

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY APPEAL NO.40 OF 2016
IN
COMPANY APPLICATION NO.154 OF 2014
IN
COMPANY PETITION NO.19 OF 2011

Ms. Sulochana Neelkanth Kalyani ...Appellant
vs.
M/s. Takle Investments Company & Ors. ...Respondents

WITH

COMPANY APPEAL NO.41 OF 2016
IN
COMPANY APPLICATION NO.155 OF 2014
IN
COMPANY PETITION NO.20 OF 2011

WITH

COMPANY APPEAL NO.42 OF 2016
IN
COMPANY APPLICATION NO.156 OF 2014
IN
COMPANY PETITION NO.21 OF 2011

WITH

COMPANY APPEAL NO.43 OF 2016
IN
COMPANY APPLICATION NO.157 OF 2014
IN
COMPANY PETITION NO.22 OF 2011

WITH

COMPANY APPEAL NO.44 OF 2016
IN
COMPANY APPLICATION NO.158 OF 2014

IN
COMPANY PETITION NO.23 OF 2011

WITH
COMPANY APPEAL NO.45 OF 2016
IN
COMPANY APPLICATION NO.159 OF 2014
IN
COMPANY PETITION NO.24 OF 2011

WITH
COMPANY APPEAL (L) NO.46 OF 2016
IN
COMPANY APPLICATION NO.160 OF 2014
IN
COMPANY PETITION NO.25 OF 2011

WITH
COMPANY APPEAL (L) NO.47 OF 2016
IN
COMPANY APPLICATION NO.161 OF 2014
IN
COMPANY PETITION NO.26 OF 2011

WITH
COMPANY APPLICATION (L) NO.60 OF 2015
IN
COMPANY APPEAL (L) NO.41 OF 2015
IN
CLB COMPANY APPLICATION NO.154 OF 2014
IN
CLB COMPANY PETITION NO.19 OF 2011

WITH
COMPANY APPEAL NO.86 OF 2015
IN
COMPANY APPLICATION NO.154 OF 2014
IN
COMPANY PETITION NO.19 OF 2011

WITH
COMPANY APPEAL NO.87 OF 2015
IN
COMPANY APPLICATION NO.155 OF 2014
IN
COMPANY PETITION NO.20 OF 2011

WITH
COMPANY APPEAL NO.88 OF 2015
IN
COMPANY APPLICATION NO.156 OF 2014

WITH
COMPANY APPEAL NO.89 OF 2015
IN
COMPANY APPLICATION NO.157 OF 2015
IN
COMPANY PETITION NO.22 OF 2011

WITH
COMPANY APPEAL NO.90 OF 2015
IN
COMPANY APPLICATION NO.158 OF 2014
IN
COMPANY PETITION NO.23 OF 2011

WITH
COMPANY APPEAL NO. 91 OF 2015
IN
COMPANY APPLICATION NO.159 OF 2014
IN
COMPANY PETITION NO. 24 OF 2011

WITH
COMPANY APPEAL NO.92 OF 2015
IN
COMPANY APPLICATION NO. 160 OF 2014
IN

COMPANY PETITION NO.25 OF 2011**WITH****COMPANY APPEAL NO.93 OF 2015****IN****COMPANY APPLICATION NO.161 OF 2014****IN****COMPANY PETITION NO.26 OF 2011** $\frac{1}{4}$...

Mr. Janak Dwarkadas, Senior Advocate, a/w. Mr. J.J. Bhatt, Senior Advocate, Mr. Ashish Kamat, Mr. Kunal Mehta, Ms. Bhumika Batra, Ms. Shivani Parikh and Mr. Pranav Arora, i/b. Crawford Bayley & Co., for Appellant in COAPPL/41/2015 to 48/2015 and Respondent No.1 in COAPP/86/2015 to 93/2015.

Mr. Snehal Shah, a/w. Mr. Atul Daga and Ms. Aditi Prabhu, i/b. Desai Desai Carrimjee & Mulla, for Respondent No.1 in COAPPL/41/2015 to 48/2015 and Respondent No.2 in COAPP/86/2015 to 93/2015.

Mr. S.N. Mookherjee, Senior Advocate, a/w. Mr. Zal Andhyarujina, Mr. Ravi Gandhi, Mr. Punit Damodar, Ms. Nikita Vardhan and Mr. Rashmin Jain, i/b. Kanga & Co., for Appellants in COAPP/86/2015 to 93/2015 and for Respondent Nos. 2 to 4 in COAPPL/41/2015 to 46/2015.

 $\frac{1}{4}$..**CORAM : S.C. GUPTE, J.****RESERVED ON : 22 DECEMBER 2015****PRONOUNCED ON : 7 JUNE 2016****JUDGMENT:**

. This company appeal impugns an order passed by the Company Law Board, Mumbai Bench, Mumbai (^aCLB^o) on petitions filed under Section 111(4) of the Companies Act, 1956 for rectification in the register of members. The petitions for rectification were filed in respect of

eight different companies, who were arraigned respectively as Respondent No.1 in eight separate petitions. The facts of these eight petitions are more or less similar and considered hereinbelow in Company Appeal (L) No.41 of 2015 arising out of Company Petition No.19 of 2011 as a representative case.

2. The short facts of the Petitioner[©] case may be noted as follows :

(i) The Petitioner ±Sulochana Neelkanth Kalyani (^aSulochana^o or ^aPetitioner^o) is one of the trustees of a private family trust known as ^aN.S. Trust^o. This trust was settled by Mr. M.B. Hattarki, brother of Sulochana, under an Indenture of Trust dated 10 April 1999, the initial trustees of the trust being (1) Sulochana, (2) her late husband Dr. N.A. Kalyani (^aDr. Kalyani^o), (3) Dilip Ganesh Karnik, now a retired Judge of this Court and then an advocate (^aDGK^o) and (4) Srikrishna Narhari Inamdar, a Chartered Accountant (^aSNI^o).

(ii) Respondent No.1 is a private limited company incorporated for the purposes of holding and / or facilitating investments of Dr. Kalyani, Sulochana and Respondent Nos.2 and 4 herein, who are, respectively, son (^aGaurishankar^o), and grandson of Sulochana and Dr.Kalyani (^aViraj^o) all of whom together form Kalyani family, which owns diverse business interests held by incorporated entities. The business interests are substantially owned and controlled through nine investment companies like Respondent No.1 herein. Nearly 98% of the share capital of each of these nine holding companies is held by N.S. Trust. 6833 shares of

Respondent No.1, which constitutes 98% of capital, are accordingly acquired in the joint names of Dr. Kalyani, Sulochana, DGK and SNI. Under Section 153 of the Act, Respondent No.1 is not entitled to take cognizance of the trust. Accordingly, Dr. Kalyani, Sulochana, DGK and SNI have been joint shareholders of these shares and members of Respondent No.1 Company.

(iii) In or about 2005, Dr. Kalyani's health started failing. Gaurishankar having peculiar medical problems connected to his mental / physiological imbalances, preventing him from taking responsibility of looking after the family business, Respondent No.3 (^aRohini^o) started acquiring a position of dominance, control and trust in the affairs of the business of Kalyani family. She was appointed as Managing Director of Kalyani Forge Limited, an important group company, and also became a Director of other group companies and started looking after the Kalyani family companies and business affairs. It is Sulochana's grievance that Rohini had illegally and / or wrongfully gained confidence of late Dr. Kalyani and Gaurishankar and placed herself in a position where she exercised undue influence over them.

(iv) Sometime later, unrest started in the family, when Dr. Kalyani and Sulochana started learning about the wrongdoings and illegalities committed by Rohini. With a view to maintain family amity and for other diverse reasons, including the deteriorating health of Dr. Kalyani, no legal action was initiated in the matter, though in January 2010, both Dr. Kalyani and Sulochana revoked two Powers of Attorney, which were earlier executed in favour of Gaurishankar and Rohini.

(v) In or about February / March 2011, the matters reached the stage of full-blown unrest, whereupon a search was caused to be taken in the records of various statutory authorities, including the Registrar of Companies, in respect of Kalyani family companies. Upon these inquiries, Sulochana claims to have gained knowledge of the following :

- (a) Annual returns of Respondent No.1 for the year ending 31 March 2008 revealed a purported transfer of shares owned by the trustees (as transferors) in favour of Dr. Kalyani (as transferee);
- (b) Annual returns of Respondent No.1 for the year ending 31 March 2009 revealed a purported transfer of the shares by Dr. Kalyani to Gaurishankar.
- (c) Sulochana was purportedly shown as having ceased to be a Director of Respondent No.1 with effect from 7 January 2010. The purported resignation letter in this behalf was signed by Gaurishankar as a Power of Attorney holder though no such power was contained in the Power of Attorney and Gaurishankar had no authority to do so, besides by reason of the cancellation of the Power of Attorney itself on 19 January 2010 as recounted above. Nearly eight months after the date of the purported resignation, Form 32 was filed with the Registrar of Companies on 4 December 2010 in respect of Sulochana's resignation.

(vi) After some correspondence between the parties, the present

company petition was filed before the CLB (being Company Petition No.19 of 2011), wherein Sulochana prayed for cancellation of the transfer of the impugned shares and rectification of the relevant documents. Her case was based on the following grievances :

- (a) By virtue of Section 153 of the Act, Respondent No.1 company was not entitled to take cognizance of the trust and was, therefore, obliged in law to only look at and treat Sulochana, Dr. Kalyani and DGK and SNI as its members and joint shareholders of the impugned shares ;
 - (b) There was no instrument of transfer of shares duly executed by and on behalf of these joint shareholders and accordingly, the registration of such transfer was not in accordance with the provisions of Section 108 of the Act, which are mandatory in nature ;
 - (c) In the absence of a valid instrument of transfer, the shares continued to vest in Sulochana and other trustees and their names should not have been removed from the register of members in respect of the impugned shares.
- (vii) By its impugned order dated 18 May 2015, the CLB dismissed the petition as not maintainable. That order is impugned in the present company appeal. There is a cross-appeal filed by Respondent Nos.2 to 4 challenging some of the findings of the CLB.

3. Though the CLB held in favour of the Petitioner on merits of

the case, that is to say, the impugned transfer of shares to be invalid and not in accordance with law, the CLB proceeded to dismiss the petition on the following grounds:

(i) The Petitioner deliberately, knowingly and mala fide failed and omitted to disclose, or mention about, material documents and thus, did not approach the CLB with clean hands. She ^a*suppressed material and relevant facts going to the root of this case*^o as also ^a*vital documents which would have thrown light for the just decision of this case.*^o

(ii) The petition was barred by the law of limitation, and also suffered from unexplained delay and laches.

4. In their cross appeal/objections, the Respondents contest the impugned order of the CLB on the merits of the controversy as also on various preliminary objections such as locus standi of the Petitioner, non-joinder of necessary parties, etc., which were rejected by the CLB.

5. Going by the arguments advanced by the parties before me, the following questions arise for the consideration of the Court in the present matter:

(a) Does the Petitioner have locus to maintain a rectification petition, as one of the four joint-holders of the shares?

(b) Is the petition liable to be dismissed for non-joinder of necessary parties in the absence of the co-trustees of the Petitioner?

(c) Is the petition barred by the law of limitation or liable to be dismissed for unexplained delay or laches?

(d) Is the Petitioner guilty of suppression of material and relevant facts or vital documents, calling for dismissal of the petition? and

(e) Is the CLB justified in holding that the impugned transfers are invalid and not in accordance with law?

6. The questions of locus of the Petitioner as one of the four joint holders to present a rectification petition and non-joinder of other joint-holders/co-trustees can be taken up together. The argument of the Respondents is that the Petitioner holds the subject shares as a joint holder and trustee of N.S. Trust along with other joint holders and co-trustees and cannot maintain in her own right a rectification petition and in any event, her co-trustees who jointly hold the shares with her ought to have been joined as necessary parties to the petition. The Respondents rely on Section 48 of the Indian Trusts Act in this behalf, which provides that when there are more trustees than one, all must join in the execution of the trust except where the instrument of trust otherwise provides. The argument is devoid of substance. Section 153 of the Companies Act provides that no notice of any trust, express, implied or constructive, shall be entered on the register of members. A company cannot take cognizance of any trust and is obliged in law to treat the trustees who may be holding shares in it as merely joint holders. The four trustees of N.S. Trust have, thus, been mere joint holders of the impugned shares *qua* the company. If it is the case of

the Petitioner, as such joint holder, that without compliance with the provisions of Section 108, and particularly, her having executed any transfer deed, the shares are transferred, she is but an aggrieved person and can certainly apply for rectification in her individual capacity. When she does so apply, she is not executing the trust within the meaning of Section 48 of the Trusts Act, but seeking redressal as a person aggrieved under Section 111(4) of the Companies Act. In that case, there is no need to join the other joint holders, even if they be co-trustees, as necessary parties. These joint holders cannot be termed as parties who ought to have been joined. The Petitioner, accordingly, had the locus and, as rightly held by the CLB, need not have joined the other joint holders/co-trustees as parties to the petition.

7. The question of bar of limitation has two aspects- one, whether the Limitation Act, 1963 and particularly, Article 137 thereof (residuary article providing for applications, where no limitation period is otherwise provided for), applies to a rectification application to the CLB under Section 111(4), and two, what is the starting point of limitation - whether it is the date of execution of the purported transfer documents or the date of knowledge as claimed by the Petitioner.

8. The applicability of the Limitation Act generally to proceedings before the CLB depends on the central question as to whether the CLB is a Court within the meaning of Section 3 read with Sections 4 and 5 of that Act. The proposition that the Limitation Act only applies to proceedings before Courts is not seriously contested by the Respondents. What the Respondents submit is that the CLB is indeed a Court within the meaning

of the Limitation Act. The Supreme Court in **Kerala State Electricity Board vs. T.P. Kunthali**¹, whilst analysing the provisions of Article 181 of the old Limitation Act (the 1908 Act) and Article 137 of the present Act (the 1963 Act), both of which are residual entries, has affirmed that the words "any other applications" under Article 137 do not imply only applications under the Civil Procedure Code other than those mentioned in Part I of the third division; that any other application under Article 137 would be a petition or an application under any Act, but it has to be an application to a court. The Court stated its conclusion in the following words :

"22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in *Athani Municipal Council* case and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act."

9. Let us now consider what is meant by a court or specifically, a civil court in this context. The word court is not defined under the Limitation Act. Courts are established by the State for administration of justice. It is a generic expression and in the context in which it occurs, may mean a body or organization invested with the power or authority to decide disputes between the subjects of the state or the State and its subjects. But there is a well-known distinction between courts and tribunals both of whom are required to decide matters involving a

¹ (1976) 4 Supreme Court Cases 634

decision on the rights and obligations of the parties before them and act judicially, i.e. fairly and impartially and in accordance with law. Then there are judicial as well as quasi-judicial tribunals. A mere duty to act judicially, either expressly imposed or arising by necessary implication by the nature of duties to be performed whilst so acting, does not of itself make a tribunal - whether judicial or quasi-judicial - a Court (See **Ramrao vs. Narayan**²). The distinction between a Court and a Tribunal is explained by the Supreme Court in **Kihota Hollohon vs. Zachilhu**³ by quoting Hidayatullah, J. in **Harinagar Sugar Mills Ltd. vs. Shyam Sunder Jhunjhunwala**⁴ in the following words:

a.....By 'Courts' is meant Courts of civil judicature and by 'tribunals', those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary Courts of civil judicature. Their procedures may differ, but the functions are not essentially different.⁵

The expression 'Court' used in different Acts has been interpreted by the Supreme Court and various High Courts in a number of cases. In **Union of India vs. R. Gandhi**⁵ the Supreme Court explained the term 'Courts' thus:

^{a38}. The term 'courts' refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the State for administration of justice

² AIR 1969 Supreme Court 724

³ AIR 1993 Supreme Court 412

⁴ AIR 1961 Supreme Court 1669 (V 48 C 315)

⁵ (2010) 11 Supreme Court Cases 1

that is for exercise of the judicial power the State to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to civil courts, criminal courts and the High Courts. Tribunals can be either private tribunals (Arbitral Tribunals), or tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or tribunals authorised by the Constitution (Administrative Tribunals under Article 323-A and tribunals for other matters under Article 323-B) or statutory tribunals which are created under a statute (Motor Accidents Claims Tribunal, Debt Recovery Tribunals and Consumer Fora). Some Tribunals are manned exclusively by Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory tribunals have judicial and technical members (Administrative Tribunals, TDSAT, Competition Appellate Tribunal, Consumer Fora, Cyber Appellate Tribunal, etc.)^o

Then, after an extensive review of the various pronouncements on the subject, the Court brought out the differences between the Courts and tribunals in the following words :

^a45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are :

(i) Courts are established by the State and entrusted with the State's inherent judicial power of administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore all courts are tribunals. But all tribunals are not courts.

(ii) Courts are exclusively manned by Judges, Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an ^aexpert^o in the field to which the tribunal relates. Some highly specialised fact-

finding tribunals may have only technical members, but they are rare and are exceptions.

(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.^o

Our Court in a Full Bench decision in the case of **Gangwani and Co. vs. Mrs. Saraswati wd/o Maniram Banewar**⁶ put the matter thus :

^a19. Even otherwise, the word ^aCourt^o used in Section 115 of the Code of Civil Procedure has a restrictive meaning and is referable only to the Civil Court in the normal hierarchy of the Courts and does not include in its ambit forums, which are constituted under the special Acts and exercising special jurisdiction. As stated hereinabove, by and large the essential features of the Court and special forums are quite similar in regard to exercising judicial powers of the State. Their decisions are binding in nature. The procedure is almost similar except in case of special forums, the same need not be strictly followed as in the case of Courts. The approach also needs to be adopted by both is also more or less same. The distinguishing feature between Court and Tribunal or special forum is that a Court is constituted by the State as a part of the normal hierarchy of Courts of Civil Judicature maintained by the State under its Constitution exercising juridical powers of the State and perform all the judicial functions of the State except those, which are excluded by law from their jurisdiction, whereas Tribunal is constituted under the special Act to exercise special jurisdiction in order to decide controversy arising under certain special laws and, therefore, by its very composition and formation, is distinct and separate and cannot be treated as Court by necessary implication.^o

6 2001(3) Mh.L.J. 6

Relying on various decisions on the point, our Court held that the word "Court" used in Section 115 of the Code of Civil Procedure is used as meaning only a civil court in the normal hierarchy of Courts and that the Commissioner appointed under Section 20 of the Workmen's Compensation Act discharges functions and powers as a tribunal and is not a civil court.

10. Apart from the case of **Union of India Vs. R. Gandhi** (supra), the decisions of Allahabad and Andhra Pradesh High Courts respectively in **Prakash Timbers Pvt Ltd. Vs. Smt. Sushma Shingla**⁷ and **RDF Power Projects Ltd. Vs. M. Muralikrishna**⁸, have considered the position of the CLB and held that it is a tribunal and not a court. These decisions have ruled that though the CLB has trappings of a court, its powers are confined only to the provisions of the Companies Act in that behalf and exercised in only specific matters provided therein; that all members of the board are not judicial members, but there are technical members; that sub-section (4-D) of S.10 of the Act and Regulation 47 are deeming clauses treating the Board as a Court for a limited purpose; that matters which are not within the jurisdiction of the Board are decided by the High Court or the District Court as provided under Section 10 and other provisions of the Act; that the residue goes before ordinary civil courts or some other competent authority; and that considering the scope, function and special jurisdiction conferred on it, the Board can be said to be only a Tribunal and not a Court.

11. Mr. Mukherjee, learned Senior Counsel for the Respondents, submitted that the expression "Court" appearing in the Limitation Act, 1963

⁷ AIR 1996 Allahabad 262

⁸ 2005 Company Cases Vol.124 Pg.184

would include all bodies which discharge curial functions and thus include the CLB as a judicial body performing a curial function under Section 111 of the Act, which was originally with the High Court under Section 155 prior to the amendment to the Act. He relied on the Supreme Court decisions in **Canara Bank Vs. Nuclear Power Corporation of India Ltd.**⁹, **P. Sarathy Vs. State Bank of India**¹⁰ and our Court[©] decision in **Raju Grover vs. Kalati Constructions Pvt. Ltd.**¹¹ in support of his submission.

12. In **Canara Bank**[©] case (supra), the Supreme Court was considering the question as to whether or not the word **Court**[©] used in Section 9A of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 included the CLB exercising powers under Section 111 of the Companies Act. Section 9A dealt with the jurisdiction, powers and authority of a Special Court constituted under that Act. It *inter alia* provided that on and from the commencement of that Act, every suit, claim or other legal proceedings (other than appeal) pending before any court answering the description under Section 9-A shall stand transferred to the Special Court. The Supreme Court, after considering the case law on the subjects, held as follows :

^a26. In our view, the word **Court**[©] must be read in the context in which it is used in a statute. It is permissible, given the context, to read it as comprehending the courts of civil judicature and courts or some tribunals exercising curial, or judicial powers. In the context in which the word **Court**[©] is used in Section 9-A of the Special Court Act, it is intended to encompass all curial or judicial bodies which have the jurisdiction to decide matters or claims, *inter alia*, arising out transactions in securities entered

9 1995 Supp (3) Supreme Court Cases 81

10 AIR 2000 Supreme Court 2023

11 Company Appeal No.12/15 in Company Petition No.6/14

into between the stated dates in which a person notified is involved.^o

The Court, accordingly, held the CLB as being covered within the expression "Court" for the purposes of Section 9-A. There were special circumstances which warranted such interpretation under that Act. The Court considered the purpose of the enactment. The Act was preceded by a huge scam which had hit the securities market between July 1991 and May 1992 resulting from a systematic and deliberate abuse of the system by unscrupulous elements. Having regard to the enormity and ramifications of the scam, a special forum was created for deciding all matters and claims arising out of transactions of the period. These circumstances and steps taken to deal with them required to ascribe a broader meaning to the word "Court" so as to suppress the mischief and advance the remedy. The following paragraph from the judgment in **Canara Bank** explains the position :

^a28. Having regard to the enormity of the "scam" and its vast ramifications, parliament thought it was necessary that all the matters or claims arising out of transactions in securities entered into between the stated dates in which a person notified was involved should be brought before and tried by the same forum. That forum had been invested with the jurisdiction to try persons accused of offences relating to transactions in securities entered into between the stated dates. It was also required to give directions to the Custodian in regard to property belonging to persons notified which stood attached under the provisions of the Special Court Act. The object of amending the Special Court Act to invest the Special Court with the power and authority to decide civil claims arising out of transactions in securities entered into between the stated dates in which a person notified was involved has already been stated. In these circumstances, it is proper to attribute to the word "Court" in Section 9-A(I) of the Special

Court Act, not the narrower meaning of a court of civil judicature which is part of the ordinary hierarchy of courts, but the broader meaning of a curial body, a body acting judicially to deal with matters and claims arising out of transactions in securities entered into between the stated dates in which a person notified is involved. An interpretation that suppress the mischief and advances the remedy must, plainly, be given.^o

Such is not the position with a general statute like Limitation Act. There is nothing in the statute or its context to ascribe a broader meaning to the expression 'Court' used in it so as to include within it all courts and tribunals dealing with curial or judicial matters and thereby include the CLB within it.

13. In **P. Sarathy**'s case (supra), the Supreme Court was dealing with the question as to whether the expression 'Court' in Section 14 of the Limitation Act includes only 'civil courts'. Section 14 allows exclusion of time of proceeding bona fide in a court without jurisdiction for computation of limitation period. The Court held that Section 14 did not speak of a 'civil court' and that any authority or tribunal having the trappings of a court would be a 'Court' within its meaning. Again, here the context is very clear. What is important for the purposes of Section 14 is *bona fide* prosecution of a civil proceeding before a forum having trappings of court but without the jurisdiction of the court and not pendency of a matter before a civil court. Such is not the case with Section 3 read with Sections 4 and 5 and Article 137 of the Limitation Act. Here, we already have a decision of the Supreme Court directly on the point, namely, the decision in **Kerala State Electricity Board** (supra) which holds that any other application under Article 137 has to be an application to a 'Court' for the reason that Sections 4 and 5 of the Limitation Act, 1963 speak of courts

and Article 137 would apply to any petition or application filed under any Act before a civil court

14. In **Raju Grover** (supra), this Court has not really considered the question of applicability of Article 137 of the Schedule to the Limitation Act to a petition under Section 111 before the CLB. That point was not argued before the court in that case and the case is no authority for the proposition advanced by the Respondents here.

15. In the premises, the CLB is not a court for the purposes of Article 137 read with Sections 3, 4 and 5 of the Limitation Act, 1963 and there is no particular limitation period for an application under Section 111(4) of the Companies Act. The impugned order holding against the Petitioner on the ground of limitation, thus, clearly suffers from an error of law.

16. That is not to say that there are no considerations of delay and laches for granting reliefs under Section 111(4) of the Act. The relief to be granted under Section 111 is in the nature of a discretionary relief. Exercise of such discretion could certainly be affected by inordinate and unexplained delay, and laches. Any such delay may render granting of the relief of rectification inequitable; there could be equities arisen in favour of other parties as a result of such delay; such delay may give rise to a case of acquiescence, waiver or estoppel. These aspects would be for the CLB to assess and would depend on the peculiar facts and circumstances of each case. In the facts of the present case, there is no warrant for holding that there is any inordinate or unexplained delay for any reason disentitling the

Petitioner to the discretionary relief of rectification of the register. There are no equities arising in favour of the Respondents as a result of any delay. So also, there is no case of acquiescence, waiver of estoppel against the Petitioner. In fact, as I have particularly noted below, if one takes the correct date of accrual of the cause of action in the present case, there is no inordinate or unexplainable delay or laches.

17. That takes us to the question of the time of accrual of a cause of action for claiming rectification of register. The cause of action, in a case of fraud or misrepresentation in the matter of transfer of shares, would naturally arise when the fraud or misrepresentation is noticed by the aggrieved party. Even here, the CLB has clearly erred in the present matter. The impugned order proceeds on the footing that the cause of action has arisen in the present case on the date of execution of the purported documents of transfer by the Petitioner. The Petitioner's case before the CLB was that she had not signed the alleged documents of transfer and in any event, her signatures were obtained by misrepresentation and without knowledge on her part of the real nature of the transaction. The Petitioner's case was that the execution of documents, which was said to be a fraudulent act, came to light when the Petitioner took inspection of records in 2011. That is when the fraud or misrepresentation was noticed and that is when the cause of action for rectification arose. The CLB considered a so-called concession by learned Counsel for the Petitioner at the hearing in that the signatures themselves were said to be not seriously disputed, or *impliedly accepted*, as the CLB puts it. The CLB says that Counsel *confined his arguments by saying that the Petitioner was having no knowledge of having signed these documents*.

Though, it is highly debatable whether the record of the case bears out such concession, such concession certainly does not lend itself to the further conclusion drawn by the CLB on the basis of such concession that the Petitioner had knowledge of having signed the documents. It is one thing to not to dispute the signatures and quite another to say that the signatory actually knew that he was signing a document of transfer of shares, especially in the face of a specific case in the alternative, which was pressed at the Bar, that the Petitioner signed the documents inadvertently in routine course or more seriously, the signatures were obtained by misrepresentation and without letting the Petitioner know the real nature of the transaction. The CLB has not come to this conclusion on the basis of any analysis of evidence, but simply deduced it from the so-called concession of Counsel. That is clearly impermissible and has led to miscarriage of justice.

18. We may now take up the case of suppression of material documents and facts, which is the other ground on which the petition was dismissed by the CLB. The CLB found that the various documents executed by the Petitioner, which purported to transfer the subject shares and which were used by the Company to effect the transfer, were deliberately not disclosed by the Petitioner; and that such non-disclosure amounted to suppression of material documents and facts, calling for dismissal of the petition. The documents were : (i) Letter dated 6.7. 2007 addressed by the Petitioner to the Board of Trustees of N.S. Trust tendering her resignation as a trustee, (ii) Declaration of relinquishment executed by the Petitioner on 7.7.2007 in respect of all benefits in the income and corpus of the trust, (iii) Letter dated 7.7.2007 addressed by the Petitioner to Dr. Kalyani and

SNI *inter alia* requesting the latter to act as trustees and without considering her as a beneficiary, (iv) Letter dated 10.7.2007 addressed by Dr. Kalyani *inter alia* co-opting Gaurishankar and Rohini on the Board of Trustees and nominating Rohini to be the chairperson of the Board, (v) Resignation dated 22.6.2007 by DGK resigning from the trust, (vi) Minutes of Board of Trustees dated 12.7.2007 accepting the resignation of the Petitioner and DGK, and (vii) Letter dated 20.7.2007 addressed by SNI to the Board of Trustees conveying his consent to distribute/transfer the income/corpus to the sole beneficiary of the trust, viz. Dr. Kalyani. Apart from these documents, it is said that the share certificate which bears the signature of the Petitioner shows her knowledge of (i) transfer of shares to Dr. Kalyani as far back as on 17.9.2007 and (ii) further transfer from Dr. Kalyani to Gaurishankar by a registered gift deed on 22.11.2007. It is submitted that suppression of these facts and documents justified the dismissal of the petition.

19. The central point in this discussion (which also bears on the question of limitation, as noted above, from the standpoint of starting of the limitation period) is knowledge of these documents and facts on the part of the Petitioner. This is evidently a question of fact. As I have noticed above, there is no proof of such knowledge emanating from the record save and except the fact that these documents are purportedly signed by the Petitioner. As I have noticed above, the conclusion of the CLB on such knowledge is simply based on a so-called concession at the bar that the signatures of the Petitioner *per se* are not seriously disputed. I have already held above that no knowledge can be deduced from such concession, assuming without admitting the factum of such concession, in

face of the alternative case pressed by the Petitioner's Counsel about the signatures being obtained on a misrepresentation and without being aware of the nature of the documents. Here we need to consider the submission of learned Counsel for the Respondents on the plea of *non est factum* - denial or disowning of execution ±for want of knowledge of the nature or contents of the document executed. The submission is that if the document is in fact signed, the burden of establishing a plea of *non est factum* is on the signatory seeking to disown the document and that party must show that in signing the document, he acted with reasonable care; he cannot take advantage of his own wrong, say, of not reading the contents carefully. It is submitted that after having actually signed the documents, the Petitioner cannot plead ignorance of the nature or contents of the documents.

20. The Supreme Court in the case of **Smt. Bismillah Vs. Janeshwar Prasad**¹², considered the contours of the common law defence of *non est factum* in the following words :

^a12. The common law defence of *non est factum* to actions on specialties in its origin was available where an illiterate person, to whom the contents of a deed had been wrongly read, executed it under a mistake as to its nature and contents, he could say that it was not his deed at all. In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in which this defence was pleaded the mistake was induced by fraud; but that was not, perhaps, a necessary factor, as the transaction is ^ainvalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of signor did not accompany the signature. In other words, that he never intended to sign, and

12 (1990) 1 Supreme Court Cases 207

therefore, in contemplation of law never did sign, the contract to which his name is appended.

13. Authorities drew a distinction between fraudulent misrepresentation as to the *character* of the document and fraudulent misrepresentation as to the *contents* thereof. It was held that the defence was available only if the mistake was as to the very nature or character of the transaction.

14. In *Foster V. Mackinnon*, Mackinnon, the defendant was induced to endorse a bill of exchange on the false representation that it was a guarantee similar to one he had signed on a previous occasion. He was held not liable when sued even by an innocent endorsee of the bill. Byles, J. said:

^a... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the actual contents of the instrument.^o

15. This decision was referred to with approval by this Court in *Ningawwa Vs. Byrappa*. It was observed : (SCR pp.80-01)

^aIt is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded.^o

This would be a voidable transaction. But the position was held to be different if the fraud or misrepresentation related to the character of the document. This court held : (SCR P.801)

^a*The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character.* The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void,

while in the case of the latter, it is merely voidable.^o

(emphasis supplied)

However the House of Lords in *Saunders v. Anglia Building Society* reviewed the law and held that the essential features of the doctrine, as expressed by Byles, J. in *Foster v. Mackinnon*, had been correctly stated. Lord Reid, however, observed : (SC headnote at p.1005)

^aThe plea of non est factum could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document. Nor could it be available to a person whose mistake was really a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing.^o

16. However the distinction based on the character of the document and the contents of the document was considered unsatisfactory. The distinction based on the character and contents of a document is not without its difficulties in its practical application; for, in conceivable cases the Character^o of the document may itself depend on its contents. The difficulty is to be resolved on a case by case basis on the facts of each case and not by appealing to any principle of general validity applicable to all cases. Chitty on *Contracts* [^aGeneral Principles^o 25th edn, para 343, page 194] has this observation to make on *Sauders* decision :

^a....It was stressed that the defence of non est factum was not lightly to be allowed where a person of full age and capacity had signed a written document embodying contractual terms. But it was nevertheless held that in exceptional circumstances the plea was available so long as the person signing the document had made a fundamental mistake as to the character or effect of the document. Their Lordships appear to have concentrated on the disparity between the effect of the document actually signed, and the document as it was believed to be (rather than on the nature of the mistake) stressing that the disparity must be radical^o essential^o, fundamental^o, or very substantial.^o

In the instant case prima facie appellant seems to proceed on the premises that she cannot ignore the sales but that the sales require to be set aside before she is entitled to possession and other consequential reliefs.^o

21. No doubt, as explained by the Supreme court in **Bismillah®** case, the defence of *non est factum* is not to be lightly allowed where a person of full age and capacity has signed a document containing contractual terms. It is also true that the burden would always lie on the person raising a plea of *non est factum*. But it is equally true that as when such plea is raised what the Court has to consider is whether or not the person signing the document had made a fundamental mistake as to the character and effect of the document; whether there was a radical difference between what he signed and what he thought he was signing. In the present case, the plea was based on the allegation that the Petitioner thought that she was actually signing routine administrative papers along with others, which were brought to her by her own daughter-in-law, who was with the consent of the family members managing the affairs of the family companies. What the Petitioner actually signed were the documents purporting to effect transfer of ownership of the shares which gave the Petitioner and her co-trustees a controlling interest in the companies. There was a fundamental difference between what she signed and what she thought she was signing. The CLB had to actually consider whether this case was made out. Instead of considering that, the CLB appears to have simply based its conclusion on the so-called concession of Counsel about signatures of the Petitioner. The reasoning of the CLB goes like this : The signatures are not disputed; if the Petitioner signed the documents, she cannot claim lack of knowledge of their contents; as she, thus, knew of the

contents of the documents and their execution by her, and yet did not disclose the documents, she thereby suppressed material facts and documents, disentitling her to the discretionary relief of rectification. In other words, not only is the knowledge of contents deduced from the simple fact of non-traversal of the signatures (which is itself debatable), but a further inference of deliberate suppression on the part of the Petitioner of the documents purportedly signed by her is imputed. A defence of *non est factum* is ordinarily raised by the Defendant to avoid being bound by the document. If the defence fails, it means the document and its effect cannot be avoided by the Defendant. But to suggest that failure of such defence also implies actual knowledge of the contents of the executed documents and a deliberate non-disclosure based on such knowledge, is clearly impermissible. It would clearly lead to miscarriage of justice.

22. The error committed by the CLB in not considering the plea of *non est factum* simply on the basis of a so-called admission of the Petitioner's signatures on the subject documents, without going into the defence of fraud and misrepresentation, is an error of law which has vitiated the impugned order.

23. The same can be said even of the Respondents' plea of deemed knowledge of the registered document (i.e., the gift deed). Deemed knowledge may at best support a case of binding nature of the document but cannot sustain a plea of actual knowledge and deliberate suppression based on such actual knowledge.

24. Coming now to the merits of the determination by the CLB of the illegality of the transfer itself under Section 111 read with Section 108 of the Act, it is pertinent to note that there are two transfers in the present case- one, from the four joint holders, namely, Dr. Kalyani, Sulochana, DGK and SNI, to Dr. Kalyani as a sole holder and two, from Dr. Kalyani to Gaurishankar. These transfers were admittedly accomplished on different dates. The share certificate placed on record shows in the memorandum of transfers overleaf that the first transfer in favour of Dr. Kalyani was effected on 17 September 2007, whilst the second transfer from Dr. Kalyani to Gaurishankar was effected on 22 November 2007. There is no explanation, however, on record as to how the names of Sulochana and DGK were replaced by the names of Rohini and Gaurishankar as holders of the shares on the face of the share certificate. No such transfer is recorded in the memorandum of transfers overleaf. There is no share transfer form for transfer of shares between the original holders to the new four joint holders (said to be the co-trustees of the trust after the purported resignations of Sulochana and DGK and co-option of Rohini and Gaurishankar in their place), as required by Section 108 of the Act. Apart from this glaring lapse, the CLB has also noted the following admitted position for holding the transfers to be in contravention of Section 108 :

- (i) There is no instrument of transfer as required by Section 108 produced on record by the answering Respondents;
- (ii) The answering Respondents did not produce the register of members of the company to controvert the Petitioner's case that the transfers did not actually take place;

- (iii) No minutes of the Board of Directors or of any transfer were placed on record in respect of the impugned transfers;
- (iv) The purported annual returns filed with the Registrar of Companies did not relate to the transfers claimed to have been executed;

Based on these facts and applying the law laid down by the Supreme Court in the case of **Mannalal Khetan Vs. Kedar Nath Khetan**¹³ and followed by our Court in **Shirish Finance and Investment (P) Ltd. Vs. M. Shreenivamlu Reddy**¹⁴, holding that execution of valid transfer deeds within the meaning of Section 108 is a mandatory requirement of a valid transfer of shares, the CLB held the impugned transfers to be invalid and not in compliance with the provisions of Section 108. There is no error of law to be found in this analysis and the finding arrived at by the CLB on the basis thereof.

25. For the reasons stated above, the Company Appeal of Sulochana deserves to be allowed and the cross appeal/objections of the Respondents deserves to be disallowed.

26. In the premises, the following order is passed:

- (i) Company Appeal (L) Nos. 41 to 48 of 2015 are allowed. The impugned order of CLB is set aside and Company Petition Nos. 19 to 26 of

¹³ 1977 Company Cases Vol.47 Pg.185

¹⁴ 2002 (1) Bom CR 419

2011 are allowed in terms of prayer clauses (a) thereof.

(ii) Company Appeal Nos.86 to 93 of 2015 are dismissed.

(iii) In view of the disposal of Company Appeal (L) No.41 of 2015, Company Application (L) No.60 of 2015 does not survive and the same is disposed of accordingly.

(iv) There shall be no order as to costs.

27. Learned Counsel for the Respondents applies for stay of this order. On his application, the order is stayed for a period of eight weeks from today. However, during the period of the stay, as a condition of such stay, the Respondents shall maintain status-quo in respect of the shares as well as the shareholding of the first Respondent Company in all these appeals.

(S.C. GUPTE, J.)