IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.654 OF 2015

Mr. Nitinkumar M. Parekh,]
Aged about 63 years (Senior Citizen),]
B-45, Sealord Apts., 117 Cuffe Parade,]
Opp. President Hotel, Mumbai – 400 005.] .... Appellant

Versus

01. Deepak Fertilisers and Petrochemicals]
Corporation Ltd., Shastri Nagar,]
Opp. Golf Course, Yerawada, Pune-411006]
02. Mashreq Bank PLS,]
Having its principal office at Bahrain,]
Being P.O. Box No.20654, Bahrain]
Chamber of Commerce & Industry,]
Ground Floor, King Faisal Road, Bahrain,]
and a Branch Office at 3rd Floor, Sakhar]
Bhawan, Nariman Point, Mumbai 400021]
03. Poise Holdings Limited,]
B-45, Sealord Apts., 117 Cuffe Parade,]
Opp. President Hotel, Mumbai 400 005.]
04. Dheerajmal Bastimal Siroya,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai – 400 021.]
05. Leena Nitinkumar Parekh,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]

Mumbai – 400 021.]

06. Mohamed Arif Birya,]
Aziz Castle, 5th Floor,]
78, Dr. A. Nair Road, Mumbai Central,]
Mumbai 400 008.]

07. Sadika M. Birya,]
Aziz Castle, 5th Floor,]
78, Dr. A. Nair Road, Mumbai Central,]
Mumbai 400 008.]

08. Patkar Deepak Diwakar,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]

09. Rema D. Patkar,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]

10. Dinesh M. Desai,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]

11. Arun Kashyap,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]

12. Shashi Kashyap,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]

Air India Building, Nariman Point,]
Mumbai 400 021.]
13. Damji D. Velani,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
14. Alok Jain,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
15. Rita Jain,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
16. Ramesh C. Desai]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
17. Meena R. Desai]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
18. Jeggar J. Parmar,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]

19. Dilip J. Patel,]
M/s. N.R. Doshi & Co.,]
P.O. Box No.13742, Dubai, U.A.E.]
20. Chandra Kumar Jain,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
21. Vivek V. Bhakhale,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]
22. Bharat J. Shah,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
23. Ketan B. Shah,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
24. Magan Jain,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
25. Gope A. Daryani,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]

26. Vandana Daryani,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]
27. Tarun M. Mehta,]
C/o. M/s. Poise Holdings Ltd.,]
C/o. Mashreq Bank PSC,]
Air India Building, Nariman Point,]
Mumbai 400 021.]
28. Amin Vazir Parkar,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]
29. Hawabi A. Parkar,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]
30. Rajendra M. Shah,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]
31. Bharti R. Shah,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]
32. Ashok S. Mandavia,]
C/o. B-45, Sealord Apts.,]
117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]
33. Nitin Mehta,]
C/o. B-45, Sealord Apts.,]

117 Cuffe Parade, Opp. President Hotel,]
Mumbai 400 005.]
34. Suryakant Ambalal Patel,]
Post Box No.7350, Dubai, U.A.E.]
35. Jyotsnaben Suryakant Patel,]
P.O. Box 7350, Dubai, U.A.E.]
36. Mayankumar Ambalal Patel,]
Post Box No.7350, Dubai, U.A.E.]
37. Shweta Mayankumar Ambalal Patel]
Post Box No.7350, Dubai, U.A.E.] .... Respondents

Mr. Nitinkumar M. Parekh, the Appellant, is present in person.

Ms. Shivani Soni, I/by M/s. Devan Dwarkadas & Partners, for Respondent No.1.

Mr. I.J. Nankani, a/w. Ms. Taniya D'Souza, Mr. H.S. Khokhawala I/by M/s. Nankani & Associates, for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
RESERVED ON : 9TH OCTOBER, 2018.
PRONOUNCED ON : 16TH OCTOBER, 2018.

JUDGMENT :

1. Heard Mr. Nitinkumar M. Parekh, the Appellant, who is appearing in person; Ms. Soni, learned counsel for Respondent No.1; and Mr. Nankani, learned counsel for Respondent No.2.

2. This Appeal is directed against the order dated 7th February 2014 passed by the City Civil Court, Greater Bombay, thereby dismissing the Notice of Motion No.1363 of 2013 filed in S.C. Suit No.2513 of 2001.

3. The said Notice of Motion was taken out by the Appellant herein, who is Original Defendant No.4 before the Trial Court, seeking direction for releasing the 'Dividend', together with interest accrued thereon. It is the case of the present Appellant that, he and other Defendant Nos.2 to 37 are the registered shareholders, except Defendant Nos.34 and 35 and, therefore, they are entitled to the payment of the 'Dividend' declared by the Plaintiff-Company to the exclusion of Defendant No.1, who is not the registered owner of the said shares.

4. This Notice of Motion was resisted by Original Defendant No.1, contending, *inter alia,* that, as there is serious dispute between Defendant No.1 on the one hand and other Defendants as to the entitlement to the shares. Hence, Respondent No.1 was constrained to file this 'Interpleader Suit', and, therefore, at this interim stage, no such order directing the payment of dividend and interest accrued thereon to Defendant No.4 and other Defendants be granted.

5. As regards Respondent No.1 – the Original Plaintiff, it was submitted that, Appellant-Defendant No.4 be directed to comply with the earlier order dated 20th November 2003 passed by this Court. If it is proved to the satisfaction of the Plaintiff-Company that Defendant No.4 is in possession of the original shares, Plaintiff-Company has no objection in permitting the Defendant No.4 to withdraw the dividend of

his shares, which is already deposited in this Court, as per the order passed by this Court.

6. The Trial Court was, after considering the various earlier orders passed by this Court in the present case, seeking the same prayer on the part of the Appellant, pleased to reject the said Notice of Motion; hence, the instant Appeal.

7. Admittedly, the Suit filed before the Trial Court is an 'Interpleader Suit', which was initially filed before this Court and thereafter, in view of enhancement of the pecuniary jurisdiction of the City Civil Court, it came to be transferred to the City Civil Court, Greater Bombay.

8. The said Suit is filed by Respondent No.1 - M/s. Deepak Fertilizers and Petrochemicals Corporation Limited, the Company, in respect of whose shares, the rival claims were made by Defendant No.1- Mashreq Bank PLC and Defendant Nos.2 to 37, except Defendant Nos.34 and 35.

9. In view of the rival claims made over the shares and the dividend that was to be received on those shares, the dividend payable on the said shares was directed to be deposited in this Court, as per the order passed by this Court in Notice of Motion No.1730 of 2001 on 13th August, 2001. Plaintiff-Company was further directed to withhold issuance of duplicate Share Certificates to any of the Defendants.

10. Thereafter, in the same Notice of Motion, this Court was pleased to pass the order dated 20th November 2003, directing that, the ad-interim order, restraining the Plaintiff-Company from issuing duplicate Share Certificates to Defendant Nos.2 to 37, shall continue to operate till decision of the Suit and the Plaintiff-Company shall not issue duplicate Share Certificates to Defendant Nos.2 to 37, without seeking leave of the Court.

11. Clause Nos.5, 6 and 7 of the further order passed by this Court are relevant and they can be reproduced as follows :-

> *"5. The Plaintiffs, within a period of four weeks from today, shall submit to the Prothonotary and Senior Master of this Court a calculation of dividend against each of the shares and break-up of dividend deposited by the Plaintiffs in this Court, showing as to how much amount has been deposited against each of the shares by the Defendants.*
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> *6. On Defendant No.1 and Defendant No.5 submitting original shares held by them for verification before the Plaintiff-Company, the Plaintiff Company shall verify whether the shares produced before the Company by Defendant Nos.1 and 5 or such of them are original shares and Company shall issue certificate accordingly in their favour. In case, Defendant No.5 and Defendant No.1 apply to the Prothonotary and Senior Master for withdrawal of the dividend deposited by the Plaintiff-Company in this Court against the shares, in relation to which they hold*

certificate from the Company that they are original shares, the Prothonotary and Senior Master shall permit Defendant Nos.1 and 5 to withdraw such amount, to which they may be entitled, according to their possession of the original share certificate, on their furnishing Bank Guarantee to the satisfaction of the Prothonotary and Senior Master of this Court of a Nationalized Bank, together with an undertaking to re-deposit the amount in the Court, if so directed by this Court, and on such terms, as may be directed by this Court. Notice of Motion is disposed of. By consent of parties, it is directed that, Notice of Motion No.1720 of 2001 shall also be treated as disposed of by this order.

7. In case it becomes liable to pay any further dividend on these shares, the Company is at liberty to apply to the Court for appropriate orders, after giving notice to the parties."

12. Thus, a specific mode is laid down by this Court, enabling the parties to withdraw the amount of the dividend, which is deposited by the Plaintiff-Company in this Court. As per the said mode, Defendant No.1, on one side, and other Defendant No.4, i.e. the Appellant herein, on submitting original shares held by them for verification before the Plaintiff-Company, the Plaintiff-Company was to verify whether those shares are original and then issue the Share Certificates accordingly. It was further held that, in case, either Defendant No.4 or Defendant No.1 apply to the Prothonotary and Senior Master for withdrawal of the dividend deposited by the Plaintiff-Company in this Court against the

shares, in relation to which they hold certificates from the Plaintiff-Company that they are original shares, then only the Prothonotary and Senior Master of this Court was to permit them to withdraw such amount of dividend, to which they may be entitled, according to their possession of the original Share Certificates, and it was to be done on furnishing the Bank Guarantee to the satisfaction of the Prothonotary and Senior Master of this Court. The Bank Guarantee was to be of a Nationalized Bank, together with an undertaking to re-deposit the amount in the Court, if so directed by this Court and on such terms, as may be directed by this Court.

13. Therefore, it is clear that, a very specific direction is given that, if any of the party wants to withdraw the amount of dividend, such party has to get his shares first certified from the Plaintiff-Company as original shares and on the basis of the certificate issued by the Plaintiff-Company only, that party will be entitled to withdraw the amount of dividend to the extent of the shares found to be original and after furnishing the Bank Guarantee.

14. Admittedly, the said order is not modified or set aside in any way as on today also. Therefore, it was necessary for the Appellant to submit the original shares held by him for verification before the Plaintiff-Company and get the certificate from the Plaintiff-Company, entitling him for withdrawal of the dividend. Appellant has not followed the said

mode. Hence, he cannot be entitled to withdraw this amount of dividend, which is, as per the order passed by this Court on 12th July 2010 in Notice of Motion No.1503 of 2010, invested in the Nationalized Bank.

15. According to the Appellant, in the Notice of Motion No.1503 of 2010 filed by him before this Court, it was observed that, *"if any party wants to withdraw the amount lying in this Court, such a party is free to make an application in the Court for withdrawal"*. It is submitted by the Appellant that, in view of the liberty given by this Court, vide its order dated 12th July 2010, he has filed this Notice of Motion before the Trial Court, seeking permission to withdraw the amount of dividend. It is submitted that, he is in urgent need of the said amount, as he is suffering from the ailment and requires the amount for medical expenses.

16. In my considered opinion, even if it is assumed that the Appellant requires the amount urgently for his medical expenses, he has to follow the directions laid down by this Court in its order dated 20th November 2003, which clearly gives him a liberty and also permit him to withdraw the amount of dividend, after getting his Shares Certificates verified from the Plaintiff-Company and on production of such certificate from the Plaintiff-Company, to apply to the Prothonotary and Senior Master of this Court for payment of the dividend, with interest accrued thereon, as per his entitlement.

17. It may be true that, the liberty was granted to any of the party, who wants to withdraw the amount lying in this Court by making an application for withdrawal, but that withdrawal has to be after satisfying the conditions laid down in the order dated 20th November 2003. As the Appellant has admittedly not complied with the said conditions, no fault can be found, if the Trial Court has rejected his Notice of Motion for withdrawal of the amount of dividend, with interest accrued thereon.

18. At this stage, when the dispute between the parties as to who is having the original shares and hence, who is entitled to get the amount of dividend is yet to be decided, neither the Trial Court, nor this Court can permit withdrawal of such amount.

19. In this respect, the Appellant has placed reliance on the Judgment of this Court in the case of *Indian Bank Vs. Deepak Fertilizers and Petrochemicals Corporation Limited, (1999) 35 CLA 389*, to submit that, *"the de jure shareholder alone is entitled to dividend in his name and de facto shareholders are not entitled to the same"*. In my considered opinion, here there is a real dispute between the parties as to who is in possession of the original shares and who is the *de jure* shareholder and that is why the 'Interpleader Suit' is filed.

20. In view thereof, unless and until it is decided as to who is having

the original shares, the Appellant cannot be permitted to withdraw the amount of dividend, with interest accrued thereon. Even today, the remedy is open to the Appellant to approach the Plaintiff-Company to get the certificate that his shares are original and then to apply to the Prothonotary and Senior Master of this Court for withdrawal of the said amount. He can very well avail that remedy.

21. This Appeal from Order, therefore, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]