

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

+ **FAO 347-48/2005**

Reserved on : 25.11.2010
Date of Decision : 08.12.2010

VISHNU MANGLANI & ANR Appellants
Through Mr. Pawan Mathur, Adv.

versus

M/S RELIANCE INDUSTRIES ... Respondent
Through Mr. Somiran, Mr Sidharth, Mr
R.S.Prabhu, Advs.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG,J**

1. This appeal arises out of judgment/order passed by the Addl. District Judge Delhi dated 02.09.2005 whereby in a suit/plaint filed for declaration/cancellation of transfer deed, mandatory and permanent injunction filed by the appellant has been directed by the Addl. District Judge to be returned for presentation before the Court of competent jurisdiction. The impugned order has been passed on the basis of the findings returned on issue No.1 which was as follows “whether this Court has got no territorial jurisdiction to entertain the present suit for the reasons stated in paragraph 2 & 3 of the written statement (preliminary objections)”.

2. The suit in question was filed by the appellant with the following prayers:

“(a) That a decree for declaration declaring the plaintiffs to be the owners of the shares, details of which are given hereunder be passed in favour of the plaintiffs and against the defendants:-

Distinctive Record No. Nos	Certificate No.	No. of Shares
---	930251955	50
---	930252005	50

133452933	-----	06307612	50
---	907158829	08070715	50

(b) A decree for cancellation of the Transfer Deeds bearing No. 4994198, 4994199, 4994201 and 4994203 be passed in favour of the plaintiff and against the defendants and direction be issued to defendant No.3 to deliver the original share scripts detailed in para No.1 above to defendant No.2 who in turn be directed to transfer the said shares in favour of the plaintiffs and deliver the same to the plaintiffs;

(c) a decree for permanent injunction be passed in favour of the plaintiffs and against the defendants restraining the defendants No.1 and 2 to transfer the said shares in favour of any one else and against the defendant No.3, his servants and agents from transferring, alienating, encumbering or parting with possession of shares bearing Nos. the details of which are given below:

Distinctive Nos	Record No.	Certificate No.	No. of Shares
----	930251955	09195779	50
---	930252005	09195779	50
Distinctive Nos	Record No.	Certificate No.	No. of Shares
133452933	---	06307612	50
---	907158829	08070715	50

- (d) Cost of the suit be awarded;
- (e) such other orders be passed as this hon’ble Court deems fit and proper.”

3. The facts in brief are that the appellants purchased 200 shares of respondent No 1 from respondent No 4 on 29.03.1993 vide intimation letter No TX-29006 dated 20.03.1993 for a total consideration of Rs 35,526/- which were delivered by respondent No 4 vide bill dated 12.04.1993 along with transfer deeds. The appellants have stated to have sent the said shares to respondent No 1 and 2 for carrying out ratification in the register of members vide letter dated 27.04.1993 and having not received any response from the respondents sent a fax message dated 25.09.1993 which was replied by the respondents through reply fax message and also vide letter dated 20.12.1993 stating that the shares stood transferred to respondent No 3 on transfer deeds lodged.

4. It is thereafter appellants filed the suit in question before the District judge on the ground that the respondent No 3 had no title, right or interest in the said shares and also the transfer deed alleged to have been executed

in favour of respondent no 3 is forged and fabricated document and hence needs to be cancelled by transferring those shares in the name of the appellant.

5. The Respondents No 1 & 2 have contested the suit on the grounds that the registered office of the respondents is located in Mumbai, hence the courts in Delhi have no territorial jurisdiction to try the suit as no cause of action arose here. Further respondents have also taken a stand that the issue relates to the rectification in the register of the shareholders U/s 155 of the Companies Act and hence either The Company Law Board can decide this issue or by the virtue of Section 10 of Companies Act , it is the Mumbai High Court or the District Courts at Mumbai U/s 10(a) who have the jurisdiction to try the suit.

6. The Appellants on the other hand have submitted that the subject matter does not fall under the jurisdiction of the Companies Act inas much as the jurisdiction exercised by the Company Court U/s 155 of the Act is discretionary and of summary nature, and if the title to the holding of the shares is challenged, then the Company Court will not inquire into such a dispute under Section 155 of the Act and for such an inquiry, a civil suit is the proper forum.

7. Further regarding the aspect that the Mumbai Courts have jurisdiction to entertain the issue as the registered office of the respondents is located in Mumbai, appellants contend that the respondents have their corporate office in Delhi and the share certificates were sent from Delhi and were delivered back to Delhi, as such a part of cause of action arose in Delhi and hence this court has jurisdiction to try the suit.

8. On the pleadings of the parties the Addl. District Judge to whom the suit was marked for trial framed following issues:-

1. Whether this court has got no territorial jurisdiction to entertain the present suit for the reasons stated in paras 2 and 3 of the written statement (Preliminary Objections)?
2. Whether the defendants No 1 and 2 did not receive the share certificates and the transfer deeds from the plaintiff as alleged in paras 6 (i) to (iii) of the written statement (reply on merits)? If so, its effect

3. Whether defendant No 3 in connivance with other defendants forged and fabricated transfer deeds in respect of 200 shares belonging to the plaintiff as alleged in para 1 of the plaint?

4. To what relief, if any, are the plaintiffs entitled?

9. The Addl. District Judge decided issue No.1 against the appellant and returned the plaint for filing the same before the competent Court by holding that the Court of District Judge Delhi had no jurisdiction to entertain the suit. Primarily it is the finding of the Addl. District Judge that the dispute raised by the appellant is required to be adjudicated by the Company Law Board under Section 155 of the Companies Act and therefore the objection ought to have been filed before the Company Law Board. It has been observed by the Addl. District Judge that:-

In the present case the plaintiffs seek entering of their names in the register of shareholders which as per them should have been done but has not been done and instead the name of defendant No 3 has been entered in the register. In sum & substance the relief claimed by the plaintiffs is the rectification of register of shareholders which is covered U/s 155 of Companies Act.

Section 10 of Companies Act reads as follows:-

Jurisdiction of courts- (1) The Court having jurisdiction under this Act shall be:-

(a) The High court having jurisdiction in relation to the place at which the registered office of the company concerned is situated, except to the extent to which the jurisdiction has been conferred on any district court or District courts subordinate to that High Court in pursuance of sub-section (2) and

(b) Where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district

(2)

(3)

In the present case, it is the admitted case of the parties that the registered office of the defendant No 1 is situated in Mumbai.

The Companies Act is admittedly a special enactment and the territorial jurisdiction has to be decided with reference to the special enactment. And that being so Section 20 CPC has no application.

10. I have heard the parties. I have examined the written synopsis filed by respondent. No written synopsis has been filed by the appellant It may

be observed here that Section 155 of the Companies Act has come into being after the amendment of Section 111 of the Companies Act w.e.f. 31.05.1991. According to the aforesaid provision the Company Law Board performs the functions that were here-to-before performed by the Court of Civil Judicature under Section 155. As per the aforesaid provisions of Company Law Board *“It is empowered to make orders directing rectification of the Company’s register as to damages, costs and incidental and consequential orders. It may decide any question relating to the title of any person who is a party before it to have his name entered upon the company’s register; and any question which it is necessary or expedient to decide, it may make interim orders. Failure to comply with any order visits the company with a fine. In regard to all these matters it has exclusive jurisdiction (except under the provisions of the Special Court Act). Its orders are appealable. The CLB, further, is a permanent body constituted under a statute. The CLB performs functions which are administrative, as under Sections 224 and 269, and curial, as under Section 111. In exercising its function under Section 111 the CLB must, and does, act judicially. It cannot be said to be anything other than a court, particularly for the purpose of Section 9-A of the Special Court Act.”*

11. The aforesaid observations were made by the Supreme Court in the judgment delivered by it in the case of Canara Bank Vs. Nuclear Power Corporation of India Ltd. & Ors. 1995 Supp (3) SCC 81. In view of the aforesaid, the issues raised by the appellant are required to be determined by the Company Law Board.

12. Another aspect of the matter is as to whether Delhi Courts have the jurisdiction to try the disputes or not. In this regard, in the case of Pandian Graphities (India) Ltd. Vs Louvumi Lakshmi and another (1996) 87 Comp. cases 323 (AP), the Apex Court has held that the location of the registered office of the company has to be taken into consideration for deciding the question of territorial jurisdiction with reference to the special statute, and held that since the registered office of the company is situated in Madras, the High Court of Madras has the jurisdiction to entertain matters relating to Company Court i.e. Company Law Board after the amendment of Section 111 of the Act.

13. At this juncture, it may also be relevant to take note of Section 155 of the Company Act, which reads as under:

“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 or 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, of the company, may apply to the Court for rectification of the register.

(2) The Court may either reject the application or order rectification of the register; and in the latter case, may direct the company to pay the damages, if any, sustained by any party aggrieved.

In either case, the Court in its discretion may make such order as to costs as it thinks fit.

(3) On an application under this Section, the Court

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(4) From any order passed by the Court on the application, or on any issue raised therein and tried separately an appeal shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (5 of 1908)—

(a) if the order be passed by a District Court, to the High Court;

(b) if the order be passed by a single Judge of a High Court consisting of three or more Judges, to a Bench of that High Court.

(5) The provisions of sub-sections (1) to (4) shall apply in relation to the rectification of the register of debentures holders as they apply in relation to the rectification of the register of members.”

13. Interpreting the aforesaid provisions, the Apex court, in the case of Ammonia Supplies Corporation (P) Ltd. Vs Modern Plastic Containers Pvt. Ltd. AIR 1998 SC 3153.

“The proviso gave discretion to the court to direct an issue of law to be tried, if raised. By this deletion, submission is that the Company Court now itself has to decide any question relating to the rectification of the Register including the law and not to send one to the civil court. There could be no doubt any question raised within the peripheral field of rectification, it is the court under Section 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. **In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away merely on account of the deletion of the aforesaid proviso.**

Sub-section (1)(a) of Section 155 refers to a case where the name of any person is without sufficient cause entered or omitted in the Register of Members of a company. The word “sufficient cause” is to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have been done under the Act and the Rules but not done. Reading of this sub-clause spells out the limitation under which the court has to exercise its jurisdiction. It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court under Section 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court.”

14. The Addl. District Judge has taken note of the provisions contained under Section of the Companies Act as also the judgment delivered by the Apex Court in the Case of Pandian Graphities (India) Ltd. Vs Louvumi Lakshmi and another, Canara Bank Vs. Nuclear Power Corporation of India Ltd. & Ors (supra) and has held that as opined by the Hon’ble Supreme Court in Canara Bank’s case the word ‘Court’ must be read in the context

in which it has been used in the Statute. And it has been observed that the 'Court' means CLB hereinafter which now exercises the powers that were exercisable by the Court u/s 155. It is entitled to direct rectification of register and the payment of damages by the company. It is entitled to decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register and to decide any question which it considers necessary or expedient in this connection.

15. The Court has also taken note of the judgments delivered by the Hon'ble Supreme Court in Ammonia Supplies Corporation (P) Ltd. Vs. Modern Plastic Containers Pvt. Ltd. AIR 1998 Supreme Court 3153 where also it has been held that the Court referred to under S.155 read with S.2 (11) and S.10 of the Companies Act, it is the company Court alone which has exclusive jurisdiction. And the jurisdiction of the Court u/s 155 to the extent it has exclusive, the jurisdiction of civil Court is impliedly barred.

16. It is in these circumstances, the Addl. District Judge decided issue No.1 against the appellant and held that the Court of Addl. District Judge Delhi neither has the territorial jurisdiction nor the subject matter of jurisdiction to try and entertain the present suit and accordingly has directed the Registry to return the plaint to the appellant for presentation before the Court of competent jurisdiction.

17. The learned counsel for the appellant has relied upon a judgment of a full Bench of the Apex Court given in the case of M/s. Ammonia Supplies Corporation Private Ltd. Vs. M/s. Modern Plastic Containers (Pvt.) Ltd. & Ors. AIR 1994 DELHI 51 where it has been held that:

The jurisdiction exercised by the Company Court under S.155 of the Act is discretionary and summary in nature. In exercise of discretionary and summary jurisdiction the Company Court can decline to entertain petition involving disputed and complicated questions requiring examination of extensive oral and documentary evidence. The remedy of suit for adjudication of disputes relating to title to shares is not barred.

18. On the other hand, respondents have also relied upon a Single Bench judgment of Rajasthan High Court in the case of Eternit Everest Ltd. Vs. Neelmani Bhartiya AIR 1999 RAJASTHAN 235 wherein it has been observed:

“10. The relief claimed by the plaintiff that he should be declared to be the owner of the above 300 shares and duplicate shares be issued to him cancelling the transfer of these shares in favour of the transferees. All other reliefs are consequential. In the circumstances of the case when the plaintiff himself has stated that he had signed the transfer deeds and kept them along with the share certificates and ultimately it is found that some one has come to possess the transfer deeds and original shares and put them up before the Company for the shares being registered in their names, it is clearly a case of cancellation of such registration of shares in the name of the transferees obtained by misrepresentation or fraud or any other reason. There is no question of declaration because when the register is rectified, automatically, the shares would revert back to the plaintiff. Moreover, the transferees would be necessary parties to suit for any such declaration and they are not impleaded.”

19. In the light of the law as discussed above and particularly observation made by the Apex Court in the case of Canara Bank Vs. Nuclear Power Corporation of India Ltd. & Ors. the jurisdiction is that of the Company Law Board to decide the lis which has been raised by the appellant, of course it is the Board which can decide even to direct the parties to approach the Civil Court in case they find that the claim was based upon some seriously disputed civil rights or title. However, before such a power is exercised by the Company Law Board and directions are given to the parties to approach the Civil Court it cannot be said that civil Court will have the jurisdiction which is sought to be pressed in service by the appellant. Consequently, the appeal filed by the appellant is dismissed with no orders as to costs.

20. TCR, if summoned, be sent back along with a copy of this order.

MOOL CHAND GARG, J

DECEMBER 08, 2010

‘sg/anb’