

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

+ **RFA No.520-27/2005**

% **27th March, 2012**

SATISH CHANDRA SANWALKA & ORS. Appellants

Through : Mr. B.K. Sood, Advocate.

versus

M/S. TINPLATE DEALERS ASSOCIATION PVT. LTD. & ORS.

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 19.3.2012. No one appears for the respondents although it is 3.20 P.M. I have therefore heard the learned counsel for the appellants and perused the record. I am consequently proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 4.4.2005 rejecting the plaint

under Order 7 Rule 11 CPC on the ground that disputes which were subject matter of the suit under the Companies Act, 1956 (hereinafter referred to as 'the Act') had to be decided by the Company Law Board by virtue of Section 111 of the Act.

3. The facts of the case are that the plaintiffs filed the subject suit for declaration and mandatory injunction on the pleading that the shareholding of defendant Nos.3 and 6 to 9 of the defendant No.1 was of Redeemable Preference Shares issued in the year 1957 for a term of 10 years redeemable in the year 1967; that the defendant No.1-company issued a notice dated 12.10.1996 for holding of an Extraordinary General Meeting on 9.11.1996 for passing of a resolution subject to the consent of the Company Law Board for issuing of 7172 10% Tax Free Cumulative Redeemable Preference Shares of ₹ 100/- each redeemable on 31.10.2006 to the shareholders and on the issue of which 7172 preference shares, unredeemed redeemable cumulative preference shares issued in the year 1957 shall be deemed to have been redeemed. Another notice to the same effect dated 17.10.1996 was also said to have been received by the plaintiffs. It was contended by the plaintiffs that the redeemable preference shares of the year 1967 should have been redeemed in the year 1967 itself and after the due

RFA No.520-27/2005

date of redemption, the shares would have ceased to exist. It was pleaded that the defendants were wrongly considering the redeemable cumulative preference shares issued in the year 1957 to exist. Declaration was sought that the right of the preference shareholders of the year 1957 would only be for recovery of debt and which also in any case had become time barred.

4. Defendant No.1 filed its written statement wherein it was claimed that shares which were the subject matter of the suit were subject matter of the compromise pending before the Company Law Board and which compromise was arrived at on 30.10.1996 and that the plaintiffs were not the shareholders of the company and therefore had no locus standi to file the suit. It was denied that defendants were issued preference shares for 10 years period and which were due for redemption in the year 1967. The trial Court has dismissed the suit by making the following observations:-

“9. It is true that for deciding an application U/O 7 Rule 11, the averments made in the plaint are to be considered. Defence of the defendant in the Written Statement has to be ignored. In the suit plaintiff prayed for decree of declaration declaring that 3065 6% Tax Free Cumulative Redeemable Preference Share cannot be substituted by fresh issuance of shares. The second declaration sought was that after due date of redemption of 3065 Preference Shares the right of shareholders was only to recover the share money. Since 29 years had passed, the debt had become time barred. The third prayer was for decree of mandatory (sic) injunction restraining the defendant from holding Extraordinary

General Meeting on 09.11.1996. Though in the application U/O 7 Rule 11 many grounds were taken by the defendant. To my mind ground no.1 and 6 are sufficient to dispose of the present suit. Even if we ignore the averments regarding compromise being effected before Company Law Board, we find that the relief sought by the plaintiff otherwise cannot be granted.

10. **Section 111 (4) & (5) of Companies Act reads as under:-**
(4) 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 in the register the fact of any person having become, or ceased to be, a member (including a refusal under sub-section (1)),

the person aggrieved, or any member of the company, or the company, may apply to the (Tribunal) for rectification of the register.

(5) The (Tribunal), while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after defendant. To my mind ground no.1 and 6 are sufficient to dispose of the present suit. Even if we ignore the averments regarding compromise being effected before Company Law Board, we find that the relief sought by the plaintiff otherwise cannot be granted.”

5. A reading of the aforesaid paras shows that the trial Court held that the jurisdiction of the Civil Court was barred as the Company Law Board has jurisdiction under Section 111 of the Act. In my opinion, the trial Court has misdirected itself in holding that the jurisdiction of the Civil Court

is barred. Section 111, sub-sections (4) and (5) of the Act are in fact
RFA No.520-27/2005 *Page 4 of 7*

reproduction of the erstwhile Section 155 of the Act. The repealed Section 155 of the Act 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 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.

(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, any appeal shall lie on the grounds mentioned in Section 100 of the Code of Civil Procedure, 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 the 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 debenture holders as they apply in relation to the rectification of the register of members.”

6. While dealing with the provision of Section 155, the Supreme Court in the case of *Claude-Lila Parulekar (Smt) Vs. Sakal Papers (P) Ltd. and Ors. (2005) 11 SCC 73* had held that the jurisdiction of the Company Court under Section 155 of the Act and of the Civil Court under Section 9 of CPC is concurrent. I may also refer to the judgment of the Supreme Court in the case of *Ammonia Supplies Corporation (P) Ltd. Vs. Modern Plastic Containers Pvt. Ltd. and Ors. (1998) 7 SCC 105* which holds that highly disputed questions of fact in fact ought to be decided by the Civil Court and not by the Company Law Board. Thus, looking at the issue from any angle i.e. whether of the fact that jurisdiction of the Civil Court is concurrent with the Company Law Board or the fact that it is preferable that highly disputed questions of fact such as those in the present case, ought to be decided by the Civil Court, the impugned judgment, therefore, dismissing the suit of the appellants/plaintiffs was not correct and is accordingly set aside.

7. In view of the above, the appeal is accepted. Impugned

judgment dated 4.4.2005 is set aside. It is held that the Civil Court has jurisdiction to try and determine the disputes which were the subject matter of the suit.

8. Let the parties appear before the District & Sessions Judge, Delhi on 1st May, 2012, and on which date the District & Sessions Judge, Delhi will mark the suit for disposal to a competent Court in accordance with law. The Court, to whom the suit will be marked, will issue notice to the defendants in the suit before proceeding ahead in the matter. Trial Court record be sent back so as to be available before the District & Sessions Judge on the date fixed.

VALMIKI J. MEHTA, J.

MARCH 27, 2012

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