

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Amk

**FIRST APPEAL NO. 406 OF 2016
WITH
CIVIL APPLICATION NO. 3681 OF 2016**

Nine Media & Information Services Ltd.]
a company incorporated under the]
provisions of the Companies Act, 1956]
and having its office at 104-A, Motlibai]
Wadia Building, 1st Floor, 22 D S A]
Brelvi Road, Fort, Mumbai-400 001.] .. Appellant

Vs.

1. Hero Honda Motors Ltd.]
a company incorporated under the]
provisions of the Companies Act, 1956]
and having its office at 34, Community]
Centre, Basant Lok, Vasant Nihar,]
New Delhi - 110 057.]
2. MCS Ltd.]
a company incorporated under the]
provisions of the Companies Act, 1956]
and having its office at 212/A,]
Shahpur Jat, Behind Panchsheel Club,]
New Delhi - 110 057.]
3. Bank of India, A/c. BOI Mutual Fund,]
24th Floor, Stock Exchange Tower,]
Dalal Street, Bombay-400 023.]
4. Jardine Fleming Intl. Mgmt. Inc.]
A/c. Jardine Fleming India Fund Inc.]
Citibank N.A., C/o. Sutanally's]
Business Centre, Boradwall Mansion,]
Dr. Anni Besant Road, Worli,]
Mumbai - 400 018.]
5. Vikran Dahayal Upadhya]
6. Jatin Kantilal Upadhay]
Both having address at C/o. Dahyala]

- Bachanlal & Co. 72, New Bardan Lane,]
Mandvi, Bombay - 400 003.]
7. SBI Capital Markets Ltd.]
The Indian Mutual Fund NVMP]
Through 'Stock Holding Corporation]
of India Ltd., having their office at]
224, Mittal Court, B Wing, 2nd Floor,]
Nariman Point, Mumbai - 400 021.]
8. Morgan Stanely Assets Management]
Inc. A/c. Morgan Stanley Emerging]
Markets Funds Inc., The Hongkong]
& Shanghai Banking Corporation Ltd.,]
52/60, M. G. Road, P. B. No. 128,]
Bombay - 400 001.]
9. Southern India Depository Services]
Pvt. Ltd.]
A/c. Kothari Pioneer Prime Fund]
Century Centre, Ground Floor, 39,]
T. T. K. Road, Alwarpet,]
Madras - 600018.]
10. SBI Capital Markets]
A/c. India Magnum Fund NV]
SCHL 44/1, Kalicharan Mehta Estate,]
LBS Marg, Near Vikhroli Station,]
Vikhroli, Mumbai - 400 079.]
11. Pankaj B. Desai]
12. Nozer J. Shroff]
Both having address at C/o.]
D S Purbhoodas & Co.]
1107, Stock Exchange Tower,]
11th Floor, Dalal Street, Fort,]
Mumbai - 400 023.]
13. Roopakala K. Jain]
14. Kushal Raj Jain]
Both having address at]
C/o. Sagar Handloom, Post]
Bhilad, Dist.-Valsad-396 105.]

15. Chetan Shantilal Shah]
16. Nirmala Shantilal Shah]
both having address at 187,]
Manhar Building, 3rd Floor,]
Lohar Chawl, Mumbai - 400 002.]
17. Anish Kharidia]
18. Niranjan Kharidia]
both having address at 17/A,]
Bank of India Society, Ussmanpura,]
Ahmedabad-380 013.]
19. K. Saraswathy]
20. K. Unnikrishnan]
both having address at A28,]
Rajatrekha 142-6, J. P. Road,]
Andheri (W), Mumbai - 400 058.]
21. Morgan Stanley Assets]
Management Inc.]
Sub. A/c. The India Special]
Situation Fund Ltd., C/o. Stock]
Holding Corporation of India Ltd.]
Mittal Court, B Wing, 224,]
Nariman Point, Mumbai-400 021.]
22. Shyam Sunder H. Vyas]
508, Arpita Apartment, TPS Road,]
Off Factoring Lane, Borivali (W),]
Mumbai - 400 092.]
23. MCC Investment & Leasing Ltd.]
RAvindra Sarani, Calcutta-700 073.]
24. HB Portfolio & Leasing Ltd.]
2nd Floor, Gopala Tower,]
25 Rajendra Place,]
New Delhi - 110 008.]
25. Flaming Fund Management]
(Luxembourg) S. A.]

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|-----|------------------------------------|---|
| | A/c. Flagship India Investment |] |
| | Co., (Mauritius) Deutsche Bank, |] |
| | Ground Floor, Matre Pen Bldg., |] |
| | Tulsi Pipe Road, Dadar (W), |] |
| | Bombay-400 028. |] |
| 26. | M Anand |] |
| | 1L-192m 12th Main Road, |] |
| | Annanagar, Madras-600 040. |] |
| 27. | IDBI AS Principle Trustee |] |
| | A/c. IDBI Mutual Fund Ground |] |
| | NIIT-93, Citibank N. A. |] |
| | C/o. Sultanallias Business Centre, |] |
| | Boradawalla Mansion, |] |
| | Dr. Annie Besant Road, Worli, |] |
| | Mumbai - 400 018. |] |
- .. Respondents

Mr. P. M. Modi, Sr. Advocate a/w. Mr. N. P. Lashkari i/b Das Associates for the Appellant.

Mr. Ankit Lohia a/w Mr. Sanket Shah i/b Akshar Laws for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 29th SEPTEMBER, 2016.

ORAL JUDGMENT

1. This appeal takes an exception to the Judgment and Order dated 12.01.2016 passed by City Civil Court, Mumbai in Suit No. 8497 of 1995.

2. The brief facts of the appeal can be stated as follows:

The appellant herein has filed the instant suit for the relief of declaration and injunction. The declaration sought was in respect of the various shares of respondent-company which came to be lost in the

process of transit. It is submitted that the appellant has purchased 2200 shares of respondent No.1 from their brokers M/s. Raj Chawla & Co., having their office at New Delhi, under the purchase bill No.7797 dated 20.01.1995. The said shares along with blank transfer forms duly signed by the transferor were dispatched by the brokers to the appellant at Mumbai on 23.01.1995 under the airway bill No.603032720, through courier service namely, M/s. Elbee Services Ltd. As per the case of the appellant, before the receipt of the delivery of the said shares with the duly signed transfer forms by the appellant, the same were lost in transit from the head office of Elbee Services Ltd., Mumbai. Accordingly M/s. Elbee Services Ltd. has also lodged complaint with the police on 31.01.1995 and intimated about the same to the appellant. The appellant by its letters dated 08.02.1995 and 28.02.1995 informed about the loss of the said shares to respondent No.1 company and respondent No.2 and requested them to issue duplicate share certificate after completing the requisite formalities. The appellant also requested them to stop the transfer of the said shares. As there was absolutely no response from respondent No.1 or respondent No.2, the appellant, through its Advocate, issued a further letter dated 23.03.1995 requesting them to refrain from transferring the said shares in favour of any third person, except the appellant. Respondent No.2 has taken the cognizance of the said letter and vide its reply dated 14.03.1995 called upon the appellant to obtain the necessary order to that effect from the competent Court. The appellant has,

therefore, approached the Trial Court by filing the instant suit seeking the relief of declaration that the appellant is the absolute owner of these shares and for further direction to respondent Nos.1 and 2 to issue duplicate share certificates in favour of the appellant in respect of these shares. The consequential relief of injunction was also sought for.

3. Initially the suit was filed in this Court and this Court was pleased to pass the order of interim injunction restraining respondent Nos.1 and 2 from transferring the said shares in favour of any third person. Respondent Nos.3 to 28 are also joined subsequently in the suit as they were the transferors of the shares in question.

4. In view of the enhancement of pecuniary jurisdiction of the City Civil Court, the suit came to be transferred to the Trial Court. Respondent Nos.1 and 2 resisted the suit by filing the their written statement, denying all the allegations and averments and raising a very specific defence that the Civil Court has no jurisdiction to entertain such suit as the subject matter of the suit can squarely fall within the inquiry and the jurisdiction of the Registrar of Companies in view of Section 84 of the of the Companies Act. The reliance was placed in the written statement itself on the observations of the Apex Court in the case of **Shripal Jain Vs. Torrent Pharmaceuticals Ltd. & Ors., 1995 Supp (4) SCC 590.**

5. In addition to this contention that the Trial Court has no jurisdiction to try the suit, the various other contentions were also raised in the suit, like denying the appellant's claim of being absolute owner of the said shares, challenging the territorial jurisdiction of the Trial Court and also on the ground of non joinder of necessary party, like the transferors of the shares being not joined in the suit.

6. The Trial Court framed necessary issues at Exhibit 4, on the basis of respective pleadings of the parties, including the issue relating to jurisdiction of Civil Court to try and decide the suit. In support of its case, on behalf of the appellant, one Nitin Sawant examined himself. The appellant led the evidence of Vijaysingh Padode. Through the evidence of both these witnesses, the documents were got exhibited and marked. Respondent Nos.1 and 2 did not lead any oral or documentary evidence. Respondent Nos.3 to 28, except for respondent No.7 did not even appear and the suit has proceeded ex parte against them. Respondent No.7 also did not file any written statement or adduced evidence.

7. On the basis of the evidence produced on record and relying upon the Judgment of the Apex Court, in the case of **Shripal Jain** (supra), the Trial Court was pleased to hold that Civil Court has no jurisdiction over the subject matter of the suit to entertain and try the same, in view of the provisions of Section 84 of the Companies Act. A specific finding was

recorded to that effect to issue No.1. The Trial Court however proceeded further to decide issue Nos.3 and 4 which pertain to the relief of declaration as sought by the appellant, of being the absolute owner of the disputed shares and also the direction to respondent No.1 to issue duplicate share certificate. The Trial Court considered the evidence adduced on record by the appellant herein and came to conclusion that the appellant has failed to prove the documents like, the bill No.7797 dated 20.01.1995 and also the originals of those documents being not produced and held that the contents thereof were not proved. Accordingly, the Trial Court held that the appellant has failed to prove its case on these relevant two issues also. In view thereof, the Trial Court dismissed the suit in its entirety.

8. This Judgment of the Trial Court is challenged in this appeal by learned counsel for the appellant by submitting that once the Trial Court has arrived at its own finding that it has no jurisdiction to entertain the suit, as the subject matter thereof, is covered under Section 84 of the Companies Act in view of the Judgment of the Apex Court in the case of **Shripal Jain** (supra), the Trial Court should not have proceeded further of deciding the other issues relating to the ownership and declaration as sought by the appellant. The proper mode open for the Trial Court was either to return the plaint or to reject the same on that very ground itself of not having jurisdiction over the subject matter of the suit. However, the

Trial Court has proceeded to decide other issues also and ultimately dismissed the suit. According to learned counsel for the appellant, the findings of the Trial Court in respect of the merits of the suit claim, being rendered or given by the Court which was not having jurisdiction over the subject matter, those findings cannot be, in any way, having any legal value or binding nature.

9. Learned counsel for the appellant has fairly submitted that the present case squarely fall in the ratio laid down by the Apex Court in the above said Judgment of **Shripal Jain** (supra). According to him, if the said ratio is to be applied and which was real contention of respondent Nos.1 and 2 also that Trial Court has no jurisdiction to entertain the suit, then according to him, it is necessary, when the appeal is at the stage of admission itself, to quash and set aside the impugned Judgment and order of the Trial Court and give an opportunity and liberty to the appellant to make appropriate application before the current RTA of respondent No.1 company, namely, Karvy Computershare Pvt. Ltd. It is submitted that till the said RTA decides the application of the appellant under Section 84 of the Companies Act, the relief of interim injunction granted by this Court on 30.09.1997 shall continue to operate. According to learned counsel for the appellant in this way the appeal can be disposed of at this stage itself, instead of proceeding with the hearing of the same and ultimately coming to the conclusion that the Civil Court has no jurisdiction to decide the

same.

10. Learned counsel for respondent No.1 has, however strongly resisted this submission. According to him, this prayer is made by the appellant herein, only after an adverse finding on all the issues are recorded by the Trial Court against the appellant. Further, learned counsel for respondent No.1 has submitted that, so far as the jurisdiction of the Civil Court is concerned, it was ousted only in respect of the issuance of duplicate share certificate, which can only be issued by the Company Registrar under Section 84 of the Companies Act. However, as regards the relief of declaration, which the appellant is claiming in the instant suit that the appellant is the absolute owner of the shares, Civil Court alone can grant such declaration and, therefore, the jurisdiction of the Trial Court was not barred in respect of this issue. It is submitted by learned counsel for respondent No.1, that whether the finding arrived at by the Trial Court on this issue of declaration relating to ownership of the shares is correct, valid and supported with the evidence and material, can be decided only after the appeal is admitted and heard finally. At this stage, according to learned counsel for respondent No.1, this Court cannot pass any order, as sought by the appellant, of disposing of the appeal, setting aside the impugned Judgment and order of the Trial Court, with a liberty to the appellant to approach the Registrar of the Company. According to learned counsel for the respondent No.1, unless and until, legality of the finding

given by the Trial Court on this issue is tested by this Court, such course cannot be adopted. Hence, in his opinion, it is necessary to admit the appeal and fix it for the final hearing after compliance of paper book. According to him, at the stage of admission of appeal itself, this Court is not armed with any provision of the law, to set aside the Judgment of the Trial Court.

11. In order to appreciate the rival submissions advanced by the learned counsel for the parties, in my considered opinion, it would be useful to first have reference to the averments made in the plaint and also the written statement.

12. As stated above, the simple case of appellant, as pleaded before the Trial Court and before this Court is that the appellant had purchased about 2200 shares of respondent No.1-company, which came to be lost during the transit from the brokers at Delhi to appellant's office at Mumbai. In respect of loss of those shares, the complaint also came to be lodged. Respondent Nos.3 to 28 are the transferors of those shares. The notice of the suit was issued to them but none of them chose to appear before the Trial Court or to contest the ownership and title of the appellant over those shares.

13. Thus, the case of the appellant is in respect of stolen shares

for which he requests a direction to the Registrar of respondent No.1 to issue duplicate share certificate. It is stated in the plaint also that vide two letters dated 08.02.1995 and 20.02.1995, the appellant had informed about the loss of the shares to respondent Nos.1 and 2 but there was no response from them. Hence, one more letter dated 23.03.1995 was issued restraining respondent No.1 from transferring the same in favour of any third person. Thereafter, respondent No.2 has sent a reply to the appellant on 14.03.1995 and directed the appellant to obtain an order to that effect from the competent Court. Thus, only when respondent No.2- the Registrar refused to issue the duplicate certificate without the order from the competent Court, the appellant was constrained to approach the Trial Court, to get the relief of necessary declaration and direction.

14. It is pertinent to note that, according to respondent Nos.1 and 2 also, the competent authority to issue the duplicate share certificate was the Registrar in view of Section 84 of the Companies Act. A specific plea to that effect was raised in para 3 of the written statement filed before the Trial Court in which it was stated that, "the plaintiff has filed the suit for ownership declaration of 2200 shares and seeking direction against these defendants for issuing duplicate shares in their favour. It is submitted that the suit is covered under Section 84 of the Companies Act and under this section the Civil Court has no power to grant any relief as per the Judgment of the Hon'ble Supreme Court of India in the case titled as

Shripal Jain (supra)." It was further stated that, "in view of this Judgment, the suit is not maintainable and accordingly the appellant is not entitled for any relief as prayed in the suit. Therefore, the suit deserves to be dismissed with costs."

15. Respondent Nos.1 and 2 had thus challenged the maintainability of the suit on the count that the Civil Court has no jurisdiction to decide the subject matter involved in the suit in view of the provisions of Section 84 (4) of the Companies Act.

16. Section 84 of the Companies Act which is the crux of the matter and around which entire controversy revolves can be reproduced as follows:

"84. Certificate of shares.- (1) *A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to such shares.*

(2) *A certificate may be renewed or a duplicate of a certificate may be issued if such certificate-*

(a) *is proved to have been lost or destroyed, or*

(b) *having been defected or mutilated or torn is surrendered to the company.*

(3) *If a company with intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to ten thousand rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [one lakh rupees], or with both.*

(4) *Notwithstanding anything contained in the articles of association of a company, the manner of issue or renewal of a certificate or issue of a duplicate thereof, the form of a certificate (original or renewed) or of a duplicate thereof, the particulars to be entered in the register of members or in the register of renewed or duplicate certificates, the form of such registers, the fee on*

payment of which, the terms and conditions, if any (including terms and conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by a company in investigating evidence) on which a certificate may be renewed or a duplicate thereof may be issued, shall be such as may be prescribed."

17. Thus, Section 84 (4) of the Companies Act makes it clear that it is the jurisdiction of the Registrar of Companies to issue the share certificate, to renew the same or to issue a duplicate of the certificate if, original certificate is proved to have been lost or destroyed. Sub-section 4 of Section 84 of the Companies Act makes it clear that the Registrar in such situation, can also have the power to make necessary inquiry and for that purpose even to collect the evidence, vide investigation and the expenses for the same will be borne out by the concerned party and only after inquiry, the Registrar may renew the certificate or issue the duplicate thereof. Thus, a specific jurisdiction is conferred on the Registrar of the Companies in respect of the issuance of duplicate certificate, whenever the original certificate is lost or destroyed.

18. In the instant case, the very case of the appellant is that the shares purchased by the appellant came to be lost in transit. Therefore, it follows that, under Section 84 (4) of the Companies Act, the Registrar of the Companies will have the jurisdiction to issue the duplicate share certificate, after making necessary inquiry, in which he can even investigate and collect the evidence. The Trial Court has also, accordingly,

come to that conclusion, especially, placing reliance on the decision of Hon'ble Supreme Court in the case of **Shripal Jain** (supra).

19. The facts of the present case, as submitted by learned counsel for the appellant, squarely fall within the four corners of the law, as laid down by the Apex Court in this decision. In the said decision also, the share certificates purchased by the appellant in respect of M/s. Torrent Pharmaceuticals Ltd. were stolen. The appellant therein approached the Registrar of Companies, namely, respondent No.2 in the appeal, for issue of duplicate certificates. The Registrar directed the appellant to have a direction in this respect from the Civil Court, as had happened in the instant case also. The Civil Court rejected the application of the appellant. The appellant challenged the said decision in the High Court. The High Court dismissed the Civil Revision Application, filed by the appellant in limine. The appellant challenged the said order before the Hon'ble Supreme Court and the Hon'ble Supreme Court observed as follows:

"3. We are of the view that the Registrar of the Company was in patent error in referring the appellant to the civil court in the facts and circumstances of the present case. He should have himself held an enquiry into the matter under Section 84(4) of the Companies Act read with the Companies (Issue of Share Certificates) Rules, 1960 and taken a decision himself in the matter."

20. Accordingly, the Apex Court set aside the impugned order of the Civil Court and consequent order of the High Court and remanded the case back to the Registrar to decide the matter, in accordance with law.

21. In the instant case also, the appellant has, after coming to know about the loss of the share certificates, initially approached respondent No.2-the Registrar by sending three letters. However, respondent No.2-the Registrar of the Company directed the appellant to bring the order from the competent Court. Hence, the appellant was compelled to approach the Trial Court. The Trial Court has, also rightly relying upon this decision of **Shripal Jain** (supra), which was cited before the Trial Court by learned counsel for respondent Nos.1 and 2, held that it has no jurisdiction to decide the subject matter of the suit, namely issuance of duplicate share certificates. In this appeal, learned counsel for the appellant is relying on the same decision to relegate the matter to respondent No.2-the Registrar for issuance of such duplicate share certificates.

22. In view thereof, and in the light of the order passed by the Apex Court in the above said decision, it becomes necessary to hold that the respondent No.2-Registrar of Companies in the present case also, was in patent error in referring the appellant to obtain the order from the Competent Court, though he could have himself held the inquiry into the matter under Section 84(4) of the Companies Act read with the Companies (Issue of Share Certificates) Rules, 1960 and taken a decision himself. Therefore, as was done by the Apex Court in the above case, in this case

also, it is necessary to remand the case back to the Registrar by giving liberty to the appellant to approach the Registrar.

23. Needless to state that the Registrar cannot issue the duplicate share certificate even after being satisfied on due enquiry, as a result of the adverse finding recorded by the Trial Court on issues relating to ownership of appellant over those shares. As the Trial Court has recorded that finding despite holding that it has no jurisdiction to issue duplicate certificate, it becomes necessary to set aside the impugned Judgment and order of the Trial Court and dispose of the appeal at this stage itself, instead of allowing the appeal to remain pending on admission.

24. The submission advanced by the learned counsel for respondent No.1 is that, the relief of declaration of ownership and title over the shares, can be granted by the Civil Court alone and Registrar of Company is not having any jurisdiction to do so. According to learned counsel for respondent No.1, in the instant case, the Trial Court has already recorded an adverse finding against the appellant on this issue and unless that finding is set aside by this Court, after hearing the appeal on merits, the appeal cannot be disposed of at the stage of admission, by quashing the Judgment and order of the Trial Court.

25. In this respect, one has to consider why the Trial Court was constrained to frame the issue relating to the declaration of ownership and why the appellant had sought the said relief. The only cause for the appellant to seek such relief was that the share certificates were lost and duplicate share certificates were necessary to be issued as the Registrar has directed the appellant to approach the competent Court for that purpose. In order to get the necessary direction from the competent Court for Registrar to issue the duplicate certificates, it was necessary for the appellant to seek a relief of declaration that the appellant is the owner and having the title over those shares. The main relief, which the appellant was seeking, was the direction to the Registrar to issue the duplicate share certificate and only to obtain that relief, the declaration of ownership was sought. Hence, once it is held that the jurisdiction to issue the duplicate share certificate lies with the Registrar in view of Section 84(2) of the Companies Act, then it necessarily follows that the Registrar is also vested with all the jurisdiction and powers to decide whether the person approaching it for duplicate share certificate is having ownership or title to those shares. For that purpose only, as rightly submitted by the learned counsel for the appellant, the Rules framed under the Companies Act also vests necessary powers and jurisdiction on the Registrar to not only make inquiry but also to collect the investigating evidence and if such evidence is collected and expenses for the same are incurred, then to recover those expenses also. That is the very reason why the Apex Court has, also in

this above said authority of **Shripal Jain** (supra) relegated the appellant therein to the Registrar, when the duplicate share certificates were sought as the original share certificates were stolen. Therefore, there is absolutely no substance in the contention of the learned counsel for respondent No.1 that as the relief of declaration could have been given only by the Civil Court, findings recorded by the Civil Court on these issues are binding, unless they are set aside by this Court after admitting the appeal and these findings cannot be set aside at the stage of admission.

26. It is pertinent to note that in para 3 of the written statement the respondents have challenged the maintainability of the suit, on this very count that Civil Court has no jurisdiction under Section 84 of the Companies Act. Even the perusal of the impugned Judgment and order passed by the Trial Court, especially, para 16 reveals that the Trial Court has also considered this aspect by observing as follows:

"16. The plaintiff has filed the present suit for issuance of direction to defendants No.1 and 2 to issue duplicate share certificates in respect of the suit shares. In Shripal Jain's case (cited supra), the Hon'ble Supreme Court has held that the civil court is not the proper forum to grant such relief and the plaintiff must approach the Registrar of the Company for issuance of duplicate share certificates under section 84 of the Companies Act, 1956."

27. In para 17, the Trial Court further held that, *in view of section 84 of the Companies Act, 1956, this court has no jurisdiction to direct defendants No.1 and 2 to issue duplicate share certificates to the plaintiff.*

28. In para 18, the Trial Court was further pleased to conclude and hold that, it has no jurisdiction to entertain and try the present suit.

29. Not only that, in concluding para 28 also, the Trial Court held that, *"even otherwise, as demonstrated in the forgoing paras, this court has no jurisdiction to direct to defendants No.1 and 2 to issue duplicate share certificates to the plaintiff. So, the suit must fail.*

30. Thus, the Trial Court also came to the categorical finding that it has no jurisdiction to grant the relief as sought by the appellant of directing the Registrar to issue duplicate share certificates. In such situation, the Trial Court should have restrained itself from entering into the discussion on issue relating to the ownership and title of the appellant over the shares. As, the relief of direction to the Registrar to issue duplicate share certificates was the main relief, sought by the appellant and to enable the appellant to get that relief, the consequential/ancillary relief of declaration was sought about his title to shares. If the Trial Court has held that it has no jurisdiction to grant the main relief, then it follows that Trial Court had no jurisdiction even to grant other consequential/ ancillary relief of declaration. However, the Trial Court has entered into that issue and recorded findings. Needless to state that, the findings of the Trial Court on that issue being recorded by the Court having no jurisdiction to record

such findings, those findings cannot have any legal value. Hence, it is not necessary, as such, to decide the legality of those findings on analysis of evidence. Moreover, if the submission of learned counsel for respondent No.1 is accepted that this Court should, instead of deciding the appeal at this stage of admission, admit the same and thereafter decide on merits the legality of findings recorded by the Trial Court, even then in my considered opinion, as rightly submitted by the learned counsel for the appellant, it would be a totally futile and infructuous exercise. The law is very clear, which is not and cannot be disputed in the light of the Apex Court Judgment that the Registrar is alone having jurisdiction to issue duplicate share certificate and, therefore, once the Civil Court has no jurisdiction to do so, even if I decide the appeal and ultimately hold in favour of the appellant that the appellant is having title and ownership over the said shares, respondent Nos.1 and 2 are bound to challenge the said decision on the count that if the Trial Court has no jurisdiction, this Court was also not having the jurisdiction to record such finding in the appeal. Therefore, it is going to be an entirely futile and infructuous exercise in allowing the appeal to languish after admission, till its final hearing, especially, when the cause of action for the suit has arisen in the year 1995 and already it is more than 20 years. When the legal position is crystal clear and learned counsel for the appellant has, relying upon these provisions under Section 84 of the Companies Act and the law laid down in this authority of **Shripal Jain** (supra) has fairly conceded that the

appellant may be given liberty to approach the Registrar instead of prosecuting this appeal, there is no point in proceeding with this appeal merely for academic purpose to decide the legality and validity of the findings recorded by the Trial Court on issue Nos.3 and 4, pertaining to declaration of title over the share certificates.

31. Therefore, though it is true that this court does not normally dispose of the appeal at the stage of admission, unless both parties consent thereto, considering peculiar facts of the case as even after the ultimate decision is given one way or the other, that decision is likely to become infructuous as the Civil Court has no jurisdiction to grant substantial relief of giving direction to Registrar to issue duplicate certificate, in view thereof, this Court is adopting exceptional mode of deciding this appeal at the stage of admission itself, instead of allowing the same to languish for some more years.

32. As to the decision relied upon by respondent No.1 in the case of **Inter Sales Vs. Reliance Industries Ltd. and Ors. Company Cases 680 Vol. 108**, in that case though the matter relates to loss of equity shares and consequential reliefs, considering the fact that there was dispute with respect to the issue of duplicate shares, it was held that the Civil Court should proceed with the disposing of injunction application expeditiously according to law. Moreover, in the decision of Calcutta High

Court, the above said decision of the Apex Court in **Shripal Jain** (supra) was not cited or referred.

33. In the instant case, the transferors, the original owners of the shares have not at all come forward to challenge the ownership of the appellant over these shares. They have also not approached the Registrar of respondent company to stake their ownership over the said shares. In such a situation, there does not appear to be any dispute of ownership of the appellant over those shares. Hence, even otherwise also the issue relating to declaration of ownership, as sought by the appellant is again of merely of an academic nature and academic interest, if no one is coming forward to dispute the same.

34. In such situation, one really fails to understand as to why respondent No.1 company is contesting the limited relief made by the appellant, of giving liberty to the appellant to approach the Registrar. Needless to state that before issuance of duplicate certificate to the appellant, the Registrar is bound to make requisite inquiry under the provisions of Section 84(4) of the Companies Act and he is not precluded in any way from considering the title of the appellant over the said shares. As stated above, the Registrar can even investigate the matter in accordance with rules and collect the evidence. Once, it is held that, the Registrar has to issue the duplicate share certificates after necessary

inquiry, it follows that the inquiry will not be limited but it will cover even the aspect of ownership and title of the appellant over the said shares.

35. In the light of the discussion above, I find that this is a fit case where the appeal needs to be disposed of, by setting aside the impugned Judgment and order passed by the Trial Court and grant the liberty to the appellant to make an application before the current RTA of respondent No.1-Company, Karvy Computershare Pvt. Ltd. for issuance of duplicate share certificates.

36. As a result, the appeal is allowed in following terms:

- (i) The impugned Judgment and order dated 12.01.2016 passed by the City Civil Court, Mumbai is quashed and set aside, granting liberty to the appellant to make an appropriate application before the current RTA of respondent No.-1 company, Karvy Computershare Pvt. Ltd., for issuance of duplicate share certificates.
- (ii) If, such an application is made by the appellant within a period of three weeks from today, the RTA of respondent No.1 i.e. Karvy Computershare Pvt. Ltd. shall decide the same within a period of eight weeks thereafter, in accordance with law.

- (iii) In the meantime, the interim order dated 30.09.1997 shall continue to operate and status quo shall be maintained in respect of shares claimed by the appellant.
- (iv) In the event, the order of the RTA is not in favour of the appellant, then such order of interim status quo shall continue for the further period of four weeks from the date of communication of the order by the RTA to the appellant, so that the appellant can take recourse to appropriate proceeding, in accordance with law. Needless to clarify that the time spent in Suit and in this appeal will be excluded from computation of limitation, in view of Section 14 of the Limitation Act.
- (v) As the Appeal is disposed of, the Civil Application does not survive and hence disposed of.
- (vi) In the peculiar facts and circumstances, the parties to bear their own costs, of the suit and this appeal.

[DR. SHALINI PHANSALKAR-JOSHI, J.]