IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 12 OF 2015
IN
COMPANY PETITION NO. 6 OF 2014

Raju Grover …Appellant / Orig.Petitioner
vs.
M/s.Kalati Constructions Pvt.Ltd. & Ors. ...Respondents

Mr.Vikram Nankani with Mr.A. Chaturvedi with Ms.A.A. Mujawar i/b. Economic Laws Practice for Petitioner.
Mr.Haresh Jagtiani with Mr.Siddhesh Bhole and Ms.Rishika Rajadhyaksha i/b. Mr.Siddhesh Bhole for Respondents.

CORAM : S.C. GUPTE, J.

17 JULY 2015

P.C. :

This appeal under Section 10F of the Companies Act, 1956 ('the Act') seeks to challenge an order passed by Company Law Board ('CLB') on a complaint of oppression and mismanagement of the Appellant against the first Respondent company and its directors. By the impugned order, the CLB rejected the Appellant's petition, declining to grant any relief to the Appellant.

2 Respondent No.1 is a private company limited by shares. The shares are held mostly by members of the Kalati family. The company has been in existence since the year 1988. In 1992, the Appellant became the shareholder of Respondent No.1 upon transfer of five equity shares of Rs.1000/- each of L.N. Kalati. Subsequent to this transfer, in the year 1993, further 2000 shares of Rs.1000/- were allotted by Respondent No.1 to the Appellant, thereby bringing her shareholding to a total of 2005 equity shares comprising of 20% of the issued, subscribed and paid up share capital of the company. The Appellant had since been a director of Respondent No.1 company, but ceased to be so in the year 2002. In June 2007, there was a transfer of 2005 equity shares held by the Appellant in favour of Respondent Nos.3 and 4. A consideration of Rs.20.05

lakhs was received by the Appellant towards the transfer of the shares. The amount of Rs.20.05 lakhs has been duly credited in the account of the Appellant on 14 June 2007. On 30 June 2007, Respondent No.1 effected the transfer of 2005 equity shares of the Appellant in favour of Respondent No.3 (for 505 shares) and Respondent No.4 (for 1500 shares). After making correspondence in this behalf with the Registrar of Companies in the years 2012 and 2013, the Appellant finally filed the present company petition on 24 January 2014 before the CLB complaining of oppression and mismanagement by Respondent No.1 and its directors. That was more than six and half years of the impugned transfer of shares. It was the grievance of the Appellant in the petition that the Appellant did not sign any transfer forms for the said transfer; that she was in possession of the original transfer forms, which were never sent to the company; that since the year 2007, the Appellant was never given any notice of the general meetings of the Respondent company or involved in the affairs of the company; that in March 2012 when the Appellant's patience ran out and she started having doubts about the intentions of the Respondents, she took search of the records of the company with the Registrar of Companies, whereupon she found out that the entire shareholding was transferred to Respondent No.3 and 4 fraudulently.

2 It was the case of the Appellant before the CLB that the Respondents wrongfully transferred the shares of the Appellant with malafide intention to take advantage of the Appellant’s position as a minority shareholder in the first Respondent company. It was submitted that the entire equity shareholding of the Appellant was transferred to Respondent Nos.3 and 4 without following the due process of law and by forging documents. It was submitted that this was a singular act of oppression which entitled the Appellant to approach the Board. It was also contended by the Appellant that under the mandate of Article 16 of the Articles of Association of the company, the shares had to be transferred at a valuation to be fixed by Chartered Accountant.

3 The CLB, by its impugned order, dismissed the Appellant’s petition. The impugned order of the CLB is based on the following :

(a) The Appellant was paid the sale consideration of Rs.20.05 lakhs as far back as in the year 2007, which consideration was admittedly retained by the Appellant throughout, and that, therefore, the Appellant was a party to the transaction;

(b) The names of transferees were duly recorded in the original share certificates and the register of members was, accordingly, rectified in the year 2007;

(c) The Appellant was not entitled to challenge the transfer on the ground of the non-compliance with Section 108(1);

(d) There was no breach of Article 16 of the Articles of Association of the first Respondent company concerning the subject transfer of shares, since in the event of a mutual agreement between the parties for a sale consideration, the valuation of shares by Chartered Accountant, in terms of Article 16, was not required.

In the premises, the CLB came to a conclusion that the Appellant had failed to prove that the transfer of shares was invalid, ineffective, void or ultra-vires or had no value in the eyes of law and thus, liable to be ignored. The CLB further held that non-compliance with Section 108(1) of the Act was not fatal in this case, having regard to the facts of the case noted by it. The CLB further held that the subject transfer of shares having been effected in the year 2007 and the Petitioner having failed to prove that she came to know about the transfer in the year 2011, the petition was barred by the law of limitation, having been filed after expiry of three years. The CLB also held that the Appellant had not come to the court with clean hands, particularly having regard to the fact that there were several misleading and contradictory submissions, as noted by the CLB, made by the Appellant in the petition and her pleadings in the petition.

4 In support of his appeal, Mr.Nankani, learned Senior Counsel for the Appellant, submits that the impugned transfer of shares was a fraudulent matter.

It is submitted that the transfer was effected either on forged documents or with non-compliance of Section 108(1) of the Act. Secondly, it is submitted that there is a clear breach of Article 16 of the Articles of Association by the first Respondent company inasmuch the company has not taken into account any valuation of Chartered Accountant before effecting the impugned transfer.

5 The Appellant has come before the Court with a specific case that the impugned transfer of shares was effected fraudulently and that the Appellant never intended to transfer the shares in question. It is the case of the Appellant that the transfer was wrongfully effected with malafide intention to take advantage of the Appellant's position as a minority shareholder in the first Respondent company and that this act amounted to oppression of the Appellant. What further appears to have been argued before the CLB, and is so argued even before this Court, is that the transfer effected by the Board of directors of the first Respondent company was in contravention of Section 108(1) of the Act. The rival cases of the parties before the CLB in this behalf were as follows: Whereas it was the case of the Appellant that the original transfer forms were retained by the Appellant with herself and never forwarded to Respondent No.1, it is the case of the Respondents that duly signed share transfer forms were lodged for registration and it was on these forms that the Board of directors of the Respondent company acted. It is submitted that the forms have since been misplaced and are not any longer available with the first Respondent company. It is denied by the Respondents that the transfer forms in possession of the Appellant and the transfer forms lodged for registration of transfer were one and the same. This is clearly a dispute of facts. Section 108(1) requires the company to register a transfer of shares in the company on a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and the transferee specifying the various particulars mentioned therein and delivered to the company along with the certificates relating to the shares. The proviso to Section 108(1) says that on an application in writing made to the company by the transferee and bearing the stamp required for instrument of transfer, it is proved to the satisfaction of the Board of directors that the instrument of transfer has been lost, the company may register the transfer on such terms as the Board of

directors may deem fit. No doubt, the CLB, in this case, has not come to any definite finding as to whether the Board of directors acted on the instrument of transfer duly executed by the transferor and the transferee, such instrument having been misplaced thereafter or whether the instrument was misplaced and the transfer was effected under the proviso to Section 108(1) of the Act. But, in my opinion, this aspect of the matter is not relevant for the determination of the controversy, since the specific case in the present company petition is that there is a transfer effected fraudulently by the first Respondent company and its directors in favour of Respondent Nos.3 and 4, as and by way of an act of oppression of the Appellant as a minority shareholder. It is not simply good enough for the Appellant to show procedural impropriety or non-compliance with any particular provision of Section 108(1) of the Act in such a case. The CLB has rightly come to the conclusion that the Appellant had failed to prove that the impugned transfer of shares was invalid, ineffective, void or ultra-vires or had no value in the eyes of law and thus, liable to be ignored. A transfer of shares effected more than six years prior to the filing of the petition has two important implications from the point of view of a petition complaining of oppression and mismanagement. In the first place, unless such transfer itself has been found to be an act in furtherance of oppression of the Applicant, the transfer will not give rise to any right to relief under Sections 397 and 398 of the Act on the merits of the matter. Secondly, the transfer having been effected not as an act of oppression or mismanagement, but in breach of the mandate of Section 108(1) of the Act, effected as it is more than six years before the filing of the petition, implies that there is a clear lack of the threshold requirement of 10% shareholding of the company. Both these aspects have been found by the CLB in favour for the Respondents herein and against the Appellant and no fault can be found with these findings. There is no error of law disclosed in any of these findings.

6 The petition is also dismissed on the ground that it is barred by the law of limitation. The CLB has come to a conclusion that the Petitioner had knowledge about the impugned transfer of shares since the year 2007. This clearly is a matter of fact, which is supported by material on record, and cannot be said to be a conclusion which no reasonable person properly instructed in law

could have arrived at. Even this aspect does not disclose any error of law, which calls for interference by this Court.

7 The CLB has also found that the Appellant has come to the Court with unclean hands. This conclusion is based on various misleading and contradictory submissions forming part of the petition as well as other pleadings of the Appellant before the CLB. The conclusion of the CLB in this behalf, having been supported by material on record and not having been based on any extraneous material, cannot be faulted as an impossible or perverse conclusion. Even here, there is no error of law disclosed and no interference is called for.

8 In that view of the matter, there is no merit in the appeal. The appeal is dismissed. There shall, in the circumstances, however, be no order as to costs.

(S.C. Gupte, J.)