

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****COMPANY APPEAL NO. 20 OF 2015
IN
CLB COMPANY PETITION NO. 44 OF 2011**

Mahesh Kantilal Zaveri ...Appellant
vs.
Company Law Board & Ors. ...Respondents

Mr.Ramesh Ramamurthy for Appellant.
Mr.Neville Majra i/b. Yusufs & Associates for Respondent No.2.

CORAM : S.C. GUPTE, J.

27 AUGUST 2015

P.C. :

The company appeal *inter alia* impugns an order passed by the Company Law Board ("CLB") on 4 November 2013. The appeal also impugns an order dated 19 October 2012 passed by the CLB. The subject matter of the appeal concerns transmission and registration of shares held by the Appellant's predecessor in title in Respondent No.3 company.

2 The Appellant and Respondent No.2 herein are brothers. Flat No. 162 in the building known as "Satnam Apartment", which is owned by the third Respondent company, was owned by one Vijaya K. Zaveri (since deceased). The deceased Vijaya was the mother of the Appellant and Respondent No.2. Respondent No.2 applied, by Company Petition No.44 of 2011, for rectification of the register by transfer of the subject shares to himself as a nominee of the shareholder. That application was allowed by the CLB in its order dated 19 October 2012. The Appellant was not a party to Company Petition No.44 of 2011 and was not heard when the impugned order dated 19 October 2012 was passed by the CLB. After coming to know about the order in December 2012, the Appellant took out a company application, being Company Application No.199 of

2013, in the original company petition filed by Respondent No.2 challenging the transmission of the shares in favour of Respondent No.2. The impugned order dated 4 November 2013 was passed on this application. Aggrieved by these orders, the Appellant herein filed a company appeal, being Company Appeal No.104 of 2013. At the hearing of the appeal, upon realising that through oversight, the order passed by the CLB on 4 November 2013 was not in terms impugned in the appeal, the Appellant sought leave to withdraw the appeal with liberty to file a fresh appeal challenging *inter alia* the order of the CLB dated 4 November 2013. The present appeal is filed by the Appellant in pursuance of that liberty.

3 There is a preliminary objection raised by Respondent No.2 to the company appeal. It is submitted that the appeal is barred by the law of limitation. It is a fact that the Appellant herein was not a party to the original company petition filed by Respondent No.2 (Company Petition No.44 of 2011). After coming to know about the order passed by the CLB on 19 October 2012 in the company petition, the Appellant preferred the company application in which the second order, namely, the order dated 4 November 2013, came to be passed. The CLB refused to modify its original order dated 19 October 2012. Aggrieved by this refusal, the Appellant presented his first appeal, namely, Company Appeal No.104 of 2013. That appeal was presented in time. The appeal was allowed to be withdrawn by this Court on 23 June 2014 with liberty to file a fresh appeal. In these facts, the present appeal, filed as a fresh appeal, can be considered merely as a continuation of the earlier challenge in pursuance of the liberty reserved by this Court.

4 On merits, it is noticed that the subject matter of challenge is really the transmission of shares of Respondent No.3 in favour of Respondent No.2. It is an admitted position that Respondent No.2 was a nominee in respect of these shares, though it is the case of the Appellant that under a last will and testament executed by late Vijaya, the subject flat and the shares representing the flat were bequeathed to the Appellant. The testamentary proceedings filed by the Appellant in respect of the last will and testament of late Vijaya are pending before this

Court. The Appellant's testamentary petition has been converted into a testamentary suit, being Testamentary Suit No.62 of 2008. Having regard to this position, the order of the CLB directing transmission of shares in favour of Respondent No.2 in pursuance of the nomination by late Vijaya, subject to a rectification of registrar of members in the event the court passing an order in favour of the Appellant in the testamentary suit, cannot be faulted. Respondent No.2, as a nominee in respect of the shares would hold these shares as a trustee for the rightful owner. In the event of such rightful owner being adjudicated upon by this Court in the testamentary proceedings pending before it, the transmission of shares in favour of Respondent No.2 will have to be undone and the register of members will have to be rectified. That is precisely what the CLB has observed in the impugned order dated 4 November 2013. In the premises, no fault can be found with the impugned order. There is no question of law, which arises for the consideration of this Court in the present appeal.

6 The appeal is, accordingly, dismissed. It is clarified that in the event the Appellant desires to seek any appropriate relief, interim or otherwise, in respect of either the subject flat or the subject shares, he will be at liberty to do so by adopting appropriate proceedings. Any such application shall be decided on its own merits and this order shall not in any way prejudice such application.

(S.C. Gupte, J.)