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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CM(M) 822/2018

Date of Decision: 08.08. 2018

CAPITAL LAND BUILDERS PVT LTD & ORS ...Petitioners

Through: Mr.Viraj Datar, Mr.Vineet Jhanjik and Mr.Imran Moulaey, Advocates

Versus

M/S SHAHEED MEMORIAL SOCIETY & ORS..... Respondents

Through: Mr.Ashish Mohan, Adv for R-4 to 6
Mr. A.S. Singh, Adv for R-9 and 10

% **CORAM:**
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

CM No. 28884/2018 (Exemption)

This is an application filed on behalf of the petitioner for exemption from filing certified copies of the annexures.

Exemption allowed, subject to just exceptions.

CM(M) 822/2018 and CM No. 2883/2018

1. The petition assails the impugned order dated 3.4.2018 of the learned ADJ-03,Patiala House Court, New

Delhi in CS No. 57946/16 whereby an application under Order VI Rule 17 CPC filed by the defendant No.4 to 6 to the said suit arrayed on record as respondent no.4 to 6 to the present petition had been allowed.

2. It has been submitted, at the outset, on behalf of the petitioners that the relief sought through the present petition is only against the respondents No. 4 to 6. Taking the said aspect into account, it is not considered essential to issue any notice to the remaining respondent arrayed on record.

3. Initial submissions have been made on behalf of the petitioner and on behalf of the respondents No. 4 to 6 qua the averments made in the petition.

4. CS 57946/16 which is pending before the learned Court of the Additional District Judge-03, Patiala House Courts, New Delhi, is a suit filed by the petitioner herein as plaintiff thereof seeking injunction and damages whereby the prayers are made to the effect:

> *"(b) Issue a Permanent Injunction restraining the Defendants 1-8, their agents and employees from representing and/or holding themselves out to be shareholders of the Plaintiff Company, and*
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> *(c) Issue a Permanent Injunction restraining the Defendants 1-8, their agents and*

employees from representing and/or holding themselves out to be Directors, Agents or Authorized Representatives of the Plaintiff Company and restrain the said Defendants from in any manner acting for and on behalf of or in the name of the Plaintiff Company or from using the letter heads of the Plaintiff Company; and

(d) Issue a Mandatory Injunction directing the Defendant No. 1-8, their agents, employees and associates to forthwith handover all letter heads and other documents or Instruments, stamps and seals created by them bearing the name of the Plaintiff Company or which may otherwise be in their possession and control and direct the destruction of the same; and

(e) Issue a Mandatory Injunction directing the Defendants No. 9 & 10 to forthwith remove from the records maintained with the said Defendant No.9 in relation to the Plaintiff Company all Forms including Form 32 (Annexure-P17), Form 18 (Annexure-P18), Form 2 (Annexure-P19) and Form 5 (Annexure-P20) and all such other unauthorized filed; and

(f) Issue a Mandatory Injunction directing the Defendant No.9 & 10 and their successors in office to immediately institute and initiate appropriate proceedings against the Defendants no. 1-8 and against all those who

have filed the unauthorized Form 32 (Annexure-P17) Form 18 (Annexure-P18), Form 2 (Annexure-P19), and Form 5 (Annexure-P20) and in particular proceedings under the provisions of the Companies Act with respect to the falsification of the Plaintiff Company's records with the Defendant No.9 by the filing of the various falsified forms as aforesaid or otherwise; and

(g) Issue a Mandatory Injunction directing the Defendants No. 1-8 to disclose (i) all transactions entered into by them in the name of the plaintiff Company and or on its behalf, and (ii) details of all Bank Accounts opened by them in the name of the Company; and

(h) Issue an order of Permanent Prohibitory /Injunction restraining the Defendants 1-8, their servants, agents or assigns from appropriating and/or using any funds or dealing with any assets of the Company including funds wrongfully obtained by them in the name of the Company; and

(i) Award Damages to the Plaintiff Company against the Defendants No.1-8 and hold the said Defendants jointly and severally liable to pay the same; and

(j) Award costs of the Suit to the Plaintiffs;

> *(f) Grant all such other reliefs which the Hon'ble Court deems fit and proper in the facts and circumstances of the case be allowed in favor of the Plaintiffs and against the Defendants."*

5. During the course of the proceedings, the respondent No.1 to the present petition who is stated to be the defendant No.1 to the suit vide order dated 27.10.2010 in FAO (OS) 621/2010 before this Court, the finding of the learned Single Judge vide order dated 13.8.2010 vide which the written submissions of the defendant No. 7, i.e., Siddharth Chaudhary was deemed to have not been filed on behalf of the Society, the society being arrayed on record as defendant No.1 i.e., the respondent No.1 to the present petition, and thus it was indicated that there was no written statement of the defendant No.1 i.e. the respondent No.1 on the record. A subsequent prayer that has been made on behalf of the respondent No.1 i.e., the respondent No.1 to the present petition arrayed on record to the suit as defendant No.1 seeking to adopt the written statement filed by the defendants No. 4 to 6 vide order 24.5.2016, was not allowed to be adopted by the defendants No. 1 to 3. The respondent Nos. 4 to 6 through their application which was allowed vide order dated 3.4.2018 had sought to assert that the contentions raised by the plaintiff, i.e., the petitioner to the present petition, claiming their right on the basis of

Share Transfer Certificates presuming them to be genuine was erroneous in as much as the Transfer Certificates were issued on stamp papers which stamp papers were not even in existence on the date of issuance as per the Printing Press, Nasik there was no such revenue stamp in existence as fixed on the transfer certificates on the date of the issuance thereof and it is the said assertions made by the defendant Nos. 4 to 6 arrayed on record as respondents No. 4 to 6 to the present petitioner, which vide the impugned order have been allowed to be incorporated into the written statements of the respondents No. 4 to 6.

6. The said amendments allowed to be brought on record read to the effect:

> "7. *That no cause of action has arisen in favour of the Plaintiffs and the suit is liable to be dismissed and rejected at the very outset for the reason that the sole basis of the entire claim of the Plaintiffs is that the Defendant no.1 Society ceased to be a shareholder in the Plaintiff No.1 Company since 1989. The Plaintiffs No.2 to 4 claim that Ch. Brahm Prakash, who was the founder of Defendant No.1 Society and a holder of 500 shares in the Plaintiff No.1 Company since 20.05.1962, had transferred those shares to Shaheed Memorial Society i.e. Defendant No.1 in the year 1963. The Plaintiffs further claim that the Society, which was subsequently also allotted and issued another 150 shares in the year 1983*

in addition to the already issued 500 shares, further transferred all its shares from time to time to third parties vide five Transfer Deeds dated 26.02.1968 (one Deed for150 shares) and 29.01.1979 (Four Deeds for a total 110 shares) and thereby ceased to be a member of the Plaintiff company in 1989 as per the record of the company. However, as has been revealed in the information provided by the Indian Security Press, Nasik to the Defendants No. 4 to 6 through RTI Act 2005, it is apparent that the aforesaid Transfer Deeds are forged documents manufactured at a much later date that what is alleged by the Plaintiffs No. 2 to 4.

*8. That the Defendants had sought information under RTI Act 2005, from the Indian Security Press, Nasik, in respect of the Share Transfer Stamps affixed by the said Plaintiffs on the Transfer Deeds Society. It was thereby found that on the Transfer Deed allegedly dated 26.02.1968, Stamps for the denomination of '**FIFTY PAISA'** first time printed only on 27.09.1979. Further, stamps for the denomination of '**Twenty Five PAISA'** affixed on the transfer deeds dated 29.01.1974, were in fact printed only on 20.12.1978 for the first time & the stamp for '**Two Rupees'** affixed therein was printed only on 13.02.1979 for the first time. Said revelation of facts specifically prove that since the claimed documents could not have been executed prior to 29.01.1974, 20.12.1978 and 13.02.1979 respectively, the Plaintiff has dishonestly* *and fraudulently tries to use forged documents as genuine to produce as evidence before this Hon'ble court in order to support the false claims made by the Plaintiff in the plaint.*

9. That this is further substantiated from the fact that the applicable stamp duty in the year 1968 and 1974 for transfer of shares in any Private Ltd. Company was @75 paise for every Rs.100/- value of the share, which was reduced to @ 25 paise, only in the year 2004. Reference in invited to the Notifications No. S.O. 198 (E) dated 16th March, 1976 and S.O. 130(E) dated 28th January, 2004 issued by the Ministry of Finance, Department of Revenue. From this standpoint, the stamp duty to be affixed on Transfer Deeds allegedly made in the year 1968 or 1974 should have been @ 75 paise for every Rs.100 value of the share. However, a bare perusal of the forged transfer Deeds shows that the Plaintiffs have affixed the stamp duty @ 25 paise for every Rs.100 value of share on the said Transfer Deeds which only became applicable since 2004 onward and proves that the documents were forged and manufactured subsequently and never executed in the year 1968 and 1974 as alleged. The Plaintiffs have also failed to place on record any Transfer Deed/s in lieu of the remaining 240 shares and additional 150 shares which were also issued in the name of Defendant No.1 Society. This makes it amply clear that in fact no shares of Defendant No.1 had ever been transferred and that the Defendant No.1 *continues to remain a shareholder of the Plaintiff No.1 Company. Hence the suit is liable to be rejected and dismissed under Order VII Rule 11 CPC on this ground alone.*",

to the preliminary objections to the proposed amended written statement the respondents No.4 to 6 were permitted to be brought on record. Vide the impugned order it had been sought to be submitted by the respondents No. 4 to 6 that there was no cause of action that had arisen in favour of plaintiff and the suit was liable to be dismissed with exemplary costs. It was further submitted that the defendant No.1 society ceased to be a shareholder in the plaintiff No.1 company since 1989 and the plaintiffs. No. 2 to 4 claim that Ch. Brahm praksh, who was the founder of defendant No.1 Society and a holder of 500 shares in the plaintiff No.1's company since 20.5.1962, had transferred those shares to Shaheed Memorial Society i.e. Defendant No.1 in the year 1963 which society was subsequently also allotted and issued another 150 shares in the year 1983 in addition to the already issued 500 shares, and further transferred all its share from time to time to third parties vide five Transfer Deeds dated 26.2.1968 (for 150 shares) and 29.1.1979 (four deeds for a total 110 shares) and there by ceased to be a member of the plaintiff company in the year 1989 as per the record of the company. However, as has been revealed in the information provided by the Indian

Security Press, Nasik to the Defendants No.4 to 6 through RTI Act, 2005, it is apparent that the aforesaid Transfer Deeds were forged documents manufactured at a much later date than what is alleged by the plaintiffs No. 2 to 4 and that it had been found on the Transfer Deed allegedly dated 26.2.1968, that stamps for the denomination of '**Fifty Paisa'** were affixed whereas the said stamps were found to have been for the first time printed only on 27.9.1979. further stamps for the denomination of **'Twenty Five Paisa'** were affixed on the transfer deed dated 29.1.1974, were in fact printed only on 20.12.1978 for the first time and the stamp for **'Two Rupees'** affixed therein was printed only on 13.2.1979 for the first time. It was thus submitted on behalf of the respondents No.4 to 6 that the said revelation of facts specifically prove that since the claimed documents could not have been executed prior to 29.1.1974, 20.12.1978, and 13.02.1979 respectively that the plaintiff had dishonestly and fraudulently tried to use forged documents as genuine to be produced as evidence before the Court in order to support the false claims made by the plaintiff in the plaint.

7. *Inter alia,* it has also been submitted on behalf of the respondents No.4 to 6 through the amended written statement which amendment had been allowed vide the impugned order that the applicable stamp duty in the year 1968 and 1974 for transfer of shares in any Private Ltd.

Company was @ 75 paise for every Rs.100/- value of the share, which was reduced to @ 25 paise, only in the year 2004 and reference was invited to the Notifications No. S. O. 198(E) dated 16th March, 1976 and S.O. 130(E) dated 28.1.2004 issued by the Ministry of Finance, Department of Revenue and from this standpoint, the stamp duty to be affixed on Transfer Deeds allegedly made in the year 1968 or 1974 for transfer of shares should have been @75 paise for every Rs.100/-. It was thus categorically submitted on behalf of the respondents No. 4 to 6 that the petitioners i.e., the plaintiff to the suit had failed to place on record any transfer deeds in lieu of the remaining 240 shares and additional 150 shares which were also issued in the name of plaintiff No.1 society, i.e., the defendant No.1 and that the defendant No.1 had continued to remain its shareholder of plaintiff No.1 company and that the plaint was liable to be dismissed under Order VII Rule 11 CPC.

8. It has *inter alia* been submitted on behalf of the petitioner that there have been several rounds of litigation between the parties and that in terms of the proceedings in FAO(OS) 337/2009 and FAO(OS) No.423/2009 during the course of the proceedings in the suit as it was then previously pending before this Court, the said contentions have already been raised on behalf of the respondents No.4 to 6 and that the transfer certificates in relation to which the

contention is sought to be raised on behalf of the respondents No. 4 to 6 in relation to their having not been appearing and that the revenue stamps which were not even in existence on the date of preparation of such transfer certificates, do not fall within the domain of the suit filed by the plaintiffs and the relief sought against the respondents No.4 to 6. It has also been submitted on behalf of the petitioner that a review petition against this order dated 6.11.2009 was also declined in review petition No. 153/2011 vide order dated 1.4.2011 of the Hon'ble Division Bench of this Court and that the challenge to the said order was also declined vide order dated 19.8.2011 by the Hon'ble Supreme Court in SLP(Civil) Nos. 21257-21258/2011.

9. On behalf of the respondents No. 4 to 6, it has been submitted that it is settled law that amendments necessary and germane for requisite adjudication of the matters in controversy necessarily are to be allowed and reliance has thus been placed on the verdict of the Supreme Court in ***Andhra Bank v. ABN Amro bank N.V. and Ors.;*** (2007) 3 RCR (Civil) 585 to contend that the only question at the time of considering the amendment of the pleadings would be whether such amendment would be necessary for decision of the real controversy between the parties in the suit and that the merits or demerits of the contentions of the amendment cannot be taken into account. Reliance has also

been placed on behalf of the respondents No.4 to 6 on the verdict of the Hon'ble Supreme Court of India in ***Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami and Ors.;*** AIR 2007 SC 1663, with specific reference to the observations to para 14 thereof:

> *"It is now well-settled by various decisions of this Court as well as those by High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bonafide one. In this connection, the observation of the Privy Council in the case of* Ma Shwe Mya v. Maung Mo Hnaung *[AIR 1922 P.C. 249] may be taken note of. The Privy Council observed:*
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> *"All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit.""*

and to the observations in para 16 also which reads to the effect:

> *Such being the settled law, we must hold that in the case of amendment of a written statement,*

the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case

10. On behalf of the petitioners reliance is placed on this verdict ***Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami and Ors.*** (supra) on the observations in paragraph 21 to contend that the amendment sought by the respondents no. 4 to 6 as allowed vide the impugned order cannot be allowed to be brought on record in as much as the respondents No.4 to 6 cannot be allowed to be brought on record their submissions when they are totally strangers in as much as the rights of the defendant No.1 to submit its written statement has already been declined and the defendant No.1 has also not been granted rights of adopting the written statement of respondents No.4 to 6. Reliance was also placed thus on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***HeeraLal v. Kalyan Mal*** ; 1998 AIR(SC) 618; to contend that where the admissions have been made, they cannot be allowed to be withdrawn and a plea inconsistent with an earlier plea containing an admission in favour of the plaintiff cannot be allowed to be withdrawn in as much as the written statement of the defendant No.1 not having been allowed to

be brought on record, the implicit admission made thereby by non-submission and non-existence of the submission of the defendant No.1, coupled with the factum that its prayer for adoption of the written statement of defendants No.4 to 6, having been not rejected, and that admissions of thus made by the defendant No.1 cannot be allowed to be taken away or withdrawn by the amendment being allowed to the respondent Nos. 4 to 6 in submission of their amended written statement, i.e. permitting para 7, 8 and 9 of the preliminary objections raised.

11. Vide the impugned order, it has been observed to the effect that there is a prayer made specifically by the plaintiff directing the defendants which would enable the defendants No.4 to 6 i.e., the respondents No.4 to 6 not to hold themselves out to be share holders of the plaintiff company as well as authorized representative of the company and that the whole case of the plaintiff revolves around the said share certificates which were held by defendant No.1. However the defendant No.1 did not hold any share certificate and had already transferred the same to other persons which had been denied by the defendants.

12. The verdict dated 6.11.2009 of this Court in FAO(OS) 337/2009 with observations in paragraph 30, 31 and 32 in the said order which reads to the effect :

" 30. The original documents filed by the appellant and which were on record before the learned Single Judge have been perused by us. The register of shareholders is available reflecting the transfer of shares. Similarly, the share certificate with transfer deeds have also been filed. Annual returns for some of the relevant years have also been placed on record. The position as existed in 1989 is reflective from these original documents by which time the Society had no share holding left in the Company. The claim of the respondents is predicated on the Society owning a part of share holding which is not borne out of the records. This claim is also falsified by the own stand of the Society in the proceedings initiated under Section 111 of the said Act wherein they wanted their names to be inserted in the register of members of the Company. The share have been transferred in pursuance to the transfer deeds filed. No doubt learned counsel for the respondents contended that when these documents were sought for before the Company Law Board, they were not available and were stated to have been destroyed in fire and only some of the returns were filed but the fact remains that in the suit these documents have been filed after locating and on a perusal of the same appear to be prime facie authentic. The absence of scrutiny of these documents by the learned Single Judge has resulted in a finding that the appellant had not supported their case with documents and thus finding is contrary to record. We may also note that the original share certificate relied upon by the respondent has not seen the light of the day.

31. we find that there is also merit in the pea (sic) of the learned senior counsel for the appellant that the last bit of shares held by the group of the respondents was transferred as far back as 1989. The matter sought to be raked up by the respondents for the first time in 1997 after eight years before the Company Law Board and those proceedings also dragged on and now stands withdrawn. The respondents have no explanation for their silence over this long period of time.

32. The details of the manner of transfer of shares right up to 1989 has been fully explained by the appellants along with documents. Learned counsel for the respondents did seek to plead that when a direction was passed by the Company Law Board these documents were not produced and it was claimed that there had been a fire in the office. Be that as it may even at that stage it was pleaded by the appellants that the records were old and whatever they had been able to lay hands on had been produced. Whatever further documents have been located have been produced which substantiate the case of the appellants."

13. Having taken the said aspects into account the plaintiffs are indicated to have been granted a restraint order in their favour on the basis of share transfer certificate presuming them to be genuine as observed vide order dated 6.11.2009, of the Division Bench of this court wherein it has been observed *inter alia* to the effect:

> *"The shares have been transferred in pursuance to the transfer deeds filed. No doubt , learned counsel for the respondents contended that when these documents were sought for before the Company Law Board, they were not available and were stated to have been destroyed in fire and only some of the returns were filed but the fact remains that in the suit these documents have been filed after locating and on a perusal of the same appear to be prima facie authentic."*

14. The said observations apparently are on the basis of a *prima facie* consideration of the record. The evidence in the matter is yet to commence and the case is still at the initial stage despite protracted rounds of litigation in the same. As observed vide the impugned order, the entire basis of the case of the plaintiff relies on the share transfer certificates. In these circumstances the permission granted vide the impugned order dated 3.4.2018 to the respondents No.4 to 6 to amend their written statement to bring on record preliminary objections as vide paragraphs 7, 8 and 9 to amend cannot be held to be inappropriate.

15. In the circumstances, the petition is declined in as much as the merits or demerits of the amendment would apparently be and are a matter of trial. The petition is thus declined.

16. The plaint is stated to have been filed on 4.10.2006 and the matter is still at the stage of completion of pleadings, the learned Trial Court would make an endeavour to conclude the trial in the instant case by the date 6.12.2018.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

AUGUST 08, 2018/sv