IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 4 OF 2015
IN
CLB COMPANY PETITION NO. 37 OF 2011

Mrs.Vidya Mangal & Anr. ...Appellants
vs.
Ram Nanda & Co. & Ors. ...Respondents

Mr.Amit Jajoo with Mr.Atul Singh i/b. PKA Advocates for Appellants.
Mr.Kevic Setalvad, Senior Advocate with Mr.Rakesh Singh, Ms.Sneha Prabhu, Ms.Prachi Sawant i/b. M.V. Kini & Co. for Respondent No.1.

CORAM : S.C. GUPTE, J.

11 SEPTEMBER 2015

ORDER :

The appeal impugns an order passed by Company Law Board, Mumbai Bench ('CLB') on a petition filed by Respondent No. 1 under Section 111A of the Companies Act, 1956. By the impugned order, the CLB allowed the petition, directing transfer of the subject shares in favour of Respondent No. 1 herein and rectification of the register of members accordingly.

2. In or about November 1991, the Appellants appointed Respondent No. 1 as their stock broker for sale and purchase of shares. On 12 March 1992, Respondent No. 1 purchased 1000 shares of Respondent No. 2 company ('the disputed shares') for the Appellants and sent them along with transfer deeds and a bill for the same to the Appellants. By end of April 1992, the Appellants had run up an outstanding of Rs.34,94,949/- due and payable to Respondent No. 1 on account of transactions in shares. There were disputes between the parties

regarding the outstandings, each having a claim against the other. Both parties had filed their respective suits for enforcement of their claims. Respondent No. 1 had also invoked a purported arbitration agreement between the parties. The reference was, however, rejected by the arbitrator on the grounds of bar of limitation and jurisdiction. (The arbitrator held that there was no arbitration agreement between the parties.) Respondent No. 1 thereafter sought return of its plaint before the Delhi High Court with liberty to move the CLB for the relief of rectification and then filed the present company petition for transfer of the disputed shares to itself. The petition, allowed initially by the CLB, was remanded for a fresh hearing before the CLB by this Court. The CLB, on remand, once again allowed the petition and ordered transfer of the disputed shares. That order is in challenge in this appeal.

3. The main contest between the parties before the CLB was on (a) the bar of limitation (the Appellants' case being that the petition was beyond time) and (b) the rights of Respondent No. 1 as 'unpaid seller' under the Sale of Goods Act (the Appellants' case being that as unpaid seller, Respondent No.1 was only entitled to the unpaid price and not to the goods, namely, the shares, themselves).

4. The CLB held the petition to be within time. The conclusion was on the footing that even if the residency article of the Limitation Act, namely, Article 137, were to be applied to the case, Respondent No. 1 (Petitioner before the CLB) was entitled to exclusion of time under Section 14 of the Limitation Act. The CLB considered the time spent before the Civil Court in prosecution of the suit

filed by Respondent No. 1 as time spent in bona fide prosecuting a remedy before a Court lacking jurisdiction and therefore, required to be excluded for the purpose of computation of limitation. On the rights of Respondent No. 1 to the shares, the CLB held that though shares were 'goods' within the meaning of the Sale of Goods Act, the provisions of that Act concerning unpaid seller's rights did not apply, since the sale in question was void and thus, not concluded.

5. Counsel for both the parties made submissions before me exclusively on the provisions of the Sale of Goods Act and the rights of Respondent No. 1 thereunder. I propose to decide the appeal accordingly.

6. There cannot be any dispute that shares are goods within the meaning of Section 2 (7) of the Sale of Goods Act. Section 45 of that Act defines an 'unpaid seller'. The seller of goods is deemed to be an unpaid seller, within the meaning of the Act, *inter alia,* when the whole of the price has not been paid or tendered. The rights of such unpaid seller are provided for by Section 46. The seller has, irrespective of whether or not the property in the goods has passed to the buyer, a lien , whilst he is in possession of the goods, for unpaid price and a right of resale as limited by the Act. Where the property has not passed to the buyer, the unpaid seller, in addition to his other remedies, has the right of withholding the delivery similar to and co – extensive with his right of lien. Subject to these rights of lien and withholding of delivery, which are available to the unpaid seller as a matter of law, being incidents attached by law to his contract of sale, he has no other right, except what is available under his contract of sale. If the contract merely gives him a right to recover his unpaid price, the unpaid seller

cannot demand return of goods. If he has parted with the possession of the goods and even the duration of transit has ended, that is to say, if the buyer or his agent has taken delivery, all that the seller can do is to recover the unpaid price.

7. Mr. Setalwad, for the Respondents, relied upon the judgment of **Maneckji Pestonji Bharucha Vs. Wadilal Sarabhai & Co.**[1] in support of his contention that in an appropriate case, the purchaser, on failure of consideration, can be asked to hand back the shares and blank transfer documents. The Privy Council in the case of **Maneckji Pestonji Bharucha** considered the rights of a share broker who, after having sold shares in a company and handed over to the buyer share certificates together with transfers in blank signed by the registered holders, claimed the relief of return of certificates and transfers, in addition to damages, for the buyer's failure to pay the price. Though the relief granted in that case was to direct the purchaser to hand back the shares on account of dishonour of his cheque issued in payment of the share price, the judgment does not support the Respondents. The buyer in that case, who was also a broker like the vender, was asked to hand back the shares upon failure of consideration not because of either the contract of sale of shares or its other incidents by implication of law, but because of a rule of Bombay Stock Exchange applicable in that case. That rule provided that as between two brokers, if the cheque given by the purchasing broker was not honoured, the shares would have to be returned to the selling broker and that in such event, the purchasing broker would have to take away those shares only upon payment in cash before a stipulated time,

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failing which the shares would be sold off by auction by the authorities, again by a stipulated time. The argument before the Privy Council in that case that the buyer was, on account of non – payment of price, only an ostensible owner of the shares and the broker, who was the unpaid vender, had the equity in them, was actually rejected by the Privy Council. It was held that the law of England acknowledging an equitable lien in favour of the vender, would not apply in India. Their Lordships of the Privy Council held that so far as Indian law was concerned, the lien was only statutory, and was contained in Section 95 of the Contact Act (the predecessor to Section 46 of the Sale of Goods Act). Under this law, unless there is possession there is no lien. In India, as held by the Privy Council, shares are goods and equitable considerations (which were applicable to closes in action in England), not applicable to goods, do not apply to shares in India.

8. Upon blank transfer forms duly signed by the registered holder of the shares together with the share certificates being delivered unto the buyer, the delivery of shares is complete. The transferee is then entitled to get the shares registered in his name. There is no question of the vender thereafter exercising any lien over the shares or stopping them in transit, on account of his price being unpaid. The CLB, in its impugned order, erroneously came to the conclusion that the shares would have to be returned and registered in the name of the vender broker (Respondent No. 1). The rationale for this conclusion was the CLB's finding that the sale in question was void, because the Appellants herein did not pay any consideration to the Respondent broker, and that the provisions of the Sale of Goods Act were, therefore, inapplicable. The CLB relied on Section 25 (1) of the Contract Act, which provides that a transfer without consideration is void,

unless it meets with the conditions provided therein. The contract in the present case cannot be described as an agreement without consideration. There is a clear error of law here. This is a case of failure of consideration or non – payment of consideration provided for and not of want of consideration. The contract is not void and hence giving rise to the right of restitution. The contract is supported by consideration and is valid, and can be enforced by the vender by suing for unpaid price.

9. The impugned order is, thus, vitiated on a question of law and cannot be sustained. Accordingly, the appeal is allowed and the impugned order is set aside. There shall be no order as to costs.

(S.C. Gupte, J.)