

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2019

RESERVED ON : 19.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3371 of 2004
and WMP.No.18461 of 2004

Sanjay Jayvarthanavelu ... Appellant/2nd Respondent

vs

1. Shailesh Rajinikant Parekh
No.59, Dr.V.B.Gandhi Marg
1st Floor, Kalakoda,
Mumbai 400 023.

2. M/s.Sarline Travels Limited,
34 A, Kamaraj Road,
Coimbatore 641 018.

3. Asha Raje Gaekward

4. Bipin B Shah ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 10F of the Companies Act, 1956, against the order of the Company Law Board S.R.Bench, Chennai made in C.P.No.7/111/(SRB)/1999 dated 6.5.2003.

For Appellant : Mr.T.K.Bhaskar

For R1 & R4 : No appearance

For R2 : Mr.V.Venkadasalam

J U D G M E N T

The appellant is aggrieved by the impugned order dated 6.5.2003 in C.P.No. 7/111/SRB/1999 passed by the erstwhile Company Law Board. The said order was passed under section 111A of the erstwhile Companies Act, 1956.

2. The appellant is the Managing Director of the 2nd respondent Star Line Travels Ltd. The shares in the 2nd respondent company was earlier held by the 3rd, 1st and the 4th respondent together with few others.

3. The erstwhile management of the 2nd respondent company had decided to sell their shares in the 2nd respondent company to the appellant and his family.

4. Therefore, in a Board Meeting dated 20.4.1992, the then shareholders of the 2nd respondent company under the chairmanship of the 3rd respondent herein decided to sell all the shares at a fair market value of Rs. 80 per share to the appellant and his family members.

5. In the meeting, it was resolved that the 3rd respondent was authorised to do all that was necessary for the completion of the transfer of the shares. The 3rd respondent was also authorised to invite the appellant and members of his family to join the Board of the 2nd respondent company and to obtain necessary consent for the transfer of the shares.

6. Thus, 12,020 equity shares in the 2nd respondent Company were proposed to be transferred to the appellant and his family for a total consideration of Rs.9,61,600/-. The appellant and his family also paid the entire sale consideration to the 3rd respondent pursuant to the aforesaid Board Meeting of the 2nd respondent company.

7. It appears that the original of 500 equity shares which were jointly held in the name of the 1st and the another person named Shri Girish Chimanlal Parikh bearing distinctive numbers 1021 to 1520 covered by Share Certificate No. 13 to 17 were never handed over to the 3rd respondent for transfer to the appellant and his family. The 3rd respondent therefore called upon the 1st respondent to hand over the same to her to facilitate the transfer of the share.

8. However, earlier 1st respondent had refused to hand over the same. The 3rd respondent, therefore, convened a meeting of the Board of Directors of the 2nd respondent company and got the duplicate shares issued to herself and thereafter transferred the entire share to the appellant and his family.

9. It appears that the 3rd respondent also gave an indemnity bond dated 2.9.1995 and agreed to indemnify the 2nd respondent company and keep the 2nd respondent company indemnified against all losses, damages and expenses which the 2nd respondent company may suffer for having issued duplicate share certificate or by reason of any adverse claim.

10. The 2nd respondent company thereafter registered all the shares in favour of the appellant and his family. The appellant claims to have perfected ownership over the 500 shares. Under these circumstances, the first respondent questioned the same in a proceeding before the Company Law Board and wanted the shares to be transferred in his name.

11. Since the management of the 2nd respondent company was taken over by the appellant and his family members, steps were taken to shift the registered office of the 2nd respondent company from the State of Maharashtra to State of Tamil Nadu in Coimbatore. To this effect appropriate orders were also obtained from the Company Law Board on 9.4.1996 in C.P.No. 161/17/WP/96.

12. Prior to shifting of the 2nd respondent company to Coimbatore, the 2nd respondent company registered office was at the residence of the 1st respondent and it appears that original of the 500 shares which were to be transferred to the appellant and his family continued to remain with the 1st respondent at the erstwhile registered office of the 2nd respondent company.

13. The 1st respondent by a letter dated 4.8.1997 sent a request to the 2nd respondent company at Coimbatore to transfer 500 share bearing distinctive numbers 1021 to 1520 covered under Share Certificates No. 13 to 17 to his individual name.

14. The 2nd respondent company which came under the control of the appellant and his family however declined to transfer the shares to the 1st respondent.

15. The 1st respondent, thus, sent reminders dated 12.04.1997; 15.07.1997; and 29.08.1997 to the 2nd respondent company to transfer the shares in his favour.

16. By a letter dated 3.9.97, M/s. Lakshmi Machine Works, informed the 1st respondent that the shares had already been transferred pursuant to an agreement entered earlier and it was for the 1st respondent to contact the 3rd respondent and the 4th respondent Chartered Accountant in this regard. Meanwhile, the 2nd respondent company also became a public limited company effect from 13.10.1997.

17. Under these circumstances, the 1st respondent issued a legal notice dated 3.10.1997 and 16.12.1997 and called upon the 2nd respondent company to transfer the shares denying any previous arrangement/agreement to transfer be 500 shares in favour of the appellant or his family through the 3rd respondent.

18. Since the 2nd respondent declined to transfer the 500 shares as demanded by the 1st respondent, the 1st respondent filed C.P.No. 7/111S.R.B/1999 under Section 111 of the Companies

Act, 1956.

19. The 1st respondent therefore prayed for a direction against the 2nd respondent company to transfer 500 equity shares covered by Certificate No 13 to 17 in favour of the 1st respondent and to rectify the register of members of the 2nd respondent company in respect of the shares and to award costs in the said petition.

20. The Company Law Board has noted that though the 2nd respondent had ceased to be a private limited company with effect from 13.10.1997 nevertheless, the petition filed under Section 111 Companies Act, 1956 could be treated as having filed under Section 111A of the Companies Act, 1956 to meet the ends of justice.

21. Several legal submissions were advanced on behalf of the appellant and the 2nd respondent company. It was stated that the 1st respondent was guilty of laches, delay and acquiescence in filing the petition and therefore they said petition is liable to be dismissed.

22. The Company Law Board, however, condoned the delay referring to the decision of the Calcutta High Court in Smt.Napur Mitra versus BasuBani Private Limited (1999) 2 Cal LJ 264 and the decision of the Honourable Supreme Court in G.Rama Gowda versus Special Land Acquisition Officer AIR 1988 AC 97 and in the light of its decision in Bhuvaneshwar Nath Nigam versus Hindustan Lever Ltd (2002) 111 Company Cases 590, in the light of the allegation of fraud perpetrated by the 2nd respondent company along with the 3rd respondent on the 1st respondent.

23. The Company Law Board has concluded that there was no agreement on record between the parties and the letters sent on behalf of the 2nd respondent company did not vindicate the defence taken by the appellant and the contesting the claims of the 2nd respondent herein in spite of the 1st respondent's request on 3.10.1997 and 16.12.1997 and that the contesting respondents therein (appellant included) have come forward for the 1st time with the plea of sale of the impugned shares by the 1st respondent in favour of the 3rd respondent herein/therein only in their counter to the petition filed before the Company Law Board.

24. The Company Law Board has observed that it was patently clear from the certified true copy of the resolution No. 5 of the Board of Directors of the 2nd respondent company in their meeting held on 15.2.1995 that the 3rd respondent had neither lodged the original share certificates in respect of the impugned shares nor the share transfers forms as they were never

executed by the 1st respondent in favour of the 3rd respondent.

25. Thus, it was concluded that the mandatory requirements of Section 108 of the Companies Act, 1956 were not complied with while registering the transfer of shares in favour of the 3rd respondent. The Company Law Board further observed that the consequential transfer effected by the 3rd respondent in favour of the appellant and his family to the extent of 500 shares was not valid though by letter dated 11/08/1995 the 3rd respondent had requested for the original share certificate along with the share transfer form in respect of the subject shares to be handed over to the appellant by the 1st respondent herein.

26. I have heard learned counsel for the appellant Mr. TK Bhaskar and Mr.V.Venkadasalam, learned counsel for the 2nd respondent company. Though the contesting respondent namely the 1st respondent had engaged M/s.Shah & Shah there was no representation on behalf when the case was taken up for hearing on 15.11.2019 and thereafter on 29.11.2019. The case was reserved for passing orders on 29.11.2019.

27. The other respondents namely 3rd and the 4th respondent also have not been represented. Under these circumstances, I am constrained to dispose the appeal without the assistance of the 1st respondent, 3rd & 4th respondent based on available records.

28. At the time of admission of the appeal this court had framed the following questions of law for the purpose of disposal of the appeal under Section 10 F of the Companies Act, 1956:-

i. Whether the Company Law Board ought to have held that the company petition was not maintainable under Section 111 A Of the Companies Act, 1956?

ii. Whether the conclusion of the Company Law Board in paragraph 7 of its order that the transfer of shares by the 3rd respondent in favour of the appellant was invalid is erroneous in law?

iii. Whether the Company Law Board ought to have directed the parties to file a civil suit rather than deciding the issue in a summary proceeding under Section 111 A of the Companies Act, 1956?

29. I have considered the arguments advanced by the appellant and the 2nd respondent company. The facts are not in dispute.

30. Though it was argued that the petitioner had become a deemed public limited company, and therefore it was not open to grant of relief under Section 111 of the Companies Act, 1956 and only petition under Section 111A of the Companies Act, 1956 ought to have been filed, it is evident that as per sub clause (14) to Section 111 of the Companies Act, 1956, company means a private company and includes a private company which had become a public company by virtue of Section 43 A of the said Act. Therefore, the company petition filed by the 1st respondent before the Company Law Board was proper.

31. The erstwhile management of the 2nd respondent company who were the shareholders of the 2nd respondent company had decided to offload the entire share in favour of the appellant and his family which was recorded in a Board Meeting dated 20.4.1992 of the 2nd respondent company under the chairmanship of the 3rd respondent herein.

32. The extract of the aforesaid Board Meeting records reveals that all the existing shareholders have desired to sell the shares of the company by identifying the prospective purchaser and after determining the fair market value, the family of the appellant was identified as the prospective purchaser of the shares.

33. The Board had also authorised the 3rd respondent to intimate to the existing shareholders about the fair price and intended purchase and requested them to submit the necessary transfer documents. The Board also authorised the 3rd respondent to do all that was necessary for completion of the transfer of shares. The Board also invited Smt. Rajalakshmi, Coimbatore and her relatives (the appellant herein) and to join the board of the 2nd respondent company.

34. Under these circumstances, the appellant and his family paid a sum of Rs.9,61,600/- to the 3rd respondent towards the purchase of 12,020 equity shares of the 2nd respondent company.

35. The 3rd respondent who was responsible for effecting the transfer of all the share, including the share of the 1st respondent transferred all the shares in the 2nd respondent company in favour of the appellant and his family.

36. However, from a reading of the records of the case it is evident that though the erstwhile Board of Directors of the 2nd respondent company had decided to offload the entire share in the 2nd respondent company in favour of the appellant and his family and that the 3rd respondent was authorised to do all that was necessary to implement the decision taken by the Board of Directors on 20.4.1992, the 1st respondent had failed to co-

operate in this regard.

37. The 1st respondent appears to have failed to hand over 500 shares and the share transfer form to the 3rd respondent, though it is the case of the appellant that the 500 shares had been misplaced in the registered office of the 2nd respondent company which incidentally was at that time at the 1st respondent's house and taking advantage of the same the 1st respondent woke up on 4.8.97 and called upon the 2nd respondent company to transfer the shares in his name and return the original share certificates.

38. In the said letter, the 1st respondent stated that these 500 shares were registered in his name along with Shri Girish Chimanlal Parikh and it was decided between them that the shares to be transferred to his name. Thereafter, the reminder was sent by the 1st respondent to the 4th respondent to do the needful.

39. The typeset of documents filed along with the appeal seems to indicate that prior to the above Board meeting dated 15.2.1995, the 3rd respondent had stated that she had misplaced the 500 shares and therefore requested the Board of Directors of 2nd respondent to issue duplicate share certificate in her name and undertook to indemnify the 2nd respondent company for damages if any in view of the re-issue of duplicate share certificates and that she was sending an indemnity bond duly executed on a stamp paper.

40. In the Board Meeting held on 15.2.1995 it was recorded that share the transfer form and the 500 shares of the 1st respondent and Girish Chamanlal Parikh were in her custody at the registered office of the 2nd respondent company at Bombay and had requested the company to issue duplicate of the subject 500 shares to her name.

41. Duplicate shares numbering 1150 standing in the name of Smt. Bachu Phiroze Umriger and Sri Anil Ashok Rallin were also issued and transferred to the 3rd respondent along with 500 shares of the 1st respondent and Girish Chaman Lal Parikh in favour of the 3rd respondent.

42. However, on 11.8.1995, the 3rd respondent called upon the 1st respondent to make arrangements to hand over the share certificates in respect of 500 shares along with share transfer form in favour of the appellant at Coimbatore and in case the 1st respondent had not dispatched the shares certificates to the appellant, the 1st respondent was requested to hand over the same to the bearer of the aforesaid letter to help the 3rd respondent to fulfil her commitment given to the appellant of handing over of the remaining shares in compliance with the agreement.

43. However, by this time, the 3rd respondent had already obtained duplicate share certificate to complete the sale. Thus, it is clear attempt was to regularize the sale effected by the 3rd respondent earlier with the help of duplicate shares which she had already procured by misrepresenting the facts on 15.09.1995.

44. Unaware of the transfer and issue of the duplicate shares, the 1st respondent responded by a letter dated 16.8.1995 and alluded to a telephonic conversation with the 3rd respondent and stated that when the 3rd respondent had taken controlling interest in the 2nd respondent company, he had retained 500 shares as the 2nd respondent company was to operate from the 1st respondent's premises till the 3rd respondent found an alternate office premises for doing the business and also for the purpose of IATA to show that he was still connected with the 2nd respondent so that there was no need for a fresh appraisal.

45. Thus, it is evident when the 3rd respondent approached with the proposal to offload the shares in favour of the appellant and his family to the 1st respondent when the company was still occupying the 1st respondent's premises and therefore the 1st respondent did not wish to part with the 500 shares at that time. Thus, he has exercised the rights over the shares. He has also indicated that he was willing to transfer the shares to the appellant if the 3rd respondent agreed to pay the consideration agreed between them.

46. Thus, the 3rd respondent had no title over the shares and had managed to get duplicate of 500 shares standing in the name of the 1st respondent and Shri Girish Chimanlal Parikh to herself name taking advantage of her position in the 2nd respondent company and later tried to persuade the 1st respondent to transfer the originals of the 500 shares to the appellant.

47. Under Section 27 of the Sale of Goods Act, 1930 where any goods are sold by a person who is not owner of the goods and who sells them without authority or without the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods by his conduct can precluded from denying the sellers authority to sell.

48. Here, there is no dispute that the 1st respondent was in Board of the 2nd respondent Company which decided to sell the shares to the appellant and his family members pursuant to the decision taken by the erstwhile Board of directors of the 1st respondent company on 20.4.1992.

49. In the Board meeting of the Directors of the 1st respondent company, 1st respondent was also a signatory. Though he has not denied the authority of the 3rd respondent to take steps to transfer the shares and was required to hand over the shares to the 3rd respondent for giving effect to be arrangement/agreement entered into by the 3rd respondent for the aforesaid purpose, he failed to do so as the 3rd respondent failed to honour her commitment to him.

50. Even in his communication dated 16.8.1995 addressed to the 3rd respondent in response to letter dated 11.8.1995 of the 3rd respondent, the 1st respondent had agreed to transfer the shares provided the 3rd respondent agreed to pay to the 1st respondent agreed consideration unaware of the fact that the 3rd respondent had already transferred the shares to the appellant.

51. Though the said letter indicates that the 1st respondent was not averse to the idea of transferring the shares to the appellant and his family provided the 3rd respondent agreed to pay the amounts. However, the fact remains he had not transferred the shares to the 3rd respondent and therefore the 3rd respondent could neither get duplicate shares issued to herself nor transfer those shares to herself and thereafter to the appellant.

52. The private dispute between the 1st and the 3rd respondent regarding the amount to be paid inter se has remained unsettled. Since the 3rd respondent failed to pay the amount, the 1st respondent has refused to part with 500 shares. Therefore, the transfer of shares to the appellant with the help of duplicate shares cannot be sustained. The 3rd respondent could not transfer 500 shares of the 1st respondent to Shri Girish Chimanlal Parikh. Therefore, the 1st respondent was justified in filing the said company petition before the Company Law Board by the 1st Respondent.

53. I therefore find no reasons to interfere with the impugned order of the Company Law Board. Further, the issue of duplicate shares also accompanied a letter of indemnity from the 3rd respondent to indemnify the 2nd respondent company on account of any adverse orders/consequences arising out of issue of duplicate shares. Therefore, it is for the appellant and the 2nd respondent to work out their remedy against the 3rd respondent.

54. Therefore, while dismissing the present appeal, liberty is given to the appellant to approach the civil court to recover the amount from the 3rd respondent on account of the fraud played by her in obtaining duplicate certificate and transferring the same to the appellant.

55. The civil miscellaneous appeal is dismissed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Company Law Board
S.R.Bench, Chennai

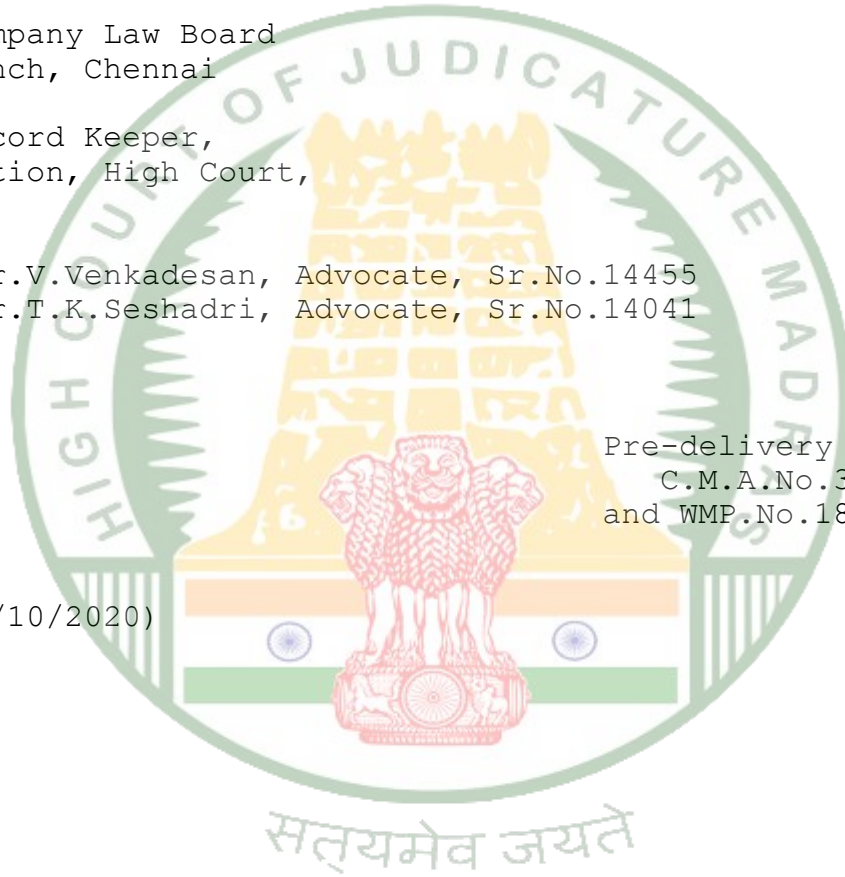
2. The Record Keeper,
VR Section, High Court,
Madras.

+1cc to Mr.V.Venkadesan, Advocate, Sr.No.14455

+1cc to Mr.T.K.Seshadri, Advocate, Sr.No.14041

Pre-delivery Judgment in
C.M.A.No.3371 of 2004
and WMP.No.18461 of 2004

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