated on 24.09.2009. It reads as follows:-

“Whether the courts below adopted the right perspective while deciding that the Civil Court has no jurisdiction to entertain the suit.”

6. Counsel for the appellant has vehemently urged that there is a distinction in a rectification and a title to the shares; in the instant case by way of declaration the plaintiff had sought a declaration that he had granted title to the said shares which were not yet transferred in his name. Reliance has been placed upon AIR 1998 S.C. 3153 Amonia Supplied Corpn. Pvt. Ltd. Vs. Modern Containers Pvt. Ltd. who support this submission. It is pointed out that the instant case is a case which would not be

covered by a “rectification”; jurisdiction of the Civil Court would not be barred.

7. The averments as deciphered from the plaint and prayer clause have been perused. Plaintiff had purchased shares of defendant no. 1 from defendants no. 2 & 3 which were stolen. Thereafter, repeated correspondence has been sent by the plaintiff to defendant no. 1 seeking issuance of duplicate shares in the name of the plaintiff; this request had not been adhered to in spite of the fact that the defendant company had sought details from the plaintiff which included the correct registered folio numbers of the shares which had been furnished by the plaintiff to the defendant.

8. In the judgment of Amonia Supplies Corpn. (Supra), the Supreme Court has expounded the definition of “rectification” as contained in Section 155 of the Indian Companies Act. It necessarily connotes same error in the Register of Members which requires a correction. Para 27 of this judgment is relevant and the same is herein extracted. It reads as follows:-

“In other words, in order to qualify for rectification, every procedure as prescribed under the Companies Act before recording the name in the register of the Company has to be stated to have been complied with by the applicant at least that part as required by the Act and assertion of what not complied with under the Act and rule by the person or authority of the respondent-Company before applicant to claim for the rectification of such register. The Court has to examine on the facts of each case, whether an application is for rectification or

something else. So field or peripheral jurisdiction of the Court under it would be what comes under rectification not projected claims under the garb of rectification. So far exercising of power for rectification within its field there could be no doubt the Court as referred under Section 155 read with Section 2(11) and Section 10, it is the Company Court alone which has exclusive jurisdiction. Similarly, under Section 446 the 'Court' refers to the Company Judge which has exclusive jurisdiction to decide matters what is covered under it by itself. But this does not mean by interpreting such 'court' having exclusive jurisdiction to include within it what is not covered under it, merely because it is cloaked under the nomenclature rectification does not mean court cannot see the substance after removing the cloak."

9. Rectification is thus the failure on the part of the Company to comply with the directions under the Act. Under Section 155 of the said Act before power is exercised for rectification certain essential ingredients are to exist. Section 108 gives a mandate to the company not to register transfer of shares unless the proper instruments of transfer have been executed by or on behalf of the transferor and by or on behalf of the transferee and have been delivered to the Company along with the certificates relating to the shares.

10. Section 155 of the said Act reads as under:-

"Section 155: Power of Court to rectify Register of Members-

- (1) If-
 - (a) the name of any person-
 - (i) is without sufficient cause, entered in the Register of Members of a Company, or
 - (ii) after having been entered in the register, is, without sufficient cause, omitted therefrom; or
 - (b) default is made, or unnecessary delay takes place, in entering on the register the fact of any person having become, or ceased to be a member;
- the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register."

11. Sub-section (1) (a) of Section 155 refers to a case where the name of any person without sufficient cause has been entered or omitted in the Register of Members of a Company. The word 'sufficient cause' has to be decided in relation to the Act and the Rules.

12. The correspondence addressed to defendant no. 1 had made a prayer seeking issuance of duplicate share certificates. Section 113 laid down the period of limitation for issuance of such certificates. The Company also sought for certain other details from the plaintiff which as per the plaintiff included the registered folio numbers as also affidavit and the indemnity bond which have been furnished by the plaintiff to the defendant company. It was thus now in the domain of the Company Law Board to make the necessary rectification in the Register of members. As is evident from the averments made in the plaint and the prayer clause of the plaint, these prayers of the plaintiff could have been answered only by the Company Law Board. There is no perversity in the findings in the impugned judgment. No interference is called for. Substantial question of law is answered accordingly.

Appeal is dismissed.

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DECEMBER 21, 2010/rs

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