

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22.02.2010

+ CS(OS) 933/2008, I.A. No. 5982/2008

ASIAN HOTELS LTD.

..... Plaintiff

Through : Mr. Monark Gahlot, Advocate.

versus

Y.A. GHULAM MOHAMED & ANR.

..... Defendants

Through : Mr. Sachin Sood and Mr. Vinod Sharma, Advocates, for
Defendant No.1.Mr. Ashutosh Dubey and Mr. Love Kumar Sharma, Advocate, for
Defendant No.2.**CORAM:****MR. JUSTICE S. RAVINDRA BHAT**

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| 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. |

S.RAVINDRA BHAT, J.

1. In this rare and unusual form of proceeding, (under Section 88 read with Order 35, of Code of Civil Procedure (or CPC)), the plaintiff (hereafter referred to as “Asian Hotels Ltd.”) seeks relief as an inter-pleader about the true ownership of 2800 shares issued by it; both the defendants are rival claimants, to those shares.

2. The facts briefly are that the Asian Hotels Ltd. was incorporated in 1980. In 1982, it advertised, calling for applications in respect of a public issue of shares bearing face value of Rs.10/- each. The public issue was open between 04.02.1982 and 23.10.1982. One Mr. Y.A. Ghulam Mohamed applied for 2000 shares through an application No. 029651 on 14.10.1982.

He had furnished his address as C/o. M/s. Loay Printing Press, Ruwi, Sultanate of Oman. The shares applied for were allotted and Asian Hotels issued an intimation for the purpose, on 11.03.1983 (Ex. P-1/2). Asian Hotels relies upon the Company Share Register and a letter dated 13.10.1983, regarding issue of Equity Shares to non-residents; the latter document is produced as Ex. P-1/3. A copy of the Share Application Form applied for in 1982, being No. 29651, has been produced by Asian Hotels Ltd. along with an application, I.A. No. 3596/2009. The said document discloses that Mr. Y.A. Ghulam Mohamed, the applicant was a resident and held an account in the Indian Overseas Bank, Chakkarapalli, Thanjavur District, Tamil Nadu. The share application amount of Rs.10,000/- was drawn on Indian Overseas Bank, Fort Branch, Bombay, and was dated 14.10.1982. The fully paid Bank Share Certificate issued by Asian Hotels Ltd. was dispatched to the said Mr. Y.A. Ghulam Mohamed.

3. Asian Hotels Ltd. claims that when shareholders were asked to deposit the certificates for dematerialization, on 30.03.2007, the first defendant sent his original certificate for 2000 shares for conversion. In the meanwhile, apparently dividend of Rupee equivalent of US\$ 235.90/- towards the dividend payable through the Demand Draft dated 01.11.1989 had been issued, in respect of the shares. Thereafter, the second defendant appears to have received the said instrument, and intimated the Asian Hotels Ltd. about his correct address, stating about the changed address somewhere in Saudi Arabia. In that letter, the second defendant also claimed that the Demand Draft did not bear the correct names, which was not “Mr. Y.A. Ghulam Mohamed” but according to second defendant, “Mr. Gulam Mohammed”; a request was also made to correct the said shareholder’s name in the company’s record. The Asian Hotels Ltd. contends that it seems to have also been asked that duplicate Share Certificates ought to be issued to the second defendant since he had lost the original certificates. This was through a

letter dated 25.05.1994 from Mr. Gulam Mohammed. The plaintiff required the said second defendant, through a letter dated 27.05.1994 (Ex. P-1/16), to complete certain formalities like depositing an affidavit, execution of an Indemnity Bond, etc. The letter was acknowledged by the second defendant on 14.06.1994 (Ex. P-1/17). Asian Hotels appears to have received the application for duplicate certificate on 10.05.1994, and Indemnity Bond, also dated 10.05.1994; the same are produced as Exhibits P-1/18 and P-1/19. Mr. Gulam Mohammed, the second defendant wrote a letter on 15.07.1995, enclosing the (duplicate) Share Certificate with a request to convert them into marketable lots. A copy of the said letter is produced as Ex. P-1/20; the request was acceded to under cover of letter dated 31.07.1995 (Ex. P-1/21). The delivered shares duly cancelled after their being converted into marketable lots is produced as Ex.P-1/22.

4. Asian Hotels Ltd. contends that on 28.11.2006, the second defendant lodged his 2800 shares (originally 2000 shares and 800 bonus shares) for dematerialization through the depository participant, the UTI Bank. The request was, however, rejected on 11.12.2006 by Asian Hotels, stating that specimen signatures differed from the recorded signatures with the company.

5. In this background, the first defendant's application dated 30.03.2007 for dematerialization was rejected on the ground that the duplicate share certificate in lieu of original share certificates had been issued to the holder and accordingly, the certificates sent by the first defendant were being held by the company for cancellation and that his request for dematerialization could not be granted. The second defendant's application for dematerialization also was rejected on 02.05.2007 on the ground that there was dispute in respect of ownership of the shares. Apparently, the first defendant complained to the Securities and Exchange Board of India (SEBI). He alleged a scam and fraud in respect of his shares. The SEBI wrote to the Asian

Hotels on 10.08.2007, enclosing copies of the complaints received from both the defendants – by then, the second defendant had lodged a complaint, on 06.08.2007.

6. The Asian Hotels Ltd., as an inter-pleader, avers that its claim upon the share certificates, except for a declaration, is as to their true ownership and further that it is ready and willing to accept dematerialization of shares as the Court would adjudge, in favour of their owner.

7. As is evident, both the defendants lay rival claims to ownership of the shares. The first defendant alleges to be the legitimate and lawful owner of shares, in Folio Nos. 901779, bearing Distinctive Nos. 4733901-4735900. In support, he has placed on record the Prospectus issued by the Asian Hotels Ltd. in 1982 (Ex. DW-1/1); the letter written by C-Mackertich of Calcutta dated 09.10.1982, intimating Mr. Y.A. Ghulam Mohamed of Chakkarapalli, of their being nominated as agents in the Gulf, for handling share issues. He has also enclosed allotment letters issued by several companies other than the Asian Hotels Ltd. and a letter dated 09.03.1993, addressed to him at Sharjah, UAE, in respect of the dividend payable on the said 2000 shares in Folio No. 901779. The said document is marked as Ex. D-1/3.

8. The first defendant has also enclosed copies of his passport certified by the Consulate General of India at Dubai. The Passport bears the number J 888723; it describes the first defendant as an Accountant by profession, his place of birth as Chakkarapalli, Thanjavur District, Tamil Nadu and his date of birth as 19.03.1951. The various Visa Stamps appearing in the Passport disclose that the said defendant was in and out of the Sultanate of Oman between 1977 and 1984. The certified copies of renewed Passports have also been enclosed; they all bear Visa Stamps even upto contemporaneous times. The second defendant contends to be the lawful owner, of the concerned shares, and submits that he was allotted them and had applied for

correction of his name in 1990, which was accepted by the Asian Hotels Ltd. He, therefore, maintains that having accepted the request for correction of name from Y.A. Ghulam Mohamed to Gulam Mohammed, the company cannot now be permitted to state that he is not the owner, or question his title to the shares.

9. In support of ownership, the second defendant relies upon a copy of his Passport attested by the Special Executive Officer at Aurangabad. This Passport appears to have been issued on 16.06.2004; it records the second defendant's name as "Gulam Mohammed Jagirdar", whose place of birth was Jalna. The said second defendant's father's name is Shamsuddin; his address is 22, Maghribi Colony, RTO Station Road, Aurangabad. The copy of the Passport is a cancelled one. It records his date of birth as 15.03.1940. This document has been produced as annexure to an additional affidavit filed by the second defendant on 14.01.2010.

10. The second defendant has also relied on copies of telex dated 04.08.1990 and a letter dated 04.08.1990 (pertaining to the correction of name appearing on the Dividend Warrants); letters dated 14.04.1994, 25.05.1994, 27.05.1994, 14.06.1994, 15.07.1994 and 31.07.1995, pertaining to issue of duplicate Share Certificates, exchanged with Asian Hotels, and supply of the said 2000 shares into marketable lots of 50 shares. The cancelled share certificate (duplicates of which were issued on 31.03.1995 by Asian Hotels) has also been produced by him.

11. It is evident from the above discussion that the question which this Court has to decide and rule upon is as to which defendant is the lawful owner of the 2000 shares issued by the Asian Hotels Ltd., and allotted by the said company, pursuant to its public issue of 1982. The allotment concededly was made in 1983. During pendency of this suit, the Court had, by an order dated 07.08.2008 ordered that the 2800 shares were to be deposited in Court and that the dividends

accruing should be deposited with the Registrar General of this Court. The Asian Hotels Ltd. had complied with the order.

12. The best piece of evidence in this case, in the opinion of the Court, is the Share Application Form bearing no. 29651. A copy of the said application was produced along with I.A. No. 3596/2009. The Court disposed of the application, I.A. No. 3596/2009,, declining the plaintiff's request to forward the original application form to the Central Forensic Science Laboratory (CFSL), for opinion. However, the fact that such an application was made has not been seriously contested by any of the parties. Only the first defendant has replied to the application; besides alleging malafides, he does not dispute the said share application form.

13. The form in question mentions the name of the applicant as Y.A. Ghulam Mohamed and lists his address as "C/o. M/s. Loay Printing Press, Ruwi, Sultanate of Oman". The bank issuing the Draft, which, according to the instructions on the application, was also entitled to refund, (in the event of non-allotment of shares) was the Chakkarapalli, Thanjavur Branch of the Indian Overseas Bank. The copy of the Passport produced by the first defendant, issued on 04.06.1974, discloses his place of birth as Chakkarapalli, Thanjavur District, Tamil Nadu and his date of birth as 19.03.1951. The share application interestingly lists the applicant's age as 31 years. It is a matter of record that the original share allotment certificate (Ex.P-1/2) forwarded to the Asian Hotels Ltd. in 2007, at the time of the first defendant's request for dematerialization also lists the address of the allottee as "C/o. M/s. Loay Printing Press, Ruwi, Sultanate of Oman". The said document is exhibited as PW-1/2, and has been filed by Asian Hotels Ltd. The intimation dated 13.10.1983 by the Asian Hotels Ltd., describing the registered Folio No. and also intimating about permission under FERA is marked as Ex. P-1/3. Two letters have been produced, of M/s. Loay Printing Press, Ruwi, Sultanate of Oman dated 01.03.1980,

01.04.1981 and 01.05.1982, in regard to the employment of the second defendant. These documents have not however, been admitted by the other parties to the suit.

14. As against these materials, the second defendant has produced a copy of a Passport which mentions the name as “Gulam Mohammed, S/o Shamsuddin”, and that his date of birth as 15.03.1940. He has produced copies of letters, after the year 1990; all commencing with the request for issue of duplicate shares, the request for correction of name and Dividend Warrants, and subsequent request for supply of shares in the marketable lots and the Asian Hotels Ltd.’s acceding to these requests.

15. From the above discussion, it is apparent that one Y.A. Ghulam Mohamed, son of Mr. Y. Abdul Ghani had applied for and was allotted 2000 shares in 1982-83. The originals of the shares allotment letters as indeed the original share certificate placed on the record by the plaintiff were issued to the said Y.A. Ghulam Mohamed. The intimation was given to the said allottee at his address - C/o. M/s. Loay Printing Press, Ruwi, Sultanate of Oman (Ex. P-1/2 and P-1/3). The copies of Passports produced by the first defendant have been duly authenticated by the Consulate General of India at UAE; they clearly list his address as - Chakkarapalli, Thanjavur District, Tamil Nadu at the most contemporaneous time. He is the son of one Mr. Y. Abdul Ghani – the name mentioned in the application form. His date of birth is 19.03.1951. On the other hand, the second defendant’s name is not “Y. Ghulam Mohamed”, but “Gulam Mohammed”. His father is Shamsuddin; his given address is somewhere in Maharashtra, i.e. 22, Maghribi Colony, RTO Station Road, Aurangabad. Furthermore, his date of birth is 15.03.1940 – which means that he would have been 42 years at the time of application for the shares in 1982. The second defendant’s evidence largely hinges on from the time he made the request for correction of name in the Dividend Warrant issued by the Asian Hotels Ltd. in 1990. He follows

it up with request for issue of duplicate shares and the grant of that request in 1994-95; and he further requested for supplying of share certificate so that they could be in marketable lots. That request too was granted. However, he is unable to substantiate why for eight years he suffered his name to be described as “Y.A. Ghulam Mohamed”. He does not dispute that the company had issued a dividend in 1987. No explanation or material exists on record evidencing that in 1982 or 1990, he was in UAE or anywhere in any Gulf country. The copies of Passports placed on the record are not of contemporaneous times – 1981-82 but of 1994 and 2004. Moreover, the entire passports have not been produced, evidencing that he was at the relevant time in UAE or anywhere nearby.

16. In this Court’s opinion, there is sufficient material by way of documentary evidence – the original share certificate sent by the first defendant in 2007, the allotment letters, Ex.P-1/2 and Ex.P-1/3 and the copies of the first defendant’s passport certified by the Consulate General of India, (showing that he was in Oman in 1982-83) establishing that the said first defendant was the applicant-allottee of the said shares, who had paid for them. These materials amount to admission, under Order 12 Rule 6, CPC enabling the Court to draw a decree. The conclusion drawn is also corroborated by the particulars as to the applicant’s age, and address, appearing on the copy of the share application form submitted to Asian Hotels. On an overview of all the material facts, therefore, this Court is of the opinion that the true and lawful owner of the 2000 shares and the 800 bonus shares issued by the plaintiff, the Asian Bank Ltd., is the first defendant, Mr. Y.A. Ghulam Mohamed.

17. In an interpleader proceeding, though the plaintiff does not have any interest except to ensure that the original owner of the property is declared and that he has lawful dealings with such persons, the facts disclose that the Asian Hotels was requested in 1990 for change of a

name. Thorough checking did not apparently take place at that stage, in all probability, specimen signatures were not compared; even the addresses of the allottee concerned does not appear to have been seen, and resultantly, the duplicate share certificates were issued to a third party stranger, who was not their owner. All these resulted in an avoidable controversy. The plaintiff company appears to have woken-up only in 2007 when the first defendant sent the original share certificates – at the same time, the second defendant's application for dematerialization also reached the records of the company, which appears to have scrutinized the matter carefully. The first defendant, perhaps justifiably, argues that the plaintiff has shown negligence in this regard.

18. In the above circumstances, this Court is of the opinion that the suit has to be decreed, declaring the first defendant to be the true and lawful owner of the 2800 shares in dispute. The plaintiff is directed to process the said defendant's application for dematerialization of the share certificates, which are lying in Court. The said first defendant is also entitled to the accrued dividends which are also lying in Court. The registry is directed to release the share certificates, and the amounts towards accrued dividends, to the first defendant.

19. CS (OS) 933/2008 is decreed in the above terms; the costs of these proceedings shall be borne by the second defendant. Counsel's fee is quantified at Rs.75,000/-. The plaintiff shall be entitled to be paid Rs.25,000/-, in addition to other costs incurred in the proceeding. The balance Rs.50,000/- shall be paid to the first defendant. The second defendant shall comply with the terms of these orders within eight weeks from today.

(S. RAVINDRA BHAT)
JUDGE

FEBRUARY 22, 2010
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