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

COMPANY APPEAL NO. 54 OF 2015
IN
COMPANY PETITION NO. 96 OF 2011
ALONGWITH
COMPANY APPLICATION NO. 54 OF 2015

Mehboob Ayub Khan & Ors. …Appellants
vs.
Mehboob Productions Pvt.Ltd. & Ors. . ...Respondents

AND
COMPANY APPEAL NO. 56 OF 2015
IN
COMPANY PETITION NO. 41 OF 2011
ALONGWITH
COMPANY APPLICATION NO. 53 OF 2015

Farida Ayub Khan …Appellant
vs.
Mehboob Productions Pvt.Ltd. & Ors. . ...Respondents

Mr.Haresh Jagtiani, Senior Advocate with Siddhesh Bhole, Ryan Mandes, Dhruti Chheda and Sayali Mehra I/b. Siddhesh Bhole for Appellants.

Mr.K.R. Daviervala I/b. Mulla & Mulla & CBC for Respondent No.1.

Ms.N.A. Sawhney I/b. Hooseini Doctor & Co. for Respondent Nos.2 and 7.

Mr.Vibhav Krishna with Tahir Prande, Devang Lokhotia, Gaurav Pandey I/b. Juris Consillis for Respondent Nos.3 and 4.

Ms.Sarrah Kambati I/b. Wadia Ghandy & Co. for Respondent No.8.

CORAM : S.C. GUPTE, J.

18 APRIL 2017

<u>ORDER</u> :

Company Appeal No.54 of 2015 arises from a petition under

Sections 397 and 398 of Companies Act, 1956 ("Act"), whereas Company Appeal No.56 of 2015 arises from a connected rectification petition under Section 111 of the Act by one of the Appellants in the former appeal. The appeals involve some common questions and are heard together. They are being disposed of by this common order.

2 Prior to 1992, one Ayub Khan ("Ayub") was a shareholder of 1132 equity shares of the first respondent company ("company"). At his request, by a resolution passed on 9 May 1992, the Board of Directors of the company resolved to add the names of Mehboob Ayub Khan ("Mehboob") and Yasmin Ayub Khan ("Yasmin"), who are his children from his marriage with one Farida Moriswala ("Farida"), as joint holders in respect of 726 and 128 shares, respectively, from out of his 1132 shares. (Ayub was earlier married to one Rahat Ara, and had children by the name of Aslam Khan ("Aslam") and Afzul Khan ("Afzul") from that marriage.) The entries were made accordingly in the share certificates and the names of Mehboob and Yasmin were entered in the register of members. By his last will and testament, executed on 17 September 2007, Ayub also bequeathed his aforesaid 726 and 128 shares, respectively, to the joint holders – Mehboob and Yasmin, and the remaining 278 shares to Farida. On 14 March 2008, Ayub passed away. On 4 April 2008, Mehboob, Yasmin and Farida called upon the company (i) to effect transfer of 726 and 128 shares, respectively, to the sole names of Mehboob and Yasmin and (ii) to transfer the balance 278 shares of Ayub to Farida by way of transmission under the last will and testament of late Ayub. Pending the decision on their application, Aslam and Afzul filed a suit in the City Civil Court at Bombay, being Suit No.726 of 2008, challenging the said last will and testament purportedly executed by Ayub. On 26 August 2008, Aslam and Afzul also filed an administration suit,

being Suit No.2855 of 2008, in this court claiming one half of the estate left by late Ayub by way of intestate succession, which estate included 566 shares out of 1132 shares of the company originally held by Ayub. On 25 November 2008, this Court rejected the prayer of Aslam and Afzul for ad-interim reliefs in their suit, namely, Suit No.2855 of 2008, though it was made clear that the transactions effected by the defendants to the suit (which included Mehboob, Yasmin and Farida) in respect of the suit property, i.e. the estate of Ayub, would be subject to further orders that may be passed in the Notice of Motion and the suit. In this background, by their resolution passed on 13 December 2008, the Board of Directors of the company decided not to transmit the subject shares and to keep the dividend on the shares in a separate account. In January 2011, the company informed Mehboob and Yasmin that the company could not accede to their request for transfer unless appropriate directions were obtained in this behalf from the court. By its letter dated 11 July 2011, the company finally rejected the request of Mehboob and Yasmin. In the premises, on 5 September 2011, Mehboob and Yasmin, respectively, filed Company Petition Nos.40 of 2011 and 42 of 2011 for rectification of register in respect of 726 shares and 126 shares jointly held by them with Ayub, whilst Farida filed her own petition, being Company Petition No.41 of 2011, claiming devolution of 278 shares of Ayub under his last will and testament. The three of them also filed a company petition under Sections 397 and 398 of the Act, being Company Petition No.96 of 2011. Aslam and Afzul, for their part, filed a petition under Sections 397 and 398 of the Act, being Company Petition No.97 of 2011. Whilst the company petitions for rectification filed by Mehboob and Yasmin were allowed by the CLB by directing the company to effect transmission of 726 shares (to Mehboob) and 128 shares (to Yasmin), the company petition of Farida for transmission of 278 shares under the will (Company Petition No.41 of 2011) was disposed of by reserving liberty to her to revive her petition after the conclusion of the pending administration suit of Aslam and Afzul (Suit No.2855 of 2008). As for the oppression and management petition of Mehboob, Yasmin and Farida (Company Petition No.96 of 2011), the same was dismissed by the CLB as their main grievance in the matter was fully addressed in their rectification petitions (Company Petition Nos.40 and 42 of 2011). By another order of the same date, the CLB also dismissed the petition filed under Sections 397 and 398 by Aslam and Afzul (Company Petition No.97 of 2011). These orders were carried in appeal before this court. The appeals formed four groups : (i) The appeals of Afzul and Aslam from the rectification orders passed on the petitions of Mehboob and Yasmin (Co.App.Nos.55 and 56 of 2014) and the appeal of Afzul and Aslam from the order on the oppression and mismanagement petition of Mehboob, Yasmin and Farida (Co.App. No. 31 of 2015); (ii) The appeal of Mehboob, Yasmin and Farida from the order on their oppression and mismanagement petition (Co.App. No.54 of 2015); (iii) Farida's appeal from the order on her rectification petition (Co.App. No.56 of 2015); and (iv) The appeal of Afzul, Aslam and Sattar from the dismissal of their petition under Sections 397 and 397 (Co.App. No.65 of 2014). By an order dated 28 March 2016, three appeals out of these, namely, Co.App. Nos.55 and 56 of 2014 and Co.App.No.31 of 2015, forming part of the first group, were disposed of, whilst the second, third and fourth groups were ordered to come up in due course. Out of these latter three groups, the second and third groups are now being disposed of by this order.

3 As far as the rectification application of Farida (forming the subject of Company Appeal No.56 of 2015) is concerned, the controversy

concerns the question as to whether the CLB should have deferred the hearing of the application on account of the pendency of the administration suit (Suit No.2855 of 2008) before this court or instead should have decided it. Mr.Jagtiani, learned Senior Counsel for Farida, contends in support of the latter course of action. Leaned Counsel submits that the CLB should have decided the matter, and in favour of his client at that, he would submit, subject, under the circumstances, to any final determination of rights of the parties in the administration suit. Mr.Krishna, for the opponents Aslam and Afzul, supports the course adopted by the CLB, namely, deferring the decision until after the disposal of the administration suit.

4 No doubt, the facts of the case present a rather peculiar situation. The right of rectification claimed by the claimant before the CLB (Farida) is based on a will executed by the testator (Ayub), the validity of which is the subject matter of an administration suit filed before this court (Suit No.2855 of 2008) by the Opponents (Aslam and Afzul). But that still does not mean that the CLB can throw its hands up and refuse to decide the rectification application under Section 111 of the Act. It is pertinent to note that this court, in the administration suit, had refused to grant any interim relief to the opponents, Aslam and Afzul, which was claimed on the footing that there was no valid will of Ayub and that he had died intestate. If that is so, it means the parties were free to act on the basis of the will, though their rights and actions would be subject to the final determination of this court in the administration suit. This court itself had made this clear. Can the CLB then stay its hands and defer the determination till after the disposal of the administration suit. The CLB is conferred with, and mandated to exercise, jurisdiction to direct transfer on transmission of shares, when a company refuses to register the transfer or transmission within the statutory period or

without any just cause. Whilst exercising such jurisdiction, the CLB has the requisite authority to decide any question relating to the title of the applicant to the shares, transmission of which is claimed before it. It can determine all questions, which it is necessary or expedient to decide in connection with such application. That included the question, in the present case, as to whether or not there was a valid will, by which Ayub, the original shareholder, had bequeathed his shares to the applicant. This the CLB had to determine. Propriety simply demanded a rider to that decision on the part of the CLB that its determination of the applicant's title to the bequeathed shares would be subject to final determination of rights of the parties in the administration suit.

5 That said, it is necessary to determine where the applicant, Farida, stands *vis-a-vis* her claim to 278 shares of Ayub bequeathed to her under the will. The admitted facts presented before the CLB disclose that Ayub and Farida got their marriage registered under the Special Marriage Act; that Ayub had indeed made the last will and testament dated 17 September 2007; and that clause 25 read with clause 28F of the Articles recognized transmission of shares by will, the company being thus bound to act on it. If the marriage is registered under the Special Marriage Act, the Shariat Law containing restrictions on testamentary bequests by a mohammedan does not apply. That is not in dispute. The only dispute raised by Aslam and Afzul concerns the validity of this registration under the Special Marriage Act. It is submitted that the registration was obtained fraudulently. Unless and until a competent court ruled on it, the registration had to be treated as valid. (One of the issues before this court, when the administration suit is heard, would be the validity of this registration.) Until that issue is determined by this court, the CLB has to proceed on the basis of

this registration. It cannot either rule on it or withhold its decision on the rectification application pending the hearing of the administration suit. Marriage certificate issued by the marriage officer is conclusive evidence of solemnization of the marriage and completion of formalities of registration required by law. There is no challenge on the part of the company to the will on the basis of invalidity of the registration of the marriage or otherwise. Farida, in the premises, having applied for registration of the transmission, the company was bound to act on it. If it did not, its action was clearly wrong and the CLB was duty-bound to intervene in its jurisdiction under Section 111. In the premises, Company Appeal No.56 of 2015 deserves to be allowed.

6 If Farida's prayer for rectification is considered, Mehboob, Yasmin and Farida do not press their appeal from dismissal of their oppression and mismanagement petition (i.e. Company Appeal No.54 of 2015).

7 Accordingly, the company appeals are disposed of in terms of the following order :

(i) Company Appeal No.56 of 2015 is allowed by setting aside the impugned order of the Company Law Board passed on 7 August 2014 and allowing Company Petition No.41 of 2011 in terms of prayer clauses (i) and (ii) thereof;

(ii) Respondent No.1 is directed to make over all dividends accrued on the 278 equity shares of late Ayub

M. Khan, which are retained by it under orders of this court, to the Appellant Farida Ayub Khan;

(iii) The transmission of shares and payment of dividend with interest, ordered above, shall be subject to the result of Suit No.2855 of 2008;

(iv) In the event of this court deciding the question of transmission of the subject 278 shares of deceased Ayub M. Khan against the Appellants herein, the shares which go to Respondent Nos.3 and 4 in accordance with that decision shall be returned by the Appellant Farida Ayub Khan to Respondent Nos.3 and 4 along with the entire dividend received by her in pursuance of this order;

(v) No order as to costs.

(vi) In view of the disposal of the appeals, the company applications do not survive and the same are also disposed of.

(S.C. Gupte, J.)