IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.670 of 2017
and C.M.P.No.3412 of 2017

Judgment reserved on	Judgment pronounced on
26.04.2017	07.06.2017

N.Ramji .. Petitioner

vs

1.Ashwath Narayan Ramji

2.Sundaram Finance Limited
Having its registered office at
No.21, Pattullos road
Chennai-600 002. .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.01.2017 made in I.A.No.7540 of 2016 in O.S.No.1618 of 2016 on the file of the XII Assistant City Civil Court, Chennai.

For Petitioner : Mr.Sriram Panju
Senior Counsel for
Mrs.Geeta Ramaseshan

For R1 : Mr.Aravind Pandian
Senior Counsel for
Mr.V.P.Raman for caveator
For R2 : Mr.T.Srinivasaraghavan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 10.01.2017 made in I.A.No.7540 of 2016 in O.S.No.1618 of 2016 on the file of the XII Assistant City Civil Court, Chennai.

2. The petitioner is the second defendant. The first respondent is the plaintiff. The second respondent is the first defendant in O.S.No.1618 of 2016 on the file of the XII Assistant City Civil Court, Chennai. The first respondent filed the suit for the following reliefs:

(i) Mandatory injunction directing the first defendant to rectify its Register of Members to substitute the name of the plaintiff in suit schedule shares in place of second defendant and issue fresh share certificates to the plaintiff;

(ii) for permanent injunction restraining the second defendant from claiming any right, title or interest in respect of suit schedule shares;

(iii) to direct the defendants to account for the dividends, benefits and payments received and appropriated by the second defendant in respect of suit schedule shares and to pay interest of 12% per annum on the amount so ascertained from the date of such benefit accruing to the second defendant till date of payment;

3. The petitioner filed I.A.No.7540 of 2017 under Order VII Rule 11 of C.P.C. for rejection of plaint. The first respondent filed counter affidavit denying the averments made in the affidavit. The learned Judge by order dated 10.01.2017 dismissed the application.

4. Against the order dated 10.01.2017 made in I.A.No.7540 of 2017, the present civil revision petition is filed by the petitioner.

5. The facts of the case is as follows:

(i) First respondent is the son of petitioner and Mrs.Sharmila Ramji. The petitioner is the great grand son of T.V.Sundaram Iyengar (TVS). From his childhood, the first respondent used to get gifts from time to time on account of birth days, festivals and other occasions from his maternal grand parents, his maternal great grand mother and other maternal family members. In March 2003, on occasion of his Upanayanam, the first respondent received larger amounts of cash gifts and the same was kept by his parents to be invested for his welfare;

(ii) The petitioner as a father and natural guardian of first respondent opened an account on behalf of the first respondent in UCO Bank, Mount road branch, Chennai, bearing Account No:SB 02710100014018. The petitioner used these funds to acquire shares and make investments in fixed deposits in first respondent name in the second respondent. The shares were purchased from various third parties including the second respondent in the name of first respondent represented by the petitioner. The first respondent had 20180 equity shares in the second respondent in his individual name and 1973 equity shares as second holder along with the petitioner. Bonus shares 1:1 were issued in the years 2008 and 2012;

(iii) Misunderstanding arose between the petitioner and his wife, mother of the first respondent and both have filed petitions for divorce and the petitions are pending in III Additional Family Court, Chennai. First respondent and his sister are residing with their mother. The petitioner did not provide sufficient funds for the maintenance of first respondent and his sister. The first respondent represented by his mother as guardian, as he was minor at that time, filed C.S.No.412 of 2008 in this Court against the petitioner for partition of joint family properties. In the interim application taken out by him, this Court granted an interim injunction restraining the petitioner from alienating the HUF properties held by him as kartha;

(iv) The first respondent intended to do higher education in a foreign country. When he acquired the details of his assets, he came to know that the petitioner fraudulently in collusion with the directors of second respondent got the shares of the first respondent transferred to his name in the register of second respondent. The first respondent after attaining majority did not rectify fraudulent transfer of shares to the petitioner. In the above circumstance, the first respondent has filed the suit for the relief referred to above;

6. The petitioner filed I.A.No.7540 of 2017 under Order VII Rule 11 of C.P.C. for rejection of plaint on the following grounds:

(a) The suit is not maintainable in Civil Court, as special remedy is available under the provisions of the Companies Act. The relief sought for cannot be entertained by the Civil Court, as the suit is expressly and impliedly barred. The suit is not maintainable either in law or on facts;

(b) The suit is barred under Section 38 of the Specific Relief Act;

(c) First respondent filed C.S.No.412 of 2008 before this Court in the very same issue and deliberately did not include the present relief and thereby, relinquished the present claim. The present claim is barred by Order II Rule 2 of C.P.C. The application filed by the petitioner to reject the plaint in C.S.No.412 of 2008 is pending in this Court;

(d) The suit is barred by Section 58 of the Companies Act, 2013;

(e) From the averments in the plaint, it is seen that in the letter to the mother of the first respondent in the year 2006, the share details were mentioned and the suit filed in the year 2016 is barred by limitation;

(f) The relationship between the petitioner and his wife/ mother of the first respondent is not cordial and it is estranged relationship. To harass the petitioner only, the first respondent has filed the suit at the instigation of his mother. The relief for rectifying the register of members of second respondent is not maintainable in the Civil Court and the present suit is abuse of process of the Court;

(g) The first respondent is indulging in forum shopping and the plaint is liable to be rejected;

7. First respondent filed counter affidavit and denied various averments made by the petitioner and prayed for treating the averments in the plaint and evidence in I.A.Nos.4383 to 4385 of 2016 as part and parcel of the counter affidavit. The first respondent contended as follows:

(i) The application is devoid of merits and is filed only to drag on the proceedings. The petitioner has filed the application without raising any substantial and valid objections and has not stated under which sub-clause of Rule 11 of Order 7 C.P.C., the application has been filed. The objections raised by the petitioner are not the grounds mentioned in the Order VII Rule 11 of C.P.C.;

(ii) While considering the application under Order VII Rule 11 of C.P.C., the averments in the plaint alone have to be taken into consideration. The contentions of the petitioner contrary to the averments in the plaint are not relevant. The power under this provison has to be exercised sparingly and cautiously. In the present case, the petitioner has not made out any case for rejection of the plaint;

(iii) The cause of action for the suit has arisen on the breach as committed by the petitioner in altering the ownership of shares mentioned in the plaint;

(iv) The issue on fraud can be decided only by the Civil Court. No other forum has jurisdiction to decide the issue on fraud. Section 38 of the Specific Relief Act has nothing to do with the issue to the suit and the petitioner has not stated as to how the suit is barred as per the provision;

(v) The properties in C.S.No.412 of 2008 on the file of this Court relate to HUF properties and shares in the present suit are the individual shares of the first respondent. The issues involved in both the suits are different and the present suit is not barred by the provisions of Order II Rule 2 of C.P.C. The facts of the case in C.S.No.412 of 2008 and petitions before the Family Court are entirely different from the facts of the present case;

(vi) Section 58 of the Companies Act, 2013 deals with refusal by a company to register the transfer or transmission of shares upon intimation. The said section does not apply to the facts and the reliefs sought for in the present case. Both the parties do not state that the shares were transferred freely. The issue on limitation is a mixed question of fact and law and it can be decided only after the completion of trial by appreciating the evidence let in by the parties. The question of fraud played by the petitioner can be decided only by appreciating the evidence let in by the parties and the Civil Court is the appropriate forum to decide the issue. The proceedings in the forum established in the provisions of the Companies Act is summary in nature and the forum has no jurisdiction or power to decide the issue of fraud in a summary proceedings.

8. Before the learned Judge, both the petitioner and the first respondent did not let in any oral evidence. The petitioner marked four documents as Exs.P1 to P4. The first respondent marked seven documents as Exs.R1 to R7.

9. The learned Judge considering the averments in the plaint, affidavit filed in support of the application, counter affidavit, documents marked, judgments relied on by the parties, arguments of the learned counsel for the petitioner and first respondent, dismissed the application by holding as follows:

(i) The plea of limitation being mixed questions of law and fact cannot be decided at that stage;

(ii) There is a serious dispute with regard to the title of the shares and the said issue can be decided only by the Civil Court and Sections 58 and 59 of the Companies Act are not applicable to the facts of the present case;

(iii) The petitioner has not stated under which sub-section of Order VII Rule 11 of C.P.C., the application has been filed. The first respondent stated that as to how the cause of action for the suit arose, in para-18 of the plaint, the cause of action is a bundle of facts. The relief sought for is to substitute the name of the first respondent and issue fresh share certificates to him;

(iv) The first respondent has pleaded fraud and without trial, the said plea cannot be proved by the first respondent;

10. Aggrieved by the said order of dismissal dated 10.01.2017 in I.A.No.7540 of 2017, the petitioner has come out with the present civil revision petition.

11. The learned senior counsel appearing for the petitioner referring to the facts of the case contended as follows:

(i) The suit is not maintainable, as per the Section 38 of the Specific Relief Act. The learned Judge dismissed the application filed by the petitioner considering the provisions of old Companies Act, 1956 and failed to consider the provisions of the Companies Act, 2013;

(ii) The order of the learned Judge is contrary to the averments in the plaint, fact and law and suffers from error apparent on the face of the record;

(iii) The learned Judge failed to see that the National Company Law Tribunal has been constituted under Section 408 of the Companies Act, 2013 and as per Section 424 of the Companies Act, the Tribunal has powers of the Civil Court, while trying a suit contemplated under Section 424 (2) of the Act.;

(iv) The suit filed by the first respondent is for rectification of register of members of the second respondent and issue fresh share certificate to the first respondent in the place of the petitioner. The rectification is covered by Section 59 of the Companies Act, 2013. The remedy and proper forum for rectification is National Company Law Tribunal. The learned Judge without considering this fact has dismissed the application;

(v) Sections 58 and 59 of the Companies Act, 2013, which are equivalent to Sections 110 and 111A of the Companies Act, 1956, came into force on 12.09.2013 and these sections deal with rectification of register of members, a refusal of registration and appeal;

(vi) As per the Section 430 of the Companies Act, 2013, the jurisdiction of the Court is ousted in respect of the matters, which National Company Law Tribunal is empowered to determine. The learned Judge failed to see that the present suit is barred under law as the jurisdiction of the Civil Court is ousted;

(vii) The learned Judge failed to see that Section 58 and 59 of the Companies Act, 2013 has to be read with Section 424 and 430 of the Companies Act, 2013. The findings of the learned Judge that the suit is maintainable is bad in law and contrary to the provisions of the Companies Act, 2013. The learned Judge erred in considering the provisions of the old Companies Act, 1956 and the proceeding before the Company Law Board and failed to consider the provisions of the Companies Act, 2013;

(viii) The allegation of fraud made by the first respondent can be decided by the National Company Law Tribunal and the Tribunal has power to decide the said issue. The findings of the learned Judge that only the Civil Court has jurisdiction to decide the issue on fraud is contrary to Section 424 of the Act and jurisdiction of the Civil Court is ousted by Section 430 of the Act, 2013.

(ix) The first respondent represented by his mother filed C.S.No.412 of 2008 before this Court for partition. At that time itself, the shares mentioned in the present suit were in the name of the petitioner. The relief claimed in the present suit was available to the first respondent at that time itself. The mother of the first respondent deliberately did not include the present relief in the earlier suit. Only due to estranged relationship, the mother of the first respondent has instigated the first respondent to file the present suit to harass the petitioner. In view of this fact, the present suit is barred by the provisions of Order II Rule 2 of C.P.C.;

(x) Admittedly, the shares were transferred in the name of the petitioner in the year 2006 to the knowledge of the mother of the first respondent. Hence, the suit filed in the year 2016 is barred by limitation;

(xi) Section 10GB was inserted by the Companies (Second Amendment) Act, 2002. It barred the jurisdiction of the Civil Court. The Companies (Second Amendment) Act, 2002 was challenged as unconstitutional. The Hon'ble Apex Court in the judgment reported in ***2010 6 SCR 857, (Union of India v. R.Gandhi, the***

President, Madras Bar Association) held that the part of 1B and 1C in the present forum are unconstitutional and held made operational by making suitable amendments, as indicated in the said judgment. Section 10GB was part of 1C. After the judgment of the Hon'ble Apex Court, the Companies Act, 2013 was enacted on 29.08.2013. Many provisions including Sections 407 to 414 constituting the Tribunal and remedying the defects were rectified and came into force with effect from 12.09.2013. In view of the Repeal and Savings clause in Section 465, Section 10GB came into operation till Section 430 was notified on 01.06.2016, which bars jurisdiction of the Civil Court and Section 10GB is equivalent to Section 430. As per the Section 424 of the Companies Act, 2013, the Tribunal and the Appellate Tribunal have the powers of the Civil Court and the Tribunal can go into the questions of fraud by letting in evidence and examining the witness;

(xii) Section 430 of the Companies Act, 2013 bars jurisdiction of the Civil Court. As per Section 434(1)(c), which came into force on 15.12.2016, the suits pending in the High Courts and the District Courts, which are to be decided by the Tribunal, have to be transferred to the Tribunal. When suits pending before the High Courts and the District Courts ought to be transferred to the

Tribunal, the present suit, which is pending before the Assistant City Civil Court, this sub judge has to be transferred to the Tribunal, even though it is not barred when it was filed in the City Civil Court.

(xiii) As per the judgment reported in ***(1993) 3 SCC 123 (Inacio Martins (deceased through legal heirs) v. Narayan Hari Naik and others)***, when the Tribunal is constituted with power to decide the matters mentioned therein, only the said Tribunal is empowered to entertain the said matter. Appeal remedy is provided to the Appellate Tribunal and order of the Appellate Tribunal can be challenged in the Hon'ble Apex Court.

12. In support of his contention, he relied on the following decisions:

(i) ***AIR 1969 SC 78(1) (Dhulabhai v. State of M.P. and other)***, wherein in para-32, the marked portions are extracted hereunder:

> "(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions

of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a

revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit. .. .. ”

(ii) ***(1993) 3 SCC 123 (Inacio Martins (deceased through legal heirs) v. Narayan Hari Naik and others),*** wherein in para-11, it is held as follows:

“11. One further situation which may arise under the provisions of the Act may be taken note of. The impact of the fifth amendment may give rise to a situation where the remedy lies entirely under the Act and may have to be taken in the manner prescribed by or under the Act. For example, where a person who is a deemed tenant under section 4 of the Act if evicted from the land on or after July 1, 1962 his remedy under section 8(2) is to approach the authority under the Act for recovery of possession of the land of which he has been dispossessed. In such a situation the remedy may not be the one available in the case of a tenant other than a deemed tenant whose case is not governed by section 8(2) of the Act. But in the case of a deemed tenant who has been evicted from the land on or after 1st July, 1962 since a remedy has been provided under the Act, the Jurisdiction of the Civil Courts stands wholly barred by virtue of Section 58 (2) of the Act. In such a situation the Civil Court would not be competent to pass any order for restoration of possession to the deemed tenant. His remedy would, therefore, to be entirely under the Act. This is just by way of an illustration. If such a situation arises what procedure should the court follow in a pending suit which was instituted in a competent court having jurisdiction at the date of its institution. It would seem unfair to non-suit the plaintiff altogether for no fault of his own. We think, in such a situation where the entire dispute falls outside the Civil Court's jurisdiction on account of the change in law the proper course would be to follow in spirit the procedure outlined in Order 7 Rules 10 and 10A of the Code of Civil Procedure."

(iii) ***2010 6 SCR 857, (Union of India v. R.Gandhi, the President, Madras Bar Association),*** wherein in para-57, it is held as follows:

"57.We therefore dispose of these appeals, partly allowing them, as follows:

(i) We uphold the decision of the High Court that the creation of National Company Law Tribunal and National Company Law Appellate Tribunal and vesting in them, the powers and jurisdiction exercised by the High Court in regard to company law matters, are not unconstitutional.

(ii) We declare that Parts 1B and 1C of the Act as presently structured, are unconstitutional for the reasons stated in the preceding para. However, Parts IB and IC of the Act, may be made operational by making suitable amendments, as indicated above, in addition to what the Union Government has already agreed in pursuance of the impugned order of the High Court."

(iv) **(1998) 7 Supreme Court Cases 105 (Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. and others),** wherein in para 26, it is held as follows:

"26.The proviso gave discretion to the Court to direct an issue of law to be tried, if raised. By this deletion, submission is that the Company Court now itself has to decide any question relating to the rectification of the Register including the law and not to send one to the civil court. There could be no doubt any

question raised within the peripheral filed of rectification, it is the Court under Section 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away merely on account of the deletion of the aforesaid proviso. Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not falling under it. Thus in other words, the court under it has discretion to find whether the dispute raised is really for rectification or is of such a nature that unless decided first it would not come within the purview of rectification. The word "rectification" itself connotes some error which has crept in requiring correction. Error would only mean everything as required under the law has been done yet by some mistake the name is either omitted or wrongly recorded in the Register of the company. In T.P.Mukherjee's Law Lexicon, Fifth Revised Edition:

> *"The expression rectification of the Register used in Section 155 is significant and purposeful. 'Rectification' implies the correctness of an error or removal of defects or imperfections. It implies prior existence of error, mistake or defect ... the Register kept by the company has to be shown to be wrong or defective."*

According to Stroud's Judicial Dictionary:

> *"Rectify – Altering the Register of a company so as to make it conformable with a lawful transfer."*

In Venkataramaiya's Law Lexicon, 2nd Edn.:

> *"The act to be done under the powers of that section is the 'rectification' of the Register, a term which itself implies that the Register, either in what is, or what is not upon it, is wrong; but the Register cannot be wrong unless there has been a failure on the part of the company to comply with the directions in the Act as to the kind of Register to be kept: for if the Act has been complied with, the Register must be right and not wrong."*

(v) ***(2012) 8 Supreme Court Cases 706 (Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust),*** *wherein in paras 17 and 30, it is held as follows:*

"17.In the case on hand, the plaintiff-respondent to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order VII Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated Nil. It clearly shows non-compliance of Order VII Rule 14(2).

.. ..

.. ..

30. In the light of the above discussion, in view of the shortfall in the plaint averments, statutory provisions, namely, Order VII Rule 11, Rule 14(1) and Rule 14(2), Form Nos. 47 and 48 in Appendix A of the Code which are statutory in nature, we hold that the learned single Judge of the High Court has correctly concluded that in the absence of any cause of action shown as against the 1st defendant, the suit cannot be proceeded either for specific performance or for the recovery of money advanced which according to the plaintiff was given to the 2nd defendant in the suit and rightly rejected the plaint as against the 1st defendant. Unfortunately, the Division bench failed to consider all those relevant aspects and erroneously reversed the decision of the learned single Judge. We are unable to agree with the reasoning of the Division Bench of the High Court."

13. Per contra, the learned senior counsel appearing for the first respondent contended as follows:

(i) The suit is not barred by limitation. The shares mentioned in the suit absolutely belongs to the first respondent. The petitioner in collusion with the directors or officials of the second respondent got the shares transferred in his name, while the first respondent was a minor and first respondent did not rectify the same, when he attained majority. The first respondent came to know the fraud played by the petitioner, when he was collecting the details of his assets to proceed abroad for his higher education. Immediately, first respondent filed the suit. The limitation is a mixed question of fact and law, which can be decided only by appreciation of evidence let in during trial. This question cannot be decided in a summary proceedings;

(ii) The suit is not barred by the provisions of the Order II Rule 2 of C.P.C. The suit in C.S.No.412 of 2008 is for partition and allotment of first respondent's share in the properties of HUF which are in possession of the petitioner as kartha. The present suit relates to shares, which are owned by the first respondent absolutely in his individual capacity. The properties and cause of action for both the suits are entirely different. Section 38 of the Specific Relief Act referred to by the petitioner has no relevance to the issue in the suit and the petitioner has not stated as to how the said provision is applicable to the facts of the present case;

(iii) The various provisions of the Companies Act, 1956 and 2013 referred to by the petitioner are not applicable to the facts of the present case, especially, Section 58 of the Act, 2013. Section 58 is applicable to a case, where the company refused to rectify register of members. In the present case, first respondent is seeking rectification of register of members by substituting his name in the place of the petitioner's name and issue share certificates showing first respondent as owner. The first respondent has alleged fraud played by the petitioner in collusion with the directors and officials of the second respondent. The first respondent has also prayed for permanent injunction, which is prohibitory injunction restraining the petitioner from claiming any right or title or interest in the shares mentioned in the suit. The Tribunal has no power and capacity to decide the issues on fraud, collusion and permanent injunction. Only the Civil Court is the competent forum to decide all these issues;

(iv) Section 58 and 59 of the Companies Act, 2013 corresponds to Sections 111 and 111A of the Companies Act, 1956. As per Section 111(7) of the Companies Act, 1956, the Company Law board has power to decide the issue of title also. The Hon'ble Apex Court considering the scope of Section 111(7) of 1956 held that the seriously disputed question of title cannot be decided by the Company Law Board as the proceeding is summary in nature. The proceedings before the Tribunal constituted under the Companies

Act, 2013 is also summary in nature and the seriously disputed questions cannot be decided by the Tribunal. Even if the proceedings is initiated in the Tribunal, the seriously disputed questions have to be relegated to the Civil Court;

(v) The Division Bench of the Karnataka High Court in the judgment reported in **(2016) 198 CompCas 481 (Kar)** in **(K.Ravinder Reddy v. Alliance Business School and others),** held that if question of title in whose favour the shares ought to be transferred, adjudication power under Section 58 is not available to the Tribunal or Company Law Board. The contention of the petitioner that Section 10GB would prevail till Section 430 of the Companies Act, 2013 was notified, is devoid of merits. Section 10GB forming part of 1C, even though inserted on 01.04.2003 by the Companies (Second Amendment) Act, 2002 never notified. The Apex Court in the judgment reported in *(2010) 11 SCC 1 held that* part 1C and 1B to be unconstitutional. The same view was taken by this Court in the judgment reported in **2012 – 5 – L.W. 278** in **(K.Saravanan and another V. M/s.Cosmopolis Properties Pvt. Ltd. and others);**

(vi) The suit was filed on 07.03.2016, when there was no bar for instituting proceedings in the Civil Court. Section 430 of the

Companies Act, 2013 came into force only on 01.06.2016 and is not applicable to the suit already instituted. Even if Section 430 is applicable to the pending suits also, the same is not applicable to the present suit in view of the fact that the first respondent is seeking rectification of register of members alleging fraud and collusion on the part of the petitioner and second respondent. In view of these allegations, the relief sought for amounts to question of title, which can be decided only by the Civil Court as per the judgment of the Hon'ble Apex Court and Karnataka High Court referred to above and the suit cannot be transferred to the Tribunal by invoking Section 422 of the Companies Act, 2013.

14. In support of his contention, the learned Senior Counsel has relied on the following decisions:

(i) **2012 – 5 – L.W. 278** in **(K.Saravanan and another V. M/s.Cosmopolis Properties Pvt. Ltd. and others)** wherein in para 27, it is held as follows:

> *"27. As stated supra, in the decision reported in (2010) 11 SCC 1, the Honourable Supreme Court dealt with the scope of section 10GB of the Companies Act, and declared that Parts I-B and I-C of the Act viz., section 10FD to 10GF as presently structured are*

unconstitutional and they can be made operational by making suitable amendments, in that judgment. Admittedly, the amendments or suggestions laid down in that judgment are not carried out as on date and therefore, as per the judgment of the Honourable Supreme Court, section 10GB of the Companies Act, as on date is unconstitutional and therefore, the contention of the learned Senior Counsel for the petitioners that the civil court has no jurisdiction as per the provisions of section 10GB cannot be accepted."

(ii) **(2016) 198 CompCas 481 (Kar)** in **(K.Ravinder Reddy v. Alliance Business School and others),** wherein in para 31, it is held as follows:

"31.Under these circumstances, we find that as per Section 58 of the Act 2013, if the question arises for the title of the person in whose favour the shares are to be transferred, adjudication power may not be available to the Tribunal/CLB to exercise power under Section 58 of the Act, 2013."

(iii) ***(2016) 1 Supreme Court Cases 423*** *in* ***(Jai Mahal Hotels Private Limited v. Devraj Singh and others),*** *wherein in paras 17 and 18, it is held as follows:*

"17. Thus, there is a thin line in appreciating the scope of jurisdiction of the Company Court/Company Law Board. The jurisdiction is exclusive if the matter truly relates to rectification but if the issue is alien to rectification, such matter may not be within the exclusive jurisdiction of the Company Court/ Company Law Board.

18. In Standard Chartered Bank (supra), scope of Section 111(7) was considered. It was observed that jurisdiction being summary in nature, a seriously disputed question of title could be left to be decided by the civil court. It was observed :

> *29 The nature of proceedings under Section 111 are slightly different from a title suit, although, sub-section (7) of Section 111 gives to the Tribunal the jurisdiction to decide any question relating to the title of any person who is a party to the application, to have his name entered in or omitted from the register and also the general jurisdiction to decide any question which it is necessary or expedient to decide in connection with such an application. It has been held in*

Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd. that the jurisdiction exercised by the Company Court under Section 155 of the Companies Act, 1956 (corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988) was somewhat summary in nature and that if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, 23 September, 2015 which was the more appropriate remedy for investigation and adjudication of such seriously disputed question of title."

15. In reply, learned Senior Counsel appearing for the petitioner submitted that the judgment reported in **2012 – 5 – L.W. 278** in **(K.Saravanan and another V. M/s.Cosmopolis Properties Pvt. Ltd. and others),** rendered before the Companies Act, 2013 whereby the defects pointed out by the Hon'ble Apex Court had been rectified. In the judgment reported in **(2016) 198 CompCas 481 (Kar)** in **(K.Ravinder Reddy v. Alliance Business School and others),** the Division Bench of the Karnataka High Court held only the Tribunal or the Company Law Board has power to decide the issue on rectification of register of members and only

when the title of shares is in serious dispute, the Civil Court can decide the same. In the present case, the first respondent has not sought the relief of declaration of title of the shares in question. The suit is only for rectification of register of members. If declaration of title of shares is sought for, the suit has to be valued in consonance with the value of shares and proper Court fee has to be paid. If value of the shares is taken as value of the suit, the City Civil Court will not have pecuniary jurisdiction.

16. I have heard the submissions made by both sides and perused the materials available on record.

17. The points for consideration of the civil revision petition are as follows:

(i) Whether the suit is barred by limitation by the provisions of Order II Rule 2 of C.P.C.?

(ii) Whether Section 38 of the Specific Relief Act is applicable to the facts of the present case?

(iii) Whether the suit for the reliefs sought for is maintainable in Civil Court or the issue can be decided only by National Company Law Tribunal?

Points 1 and 2:

18. The first respondent has come out with the present suit seeking rectification of register of members of second respondent substituting his name in the place of petitioner's name and issue share certificates in his name. The first respondent has stated that these shares were purchased, while he was a minor from and out of gifts received by him from his maternal family members on the occasion of his birth days, festivals and Upanayanam etc. The petitioner as his father and natural guardian invested these amounts and purchased the shares from and out of the amounts received by the first respondent as gifts. When misunderstanding arose between the petitioner and his wife/mother of the first respondent and when both of them filed separate petitions for divorce. The petitioner fraudulently in collusion with the officials and directors of second respondent getting shares transferred in his name.

19. According to the first respondent, he came to know the fraud played by the petitioner only when he was ascertaining his assets while planning to go abroad for higher education. The petitioner has not filed written statement or counter in the interim application. Even in the affidavit filed in support of the application to

reject the plaint, the petitioner has not stated as to whether the shares were standing in the name of the first respondent and if so, when the shares were transferred in his name.

20. The petitioner has contended that the first respondent knew about the shares in his name in the year 2006 itself and the suit filed in the year 2016 is barred by limitation.

21. It is pertinent to note that the first respondent was a minor in the year 2006 and first respondent contended that after attaining majority, he did not ratify the transfer of shares in the name of the petitioner. In view of the above contention and failure on the part of the petitioner to state whether the shares were in the name of the first respondent and if so, when the shares were transferred in the name of the petitioner, the question of limitation cannot be decided in summary proceedings. The issue on limitation is a mixed question of fact and law. In the present case, the question of limitation can be decided only by appreciating evidence let in by the parties.

22. The first respondent while he was minor filed C.S.No.412 of 2008 in this Court through his mother for partition of properties of HUF, which are with the petitioner as kartha. In the present suit, the first respondent claiming that the shares do not belong to HUF, but it belongs to him as his individual capacity. A reading of the plaint in C.S.No.412 of 2008 pending before this Court and the present suit reveal that the cause of action as well as the reliefs sought for are entirely different. Hence, the present suit is not hit by the provisions of Order II Rule 2 of C.P.C. The petitioner has not stated as to how the Section 38 of the Specific Relief Act is a bar to the present suit. The petitioner has made a vague statement that the suit is not maintainable as per Section 38 of the Specific Relief Act. In view of the above reasons, both the above contentions of the petitioner are untenable, unsustainable and hence they are hereby rejected. Thus, points 1 and 2 are answered against the petitioner.

Point 3:

23. The first respondent filed the suit for mandatory injunction directing the second respondent to rectify the register of members of the second respondent to substitute the name of the first respondent in the shares mentioned in the schedule to the plaint in

the place of the petitioner and issue fresh share certificates to him. First respondent also prayed for permanent injunction restraining the second respondent claiming any right, title or interest in the said shares.

24. The petitioner filed I.A.No.7540 of 2017 under Order VII Rule 11 of C.P.C. to reject the plaint. The main contention of the petitioner is that the suit is for rectification of register of members of the second respondent. The Civil Court has no jurisdiction to entertain and decide the suit claiming such relief. According to the petitioner, as per Section 111 and 111A of the Companies Act, 1956 and as per Section 10GB inserted by the Companies (Second Amendment) Act, 2002, the claim of the first respondent has to be filed only before the Company Law Board. As per Section 58 of the Companies Act, 2013, first respondent has to make the claim with regard to rectification of register of members only before the National Company Law Tribunal. The National Company Law Tribunal is validly constituted as per Sections 407 to 414 of the Companies Act, 2013.

25. Section 430 bars jurisdiction of the Civil Court and as per Section 434(1)(c), proceedings pending before the High Courts and District Courts have to be transferred to the National Company Law Tribunal. To substantiate this claim, the learned senior counsel for the petitioner relied on the judgment reported in ***(1993) 3 SCC 123 (Inacio Martins (deceased through legal heirs) v. Narayan Hari Naik and others).***

26. On the other hand, learned senior counsel for the first respondent contended that the proceedings before the National Company Law Tribunal is summary in nature. A serious question of fraud and collusion cannot be decided by the Tribunal in a summary proceedings. First respondent has claimed injunction restraining the petitioner from claiming any title or interest in respect of the shares mentioned in the suit schedule. In view of the relief of permanent injunction sought for in the suit, the title of the shares in question has to be decided. The Tribunal has no power to decide the title of the shares in a summary proceedings. Once the Tribunal comes to the conclusion that the title of the shares is involved, the issues have to be decided only by the Civil Court. For this, the learned Senior Counsel appearing for the first respondent relied on the

decision reported in ***(2016) 1 Supreme Court Cases 423*** *in* ***(Jai Mahal Hotels Private Limited v. Devraj Singh and others) and*** **(2016) 198 CompCas 481 (Kar)** in **(K.Ravinder Reddy v. Alliance Business School and others).**

27. A reading of Section 58 of the Companies Act, 2013, shows that rectification of register of members has to be decided by the Tribunal and as per Section 430 of the Companies Act, 2013, the Civil Court has no jurisdiction. At the same time, in the judgment relied on by the learned Senior Counsel for the petitioner and first respondent, it is clear that the Tribunal has a power only to decide the issue of rectification of register of members as per Section 58 of the Act and has no power to decide the issue of title. It is relevant to note that as per Section 111A of the Companies Act, 1956, the Company Law Board was empowered to decide the issue of title also. The word 'title' was not included in Section 58 of the Companies Act, 2013. Even while considering the Section 111A, it was held by the Hon'ble Apex Court that a seriously disputed question of title cannot be decided by the Company Court or Company Law Board. This conclusion was arrived by the Hon'ble Apex Court by taking into consideration of the jurisdiction of the

Company Law board is summary in nature. The procedure in National Company Law Tribunal constituted under the Companies Act, 2013 is also summary in nature.

28. From the provisions of the Companies Act, 2013 and 1956, it is clear that the Tribunal or Board as the case may be can decide only the rectification of register of members with regard to shares and connected incidental issues. In the present suit, a reading of the averments in the plaint as well as the relief sought for by the first respondent shows that to decide the issue raised by the first respondent, the title to the shares in question has to be considered. The first respondent has not only prayed for rectification of register of members by substituting his name in the place of the petitioner and issue share certificates to him, but also prayed for permanent injunction restraining the petitioner from claiming any title over the shares in question. Whether the first respondent is entitled to relief of permanent injunction and also payment of dividends and bonus in respect of the shares can be decided only when the title to the shares are decided. Only if the first respondent proves by acceptable evidence that he is the owner of the shares in question and that the petitioner fraudulently in collusion with the

officials of the second respondent got transferred the shares in his name due to estranged relationship between the petitioner and his wife, mother of the first respondent, the first respondent cannot succeed in the claim of the rectification of register of members of the second respondent. The petitioner has not stated that first respondent is not the owner of shares at any point of time and that there was no fraudulent transfer in collusion with the officials of the second respondent. In this circumstance, the issue on title of shares is the main issue to be decided in the suit filed by the first respondent.

29. In the judgment relied on by the learned Senior Counsel for the first respondent reported in ***(2016) 1 Supreme Court Cases 423*** *in* ***(Jai Mahal Hotels Private Limited v. Devraj Singh and others),*** wherein the Hon'ble Apex Court referring to the judgment reported in ***Standard Chartered Bank v. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94,*** held that a seriously disputed question of title could be left to be decided by the Civil Court. In para-31 of the judgment reported in **(2016) 198 CompCas 481 (Kar)** in **(K.Ravinder Reddy v. Alliance Business School and others),** the Division Bench of Karnataka High Court

held that if the question arises with regard to title of the person in whose favour, the shares are to be transferred, the Tribunal/Company Law Board has no power to adjudicate the issue.

30. The learned Senior Counsel for the petitioner contended that the judgment rendered by the Division Bench of Karnataka High Court in **(2016) 198 CompCas 481 (Kar)** in **(K.Ravinder Reddy v. Alliance Business School and others),** was challenged in the Apex Court and by order dated 10.03.2017, it was held that the question of law with regard to Section 58 of the Companies Act is kept open. The learned Senior Counsel for the first respondent in reply submitted that the Hon'ble Apex Court has held in the said judgment that there is no reason to interfere with the impugned order passed by the High Court of Karnataka and further submitted that the said judgment of Hon'ble Apex Court support the case of the first respondent as the judgment of the Karnataka High Court has been confirmed by the Hon'ble Apex Court.

31. The contention of the learned counsel for the petitioner is that as per Section 10GB of the Companies Act, 1956, which was inserted by the Companies (Second Amendment) Act, 2002, the suit

is barred by the provisions of the Companies Act, is devoid of merits. As already held supra, the second relief of permanent injunction relates to title of the share and this Section is not applicable to the facts of the present case. The learned Judge held that the suit relates to title of the share and therefore dismissed the application. The judgment relied on by the learned Senior Counsel for the petitioner do not advance the case of the petitioner. On the other hand, the judgments relied on by the learned Senior Counsel for the first respondent are squarely applicable to the facts of the present case.

32. In view of the judgments relied on by the learned Senior Counsel for the first respondent as well as the judgment dated 10.03.2017 made in S.L.P.No.4388 of 2017 and for the reasons stated above, I hold that this Civil Revision Petition is liable to be dismissed and it is hereby dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.06.2017

Index : Yes/No

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V.M.VELUMANI, J.

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To

XII Assistant City Civil Court, Chennai.

Pre-delivery order made in
C.R.P.(PD).No.670 of 2017
and C.M.P.No.3412 of 2017

07.06.2017