

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

% *Reserved on: 10<sup>th</sup> September, 2013*  
*Date of Decision: 18<sup>th</sup> September, 2013*

+ **CO.A(SB) 69/2011**

**DINESH SUD**

..... Appellant

Through: Mr. H. L. Tiku, Sr. Advocate with  
Mr. Ajay Goyal, Mr. Shubhankar  
Sengupta, Mr. Shailabh Tiwari,  
Mr. Bikash Mohanty and Ms.  
Ritu Chhabra, Advocates.

versus

**M/S. STITCHWELL QUALITEX  
PVT. LTD. & ORS.**

..... Respondents

Through: Mr. Anish Dayal with Mr.  
Siddharth Vaid, Advocates.

**CORAM:  
MR. JUSTICE R.V. EASWAR**

**JUDGMENT**

**R.V. EASWAR, J.:**

This is an appeal filed under Section 10F of the Companies Act, 1956, the order impugned being that of the Company Law Board passed on 04.07.2011 in Co. Pet. No.10/111/2009, in an application filed by the appellant herein under section 111(4) of the Act for rectification of the register of members.

2. M/s. Stitchwell Qualitex Pvt. Ltd., the first respondent herein, is a company incorporated on 23.07.1980. Its initial shareholders were members of the family of S.N. Sud – S.N. Sud himself, his son Dinesh Sud who is the appellant herein and Ms. Manju Shiv Sud, his daughter (and sister of the appellant). Each of them held 50 equity shares of ₹10 each. In the year 1983, the issued share capital was raised to 10,000 shares of ₹10 each. These shares were held as follows: Ms. Manju Shiv Sud 2000 shares, S.N. Sud 2500 shares, Mrs. Krishna Sud, the wife of S.N. Sud 3000 shares and Dinesh Sud 2500 shares. No physical share certificates were given to them, apparently because they were all family members.

3. The appellant and his father, S.N. Sud, were also carrying on business in partnership in the name and style of Stitchwell Qualitex.

4. On 01.10.1993, the appellant resigned from the directorship of the company. Mrs. Krishna Sud, his mother, died intestate on 03.01.1995 and S.N. Sud, his father, died on 11.02.2001, leaving a will dated 25.06.1998.

5. Trouble appears to have started when the appellant wrote to the company on 10.01.2009, through his advocate, that he came to know from some documents that he was not being shown as a shareholder of the company and demanded to know how many shares stood in his name. He also wanted to inspect the records of the company. The company wrote back, through its advocate, on 20.01.2009 that (a) the appellant was not a shareholder of the company; (b) he was not a shareholder for the past 15 years; (c) that pursuant to a family settlement effected by S.N. Sud in 1993 the appellant had relinquished all his shares in the company and it is a mala fide attempt on his part to rake up a closed issue after several years; (d) no enquiry, as claimed, had been made by the appellant with the company at any earlier point of time about his shareholding; (e) inspection of the company's records cannot be given.

6. In a series of correspondence exchanged thereafter, the appellant kept claiming that he was one of the original shareholders of the company with equal holding with his sister and father, that his holding was increased by 2500 shares in 1983, that though he resigned as a director of the company on 01.10.1993 he continued to hold his shares

which amounted to 25% of the total shares, that after the death of both his father and mother a part of their shares also came to his share by succession/devolution and thus he held 5250 shares in the company which came to 52.5% of the total shares and therefore he was entitled to be taken into confidence about the manner in which the company was being run, the meetings held etc. He also claimed that there were irregularities in the manner of conducting the affairs of the company and fudging of records, forging his signatures and the like. He also demanded to be supplied with a copy of the family settlement said to have been effected by his father.

7. The company's response, through its advocate's letter dated 09.04.2009 was this. There was a family settlement in 1993 under the guidance of late S.N. Sud, under which it was decided that the appellant would resign from the company and take up the operations of the firm M/s. Stitchwell Qualitex at A-11, Sector 57, Noida, S.N. Sud would continue in the firm only as a sleeping partner, that too only till March, 1994. The company would continue to run the operations at G-58, Sector-6, Noida. It would be managed by S.N. Sud and the appellant (Dinesh Sud) would withdraw from his rights in the company. This

arrangement was informed to the NOIDA authority on 31.12.1993 by a letter, which was also signed by the appellant. Pursuant to the family settlement as above, he had also resigned from the directorship of the company. He was thus aware of the family settlement. In the further letter written to the NOIDA authority on 25.01.1994, read with the reply dated 23.02.1994 of the said authority the shareholding pattern of the company was set out, which did not show the appellant as a shareholder, but showed only S.N. Sud, his wife Krishna Sud, daughter Manju Shiv Sud and her son Pankaj Shiv Sud as shareholders. Thereafter, Krishna Sud transferred her shares to Manju Shiv Sud and Pankaj Shiv Sud, as evidenced by the letter dated 28.11.1994 addressed to the board of the company. She passed away in 1995. In the year 1998, S.N. Sud, the father, transferred his shares in the company to Manju Shiv Sud and Pankaj Shiv Sud and accordingly informed the Registrar of Companies by letter date 31.03.1998. Thereafter, the only shareholders of the company were Manju Shiv Sud and her son Pankaj Shiv Sud. The fact that there was a family settlement in 1993 was also adverted to in the will left by S.N. Sud. He passed away in 2001. The annual returns were filed with the RoC only on the above basis, that is to say, that Manju

Shiv Sud and Pankaj Shiv Sud were the only shareholders of the company. It is inconceivable that a person claiming 52.5% shareholding in the company would have kept away from the affairs of the company and would not have shown any interest in them or would not have made any enquiry about the business of the company for a period of 15 years (from 1993). The appellant had no stake in the company and therefore granting inspection of the records of the company was out of the question. So ran the reply of the company.

8. The appellant thereupon moved Co. Pet. No.10/111/2009 before the CLB under section 111(4) of the Act, seeking registration as a member of the company and challenging the action of the company in not recognising him as a shareholder as claimed by him. The following points were raised by him: (i) he did not sign any document giving up the shares; (ii) the shares held by S.N. Sud and Krishna Sud were also got transferred to themselves by Manju Shiv Sud and Pankaj Shiv Sud, who were arraigned as respondents before the CLB; (iii) the respondents were preventing the appellant from exercising his role as majority shareholder of the company holding 52.5% of the shares; (iv) the company, which was the first respondent before the CLB, was wrong in

denying inspection to the appellant; (v) the appellant was denied information about the affairs of the company and its accounts, as well as about the meetings held; (vi) the mere separation of the family business into agricultural implements business and bag-closing machines and conveying systems which took place in 1993 is being deliberately twisted to show as if it was a family settlement; (vii) facts were misrepresented to the Noida authority; (viii) the petitioner was ill with acute ulcerative colitis and severe eye problem between 2001 and 2008, which prevented him from raising his claim with the company; there was no negligence on his part.

9. On behalf of the respondents before the CLB, the following points were made: (i) the petition filed after 16 years from 1993, when the name of the appellant was said to have been omitted from the register of members, is vexatious; (ii) the petitioner was not justified in denying the family settlement, of which he was part, and was thus within his knowledge; (iii) the petitioner cannot avail of the remedy under section 111 which provides for a summary proceeding, and the proper remedy was to file a civil suit; (iv) the family settlement was oral, under which the petitioner (appellant herein) got the erstwhile partnership business

with S.N. Sud continuing only as a sleeping partner till 31.03.1994; (v) that for a period of 16 years the petitioner accepted the family settlement and without any reason and justification, and out of spite and ill-will towards his sister and her son, has filed the petition to harass and humiliate them; (vi) that the family settlement was acted upon by all parties including the petitioner and it was not open to him, after a period of 16 years, to claim that there was no such settlement; (vii) that there was ample documentary record to show that the family settlement was acted upon; (viii) there was no evidence to show that the petitioner was entitled to any shares held by S.N. Sud and Krishna Sud, on their death; (ix) the petition was liable to be dismissed on the ground of limitation itself, having been filed after 16 years from the date on which his name was omitted from the register of members, or in the alternative, the petition was liable to be rejected on the ground of laches or unreasonable delay.

10. The CLB was inclined to look upon the company as a family concern, run without any pretence to professionalism; no share certificates were issued, no formal meetings were held and annual returns were not filed with any regularity. It noted that all the members

of the family resided in the same house, in different floors. The petitioner did not claim any share in the shares left by his mother on her death in 1995, nor did he claim any share in the shares left by the father on his death in 2001. There is no written communication by him asking for details of his shareholding as registered in the record of the company, nor is there any evidence of oral requests or demands to that effect. In any case, in summary proceedings under section 111 it is not permissible to examine the facts and insist on evidence in a formal manner. From 1993, for a period of 16 years the petitioner has kept quiet. According to the CLB, there was therefore inordinate and unexplained delay on his part, amounting to laches which disentitles him from claiming any relief under the section. The allegations of fraud remain mere allegations without any proof. The CLB held that there was no answer to the settlement effected in the life-time of S N Sud. In this view of the matter, the petition was dismissed.

11. It is the above order of the CLB that is under challenge in the appeal before me.

12. The learned counsel for the appellant Dinesh Sud confined his claim to the 2500 shares allotted to him in 1983, apparently realising the

difficulty in pitching his claim higher to include the shares which the appellant claimed on the death of his parents, which would have involved complicated questions relating to the proving of the will etc. that are really matters for a civil court to deal with. He contended that firstly there was no period of limitation prescribed by sub-section (4) of section 111 for filing an application to the CLB seeking rectification of the register of members and therefore the observations of the CLB regarding laches and unreasonable delay on the part of the petitioner-appellant were of no relevance. He pointed out that section 108 is mandatory in nature, in the sense that no transfer of shares can be registered by the company unless there is a written transfer deed; in the present case, there was no communication from the appellant to the company to transfer his shares. Therefore, it was contended, the removal of the appellant from the register of members was illegal and unauthorised and in blatant violation of the section. He cited *Mannalal Khetan & ors. vs. Kedar Nath Khetan & ors. (AIR 1977 SC 536)* and *Dale and Carrington Investments (P.) Ltd. & anr. vs. P. K. Prathapan & ors. (2004) 122 Comp. Cas. 161 (SC)* in support of his contention that section 108 was mandatory in nature. It was further contended that there

can be no question of any waiver or acquiescence of the rights of a shareholder as laid down in *Sha Mulchand & Co. Ltd. (in liquidation) vs. Jawahar Mills Ltd. (AIR 1953 SC 98)*. Alternatively, it was contended that limitation, if any, commenced from the time at which the appellant had knowledge about the acts of the company. At any rate, it was contended, the appellant was afflicted by acute ulcerative colitis and severe eye problem during the period 2001 to 2008 which explained the delay, if any. In support of his submissions, learned counsel relied on the following further authorities: *Maheshwari Khetan Sugar Mills (P.) Ltd. & ors. vs. Ishwari Khetan Sugar Mills & ors. (1963) 33 Comp. Cas. 1142 (All.)*; *Farhat Sheikh vs. Escman Metal Chemical Pvt. Ltd. & anr. (1991) 71 Comp. Cas. 88 (Cal.)* and *N. S. Nemura Consultancy India P. Ltd. & anr. vs. A. Devarajan (2010) 155 Comp. Cas. 175 (Mad.)*.

13. Per contra, the submissions of the learned counsel for the respondents were as follows. There are at least five documents which are consistent with the oral family settlement effected by the father S.N. Sud in 1993 and they are: (i) the letter dated 31.12.1993 written to Noida authority which was also signed by the appellant; (ii) the letter

dated 25.01.1994 written to the said authority (read with the reply dated 23.02.1994 of the said authority) giving the details of the shareholding in which the appellant's name did not figure; (iii) the annual return made upto 30.09.1994 filed with the RoC; (iv) the letter written by S.N. Sud to the RoC on 31.03.1998 intimating that he has transferred all his shares in the names of Manju Shiv Sud and Pankaj Shiv Sud, a copy of which was marked to the auditors of the company and (v) the will dated 25.06.1998 executed by S.N. Sud in which there is no reference to the shares in the company (as they had been transferred in the names of Manju Shiv Sud and Pankaj Shiv Sud earlier), but containing a reference to the terms of the family settlement effected earlier. Moreover, there was complete silence on the part of the appellant during a period of 16 years from 1993 till the date of filing the petition before the CLB, which is wholly inconsistent with the claim now made. The long and inordinate delay has not been explained; there was thus laches on his part. Further, there is no medical certificate filed in support of the illness from which the appellant was said to have been suffering during 2001-2008, and in any case, it covers only a part of the long period, the period between 1993 and 2001 remaining to be explained. The extracts from

the minutes-book for the meeting held on 20.06.1997 filed by the appellant himself, do not show his name as a shareholder, and show only S.N. Sud, Manju Shiv Sud and Pankaj Shiv Sud as shareholders. A letter had also been written by Krishna Sud on 28.11.1994 to the company asking it to transfer her shares in the name of her husband, daughter and grandson; no shares were given to the appellant, her son. Strong reliance was placed on the judgment of the Supreme Court in *Kale vs. Deputy Director of Consolidation & ors. (1976) 3 SCC 119* in which the sanctity to be accorded to a family settlement was stressed in the interests of peace, amity and goodwill amongst the family members and it was held that no person who was party to such a settlement shall be permitted to resile from or impeach the same at any later point of time, after the settlement had been acted upon by the parties.

14. In his rejoinder, the learned counsel for the appellant submitted that even the CLB has observed that there was no regular filing of the annual returns by the company, which was run as a family concern and therefore no reliance can be placed upon them. Further, in the annual return made up to 30.09.1994, it has been stated by the company that no transfer of shares took place since the last annual general meeting,

which must have been in 1993; that shows that the shares of the appellant were not transferred or given up by him pursuant to the so-called family settlement. Further, the chartered accountants in their inspection report have stated that no annual returns relating to the year 1990-91 to 1998-99 were available with the RoC. He finally submitted that the appeal may be allowed and the appellant's name be directed to be included in the register of members or in the alternative the matter may be remanded to the CLB for fresh disposal.

15. On a careful consideration of the facts in the light of the rival contentions and the authorities cited, I am unable to see any question of law arising out of the decision of the CLB. The key issue in this case is whether there was an oral family settlement in 1993 under which the appellant gave up his shares in the company. In several judgments, it has been held by the Supreme Court that a family settlement is given effect to by the courts on the broad and general principle that it brings about peace and harmony in the family and puts an end to existing or future disputes regarding property amongst the members of a family: ***Sadhu Madho Das vs. Pandit Mukand Ram & anr. (AIR 1955 SC 481)***; ***Ram Charan Das vs. Girijanandini Devi & ors. (AIR 1966 SC 323)***. It has

also been held that a family arrangement or settlement need not be in writing and registered; it can even be oral: ***Tek Bahadur Bhujil vs. Debi Singh Bhujil & ors.*** (AIR 1966 SC 292). In ***Halsbury's Laws of England, Vol.17, Third edition***, it has been stated – and that has been approvingly cited by the Supreme Court in ***Kale and others vs. Deputy Director of Consolidation and Ors.*** (*supra*) – that a family settlement may be implied from a long course of dealing. Since it is assumed that there is some sort of antecedent title vested in the parties to the settlement which the settlement recognises and acknowledges, no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the settlement: ***Sadhu Madho Das vs. Pandit Mukand Ram*** (*supra*). In ***Ram Charan Das*** (*supra*) it was further observed that the consideration in the case of a family arrangement is the expectation that it will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with each other and therefore the rights obtained thereunder cannot be permitted to be defeated thereafter. The courts strongly lean in favour of family arrangements or settlements because they ensure peace, harmony, amity and goodwill amongst the members of the family and

settle present disputes and avoid future disputes. In *Mathuri Pulliah's case (supra)* it was further held that the disputes need not involve legal claims, and bona fide disputes, present or possible, are sufficient. In *Kanhaiya Lal vs. Brij Lal (AIR 1918 PC 70)*, the Privy Council held that a party to a family settlement is bound by it and would be estopped from making a claim contrary to the terms of the settlement. Again, in *Ram Charan Das (supra)* it was held that the settlement was binding on all the parties to it; the court noted that the family arrangement had been acted upon by the parties and therefore none of them can be permitted to impeach it thereafter. In *S. Shanmugham Pillai & ors. vs. K. Shanmugham Pillai & ors. (1973) 2 SCC 312* it was held that equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence; they have an important purpose to serve in the administration of justice and courts have been liberally relying on these principles. In *Kale's case (supra)*, it was held that the parties to the family settlement were estopped from impeaching or questioning it if they have conducted themselves consistent with the arrangement and have also *“kept their mouths shut for full seven years and later try to*

*resile from the settlement*". All this is subject to the caveat that the family settlement or arrangement should be entered into *bona fide*.

16. The above principles relating to a family settlement, if applied to the present case, would show that the appellant cannot question it or act contrary to the terms of the settlement at any later point of time. It is not denied by him that he was a signatory to the letter dated 31.12.1993 written jointly by him and his father S.N. Sud to the Noida authority, under which he withdrew his rights in the company which was allotted the premises at G-58, Sector 6, Noida. There was some debate at the Bar as to what this letter meant, the contention of the learned counsel for the appellant being that the letter referred only to the rearrangement of the partnership business carried on by the appellant and his father and did not refer to the company at all, and the contention of the respondent's counsel being that the reference to the withdrawal of the appellant from his rights was only to the shares in the company, since the appellant did not withdraw from the firm and on the contrary he practically became the full owner of the partnership business, S.N. Sud having decided to become a sleeping partner and that too only till March, 1994. The letter reads as follows:

*“STITCHWELL QUALITEX  
POST BOX N.1, A-11, SECTOR 67, NOIDA  
COMPLEX-201301, DISTRICT GAZIABAD (U.P.)*

*31.12.1993*

*Ref no.S:SN:103:93:VN*

*The Chairman  
Noida.*

*Dear Sir,*

*We wish you very Happy New Year. We have to inform you that in the interest of efficient working, bout the partners of M/s Stitchwell Qualitex have decided to divide the operation of the business into two independent units, one. At A-11, Sector 57 of Closing Machines and conveying systems to be looked after and managed by Sri Dinesh Sud and the other, at G-58, Sector-6 for the manufacture of Agricultural Machines to be looked after and managed by Shri S.N.Sud exclusively, Shri Dines Sud having withdrawn from his rights. It is also understood that Shri S.N.Sud shall continue to be sleeping partner is stitchwell qualitex till end March 1994.*

*It was also agreed that necessary stage be taken to approach you for making such amendments in your records. We have no objection to the division of the properties as mentioned above.*

*An early action on your part shall be very much appreciated.*

*Thanking you*

*Yours truly  
For Stitchwell Qualitex*

- 1. Dinesh Sud*
- 2. S.N.Sud”*

There may be some ambiguity in the words used in the letter, but the argument of the learned counsel for the respondent appears plausible to me. Moreover, the letter stated that S.N. Sud would exclusively look after and manage the business of agricultural machines which was being carried on from G-58, Sector-6, Noida, which was allotted to the company and not to the partnership business. Therefore it is possible to attribute to the words “*withdraws from his rights*” the meaning that the appellant would be giving up his shares in the company and become the exclusive proprietor of the business of bag-closing machines and conveying systems, which was the business of the partnership firm. This is further fortified by the subsequent letter written by S.N. Sud to the Noida authority on 25.01.1994. In this letter, the shareholders’ names were given, which showed only S.N. Sud, his wife Krishna Sud, their daughter Manju Shiv Sud and her son Pankar Shiv Sud as shareholders. The name of the appellant was not shown as a shareholder. The letter in the earlier part also referred to the fact that the premises at G-58, Sector 6, Noida will henceforth be used by the company M/s. Stitchwell Qualitex (P) Ltd. Both the letters, taken together, certainly show that the intention of the settlement was to constitute the appellant as the

exclusive owner of the partnership business which was that of bag-closing machines and conveying systems and to give more shares in the company to Manju Shiv Sud and induct her son Pankaj Shiv Sud. It appears that the appellant was 37 years of age and his sister Manju Shiv Sud was 41 years of age at the time of the family settlement. She had unfortunately lost her husband by that time and it was the intention of S.N. Sud to provide for her and her son Pankaj Shiv Sud, which obviously was the driving force behind the family settlement. The company was, right from its incorporation, run only as a family concern, as rightly noted by the CLB and the internal formalities were hardly a priority. The family members, as found by the CLB, were living in the same house, though in different floors – the appellant and his parents in one floor and Manju Shiv Sud and Pankaj Shiv Sud (mother and son) were living in another floor of the same building. In happier times, the members of the family may not have even thought about formalising the transfer of shares; the other reason perhaps was that no share certificates had even been issued, as noted by the CLB.

17. A very crucial aspect of the case is the long period of 15-16 years in which the appellant had accepted the settlement and acted upon it.

Not only the appellant, but also the other members of the family did act upon the settlement. It should not be forgotten that the appellant himself got the bag-closing and conveying systems business, earlier carried on by the partnership firm of himself and his father, only in terms of the family settlement. He also resigned from the directorship of the company as he no longer had any interest in the working of the company, having foregone his shares in favour of the other family members. It would therefore be counter-productive for him to question the very existence of the family settlement. But the contention was that the long period of silence or inaction on his part does not amount to acquiescence or estoppel. A shareholder, it was contended, did not have to do anything except hold on to his shares which is what he did in all these years. He also became ill due to acute ulcerative colitis and severe eye problem between 2001 and 2008. But when once he came to know that his name did not appear in the register of members, he immediately hastened to take action.

18. I am afraid that I cannot accept that things were so simple. The appellant very well knew of the settlement, because it was only under the settlement that he was getting the bag-closing and conveying

systems business, which was henceforth to belong to him exclusively, at least from April, 1994, in return for giving up the shares. He could not have been oblivious to the anxiety of his parents to provide for his sister and nephew, given the fact that they were all staying in the same premises and being aware of the tragedy that had fallen upon her. If he had not accepted the terms of the settlement, he would have made his intentions known at a very early stage and would have resisted when asked to part with the shares. He kept his mouth shut, when there was no compulsion upon him to do so, which can only mean acceptance of the settlement. His long silence for a period of 15-16 years was in conformity and consistent with the family settlement. He had consciously given up his shares in the company. For reasons best known to him, he now wants to resile from the earlier position. That, in the light of the authorities to which I have referred, cannot be permitted. There is no explanation for his long silence. The illness from which he was said to have been suffering is not supported by any medical reports. That does not appear to have hampered the business which he was carrying on – at any rate, no evidence has been brought on record to show that his individual business also suffered on account of his illness.

19. Even assuming that the Limitation Act, 1963 does not apply to proceedings before the CLB and that sub-section (4) of section 111 does not provide for any period of limitation, it is expected of the appellant to claim his rights within a reasonable period. The delay from 1993 to 2001 is long enough; the further delay from 2001 to 2008 is said to be due to acute illness, for which there is no proof. The appellant is thus guilty of laches or unreasonable delay in asserting his claim.

20. The findings of the CLB regarding the conduct of the appellant and the finding that he was guilty of laches, are findings of fact from which no question of law can be said to arise. Those findings can in no way be characterised as perverse. The principles relating to the family settlement are well-settled by a series of judgments by the Supreme Court (*supra*). There is total absence of any explanation for the long delay or laches. Moreover, the appellant has confined his claim to the 2500 shares which were allotted to him in 1983 and has not made any claim over the shares left by his deceased parents who died in 1995 and 2001. Further, the copy of the extracts from the minutes-book as on 20.06.1997, filed by the appellant himself, shows that on that date there were only three shareholders: S.N. Sud, Manju Shiv Sud and Pankaj

Shiv Sud. The appellant had referred to the inspection report of the chartered accountant which stated that the annual returns for the years 1990-91 to 1998-99 were not available in the records of the RoC; the same inspection report, in the opening paragraph, notes that as per the records available with the RoC, as on 31.03.2000, the status of the shareholding of ₹6,50,000 was that Manju Shiv Sud held 39,650 shares of ₹10 each amounting to ₹3,96,500 and Pankaj Shiv Sud held 25,350 shares of ₹10/- each amounting to ₹2,53,500. This shows that even on 31.03.2000, the appellant was not a shareholder.

21. In the light of the above discussion, I do not consider it necessary to refer to the other authorities cited by both the sides.

The result is that the appeal is dismissed with costs of ₹25,000/-.

**(R.V. EASWAR)**  
**JUDGE**

**SEPTEMBER 18, 2013**

vld(s)