IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.106 of 2008

G.Nirmal Kumar Bafna ... Appellant/Plaintiff

Vs

1. Reliance Industries ltd.,
   Rep. by its Managing Director
   Regd. Office: 3rd Floor
   Makers Chambers IV
   222, Nariman Point,
   Mumbai 400 021.

2. Unit Trust of India
   17, Merchant Chamber
   Sir Vithaladas Thackersay Marg
   New Marine Lines
   Mumbai 400 020.

3. S.Ramachander Rao

4. A.K.K.Shreedhar

5. Sharada Prabhudas Manek

6. Fledgling Nominees International Ltd
   Citi Bank N.A. Custody Services
   C/o. Sultanallys
   Business Centre,
   Barodawala Mansion
   Dr.A.B.Road, Worli
   Mumbai - 400 019.

7. Garware Securities Broking Ltd.,
   PMT, Commercial Building
   5th Floor, Deccan Gymkhana
   Pune 411 004.

8. Anilkumar Sarogi
   C/o.S.P.Mfg.Co.,
   22, Braborne Road,
   Calcutta 700 001.

9. Montgomery Energing Marketing Funds
The Hongkong & Shanghai Banking
Corporation ltd.,
C/o. Investment Department
52/60, M.G.Road, Mumbai 400 001.

10. Venkateswara Rao
Kongara
Joint with Madhubala Kongara
BAE 46-C, Colony KTPS
Paloncha, Khammam,
A.P. District

11. Amitabh Junjunwala

12. Durga Vasanthalakshmi

13. Chakka Channa Krishna Rao

14. Kailash C.GAndhi

15. Stock Holding Corpn. Of India Ltd
A/c. SBI MU3
224, Mittal Court,
B-Wing, 2nd Floor,
Nariman Point, Mumbai 400 021.

16. Chroma Business Ltd.,
P-42/1, Hide Road Extention,
Calcutta - 700 008.

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree passed in A.S.No.146 of 2005 dated 25.08.2006 on the file of the Additional District and Sessions Judge, Fast Track Court - III, Chennai confirming the Judgement and Decree made in O.S.No.289 of 1996 dated 26.03.2003 on the file of the VII Assistant City Civil Court, Madras.

For Appellant	:	Mr.Rajendran for M/s.Norton & Grant
For Respondent 1	:	Mr.Giridhara Rao

J U D G E M E N T

The unsuccessful plaintiff is the appellant before this Court.

2. The suit O.S.No.289 of 1996 was instituted by the appellant on the file of the VII Assistant City Civil Court, Chennai seeking the following reliefs:

"a) for declaration that the plaintiff is the lawful owner of the shares mentioned in the schedule hereunder and consequently the transfer of the schedule mentioned shares in favour of the present owners is null and void and not binding upon the plaintiff;

b) directing the defendant to transfer the schedule mentioned shares to and in favour of the plaintiff;

c) for permanent injunction restraining the defendant, its agents, employees or its men from processing or effecting the transfer of the shares mentioned in the schedule hereunder"

3. It was the case of the appellant that he was regularly dealing in shares through his stock broker, M/s.Bafna Investment Consultants. In the course of this trade he had purchased 1500 equity shares of face value of Rs.10/- of the 1st respondent company. The shares were delivered under delivery note dated 18.02.1993. Along with the shares, the requisite document for transferring the same in the name of the appellant had also been delivered by his stock broker.

4. It is the case of the appellant that he was under the belief that he had already submitted the shares for transfer through his broker. He later learned that it had not been so done. The appellant would contend that he might have lost the shares during the travel to his office by scooter. The appellant had lodged a complaint with the Assistant Commissioner of Police, Crime Records Bureau, Vepery, Chennai and the complaint was registered on 05.12.1995. However, the Police Authorities were not in a position to trace the missing shares.

5. He therefore wrote a letter dated 09.12.1995 to the respondent company informing them that he had lost the share in transit and also that complaint had been lodged and registered. In these circumstances, the appellant requested the 1st respondent to desist from transferring the shares in favour of strangers. He also called upon the 1st respondent to furnish the names of the persons who have applied for the transfer of these shares so that the plaintiff could take necessary steps against them.

6. By reply dated 22.12.1995, the 1st respondent informed

the appellant that the shares in question had already been transferred and it would not be in a position to stop the transfer without orders of the Court. The details of transferees were not however provided to the appellant. The appellant would submit that the shares have been stolen from his possession and therefore the persons now holding the shares cannot claim ownership over the stolen property. It is in these circumstances, that the appellant had been constrained to approach the Court seeking the reliefs stated supra.

7. The 1st respondent on entering appearance had filed a written statement inter alia questioning the maintainability of the suit before the Courts at Chennai when the jurisdiction was at Mumbai as the registered office of the 1st respondent was at Mumbai outside the jurisdiction of the Courts at Chennai. The 1st respondent had further contended that the appellant had deliberately undervalued the shares and has therefore paid inadequate stamp duty. The plaint, according to the 1st respondent, was bad for non-joinder of the necessary parties viz; the stock broker of the appellant.

8. That apart, the entire proceedings suffered from delay and latches. The appellant who claims to have received the shares in the month of February 1993 has come to know about its loss only in December 1995. The 1st respondent would submit that in keeping with the provisions of the Companies Act as and when a share certificate is lodged with them together with duly executed and valid transfer deed the company is bound to transfer the share in the name of the persons who lodged the shares along with the transfer deeds. Thereafter, the names of the transferees are entered into the register of members of the 1st respondent company.

9. The 1st respondent would submit that the transferees of the shares have not been made parties to the proceedings and they are proper and necessary parties to the proceedings. The 1st respondent would raise doubts about the appellant's claim about the alleged loss of share in transit considering the fact that the appellant had waited for over 2 ½ years to lodge a complaint about the loss. The very cause of action pleaded by the appellant was doubted by the 1st respondent and therefore they sought for the dismissal of the suit.

10. The records would indicate that pending the suit, the appellant had taken steps to implead the subsequent transferees and it was only the 5th respondent who had filed a written statement in which they would submit that the very suit was one based on false allegations. They would submit that the shares have been registered in their name as early as on 28.04.1993 and the 5th respondent has been receiving the dividend regularly.

Therefore, the appellant is not entitled to the declaration as sought for by him.

11. The 5th respondent would contend that nowhere has the petitioner stated as to when the shares certificate along with the transfer form had been lost by him and the pleadings narrating the loss of the shares is shrouded in suspicion. They therefore sought for the dismissal of the suit.

12. The learned VII Assistant City Civil Judge, Chennai had on the basis of the pleadings framed the following issues:

"(i)Whether the plaintiff is entitled to the relief of declaration?
(ii)Whether the plaintiff is entitled to a decree for injunction?
(iii)To what other relief the plaintiff is entitled to ?"

13. The appellant had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.5. The respondents have neither let in oral evidence nor documentary evidence. The learned Judge by his Judgement and Decree dated 26.03.2003 was pleased to dismiss the suit.

14. Although the learned Judge had held in favour of the appellant with reference to the payment of Court fees, limitation and joinder of parties, however, the learned Judge had held that the City Civil Court had no jurisdiction to entertain the suit as it was only the Civil Courts at Mumbai which was vested with the jurisdiction to entertain the same. The learned Judge also held that the appellant has not proved that the shares belonged to him. Therefore, the learned Judge proceeded to dismiss the suit.

15. Aggrieved by the said Judgement and Decree, the appellant has filed A.S.No.146 of 2005 on the file of the Additional District & Sessions Judge, Fast Tract Court III, Chennai. The Appellate Court by its Judgement and Decree dated 25.08.2006 dismissed the appeal and confirmed the Judgement and Decree of the Trial Court. It is aggrieved by this concurrent Judgement and Decree, the appellant is before this Court.

16. When the Second Appeal came up for admission on 28.01.2008, this Court had directed notice to the respondent returnable within 8 weeks. The contesting respondent has entered appearance.

17. Mr.Rajendran, the learned counsel representing M/s.Norton & Grant, for the appellant would assail the Judgement and Decree of the Courts below by stating that they are in error

in coming to the conclusion that the Courts at Chennai are not vested with the Jurisdiction to hear the suit. The learned counsel would contend that the purchase of the shares by the appellant is at Chennai and the loss of the shares and transfer deeds were also at Chennai. Further, the complaint about the loss of the shares was also given to the Office of the Assistant Commissioner of Police, Crime Records Bureau, Vepery, Chennai, which falls within the Jurisdiction of this Court.

18. The learned counsel would submit that the Courts below have erred in coming to the conclusion that the appellant has not proved ownership of the shares in this regard. The learned counsel would submit that both the Courts below have not appreciated Ex.P.1, which is an outward memo addressed by the share broker to the appellant, listing out the shares which are the subject matter of the suit.

19. The learned counsel would further contend that the shares which have been transferred are stolen shares and that would not cloth any right on the subsequent transferees. In support of his submissions, the learned counsel would rely upon [1998] 91CompCas 31 (Mad) - K. Radhakrishnan vs. Thirumani Asphalts and Felts Pvt. Ltd. and Ors. and (1988) 1 SCC 681 - Raja Ram Kumar Bhargava (Dead) by Lrs. vs. Union of India (UOI).

20. Per contra, Mr.Giridhara Rao, learned counsel appearing on behalf of the 1st respondent would submit that the suit is not maintainable before the Civil Court as the relief sought for in the suit is to rectify the register of the 1st respondent company it is only the Company Law Board (as it existed then) that had the jurisdiction as per Sections 111 and 111 A of the Companies Act, 1956. The relief claimed squarely falls within the jurisdiction of the Company Law Board. However, this defense has not been taken either before the Trial Court or before the lower Appellate Court and is taken up for the first time before this Court. The question of jurisdiction is however a question of law which can be raised at any time.

21. He would further submit that the appellant is unable to give the exact date on which the shares had been stolen and the manner in which it has been lost. He would draw the attention of the Court to the pleadings in this regard in the plaint. He would further submit that without giving the exact date, the appellant is attempting to scuttle the due process of law. He would rely on the following Judgements:

"1. (1997) 88 CompCas 684 – Suryanarayana Paper and Boards Pvt. And others Vs. V.Padmakumar and others.
2. (1994) 81 CompCas 318 – Dr. Arvind Gupta Vs. Securities

And Exchange Board of India and others.

3.(1999) 97 CompCas 301 - Mafatlal Industries Ltd., Vs. Gujarat Gas Co. Ltd. and others.

4.(1995) 84 CompCas 70 - Canara Bank Vs. Nuclear Power Corporation of India Ltd., and others.

5.(1987) 64 CompCas 304 - Thiruvalluvar Velanmai Kazhagam (P) Ltd Vs. M.K.Seethai Achi.

22. Heard the learned counsels and perused the papers.

23. The appellant has come forward with the case that he has purchased the shares under Ex.P.1, outward memo. It is also his case that the shares had been lost. The appellant is unable to give any details as to the date on which he had for the first time noticed that the shares were missing and the circumstances surrounding this discovery. It is rather strange that the appellant has not noticed that the shares of a Blue Chip Company has gone missing for 2 years and 10 months before lodging a complaint with the Police.

24. The appellant is also unable to state as to how the shares had gone missing from his end. In the plaint at paragraph no.4, the appellant would make this statement "The plaintiff goes to his office in his scooter when it might have been lost". It is a rather strange statement made in respect of shares whose market value is pretty high. If the appellant had lost in while travelling in the scooter he should have come to know about it the minute he got off from the scooter and along with the shares he must have also missed other papers / articles etc.,

25. The appellant has not come forward with definite pleadings. The appellant has not pleaded how the shares had gone missing / stolen and Ex.P.2, the Police complaint would not help the appellant in any manner. Therefore, the very cause of action on which the suit has been filed appears doubtful. Though the arguments that the suit is not maintainable and that it is only an application to the Company Law Board that would lie has been raised for the first time before this Court however since it relates to the inherent lack of jurisdiction I am considering the same. This Court in the Judgement rendered in (1987) 64 CompCas 304 - Thiruvalluvar Velanmai Kazhagam (P) Ltd Vs. M.K.Seethai Achi, was considering the exclusion of the Jurisdiction of the Civil Courts with reference to the suit filed by the plaintiff therein to produce documents returned by the defendant during her tenure as Managing Director of the Company. A preliminary issue regarding the jurisdiction of the Court was raised and the Subordinate Judge held that the Civil Court had no jurisdiction and dismissed the suit. Against the order of dismissal the plaintiff had filed an appeal before this

Court, where the learned Judge had observed as follows:

"Section 10 of the Companies Act defines the Court having jurisdiction under that Act as the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Court subordinate to the High Court in pursuance of Sub-section (2), which enables the Central Government by notification in the Official Gazette to empower any district Court to exercise all or any of the jurisdiction conferred by this Act upon the Court. The Court having jurisdiction under the Act, as defined under Section 10 of the Act, shall have power to deal with all matters, for which provision has been made in the said Act. Hence, in respect of all matters dealt with under the Companies Act, the Court having jurisdiction is the Court as defined under Section 10 of the Act. But, in respect of matters not dealt with by the Companies Act, or for which the Companies Act does not provide remedies, the ordinary Civil Court alone will have jurisdiction. In other words, the Civil Court will have no jurisdiction only in respect of matters falling exclusively within the jurisdiction under the Companies Act. We have now to see whether the subject-matter of the suit is a matter falling within the ambit of the Companies Act."

26. Therefore, Section 10 of the Act oust the jurisdiction of the Civil Court only in respect of the matters falling exclusively within the jurisdiction of the Court under the Companies Act. Section 111 of the Companies Act provides for the power of the Company to refuse registration and provides for an appeal against the said order under Section 111 (3). The claim of the appellant would fall within the provisions of Section 111 (4) (a) (i) of the Companies Act, 1956, which provides that a person aggrieved has to apply to the Company Law Board as it then was. Therefore, considering the observation of this Court in (1987) 64 CompCas 304 - Thiruvalluvar Velanmai Kazhagam (P) Ltd Vs. M.K.Seethai Achi, the suit filed before the City Civil Court is not maintainable.

27. The Gujarat High Court in the Judgement reported in (1999) 97 CompCas 301 - Mafatlal Industries Ltd., Vs. Gujarat Gas Co. Ltd. and others, while answering the issue as to whether the Civil Court had jurisdiction to entertain the suit in respect of prayers seeking permanent injunction and temporary injunction against the Company from registering transfer of shares had returned a finding that this prayer falls within the jurisdiction of the Company Law Board under Section 111 and 111 A. Therefore by implication, the jurisdiction of the Civil Court is barred. The learned Judge relying upon the judgement of the Delhi High Court in Harnam Singh Vs. Bhagwan Singh

(1992) 74 CompCas 726 has concluded as follows:

"The off-shoot of the aforesaid discussion is that the jurisdiction of the civil court is certainly barred in so far as the plaintiff has prayed for permanent and temporary injunction to restrain defendant No. 1-company from registering the transfer of shares from defendants Nos. 2 and 8 to defendants Nos. 6 and 7 but the jurisdiction of the civil court is not barred, in so far as the plaintiff has prayed for reliefs on the basis of alleged right of pre-emption."

Therefore, the instant suit with reference to the prayers (b) & (c) of paragraph no. 13 cannot be maintained before the Civil Court.

28. The next ground on which the learned counsel for the 1st respondent sought to have the Judgement and Decree of the Courts below confirmed is on the ground of jurisdiction being at Mumbai. He would rely on the Judgement reported in (1997) 88 CompCas 684 - Suryanarayana Paper and Boards Pvt. And others Vs. V.Padmakumar and others, where this Court has held that the residence of the Company would be the place where the registered office is located and suits must be filed only where the registered office of the company is situate. Applying the dicta laid down in the above case, the Court below have rightly held that the suit has to be filed only at Mumbai and not at Chennai. This applies to the prayer (a) at paragraph no.13 since only prayer (a) would lie within the jurisdiction of the Civil Court.

29. I do not find any question of law much less a substantial question of law warranting any interference in the Judgement and Decree of the Courts below. Accordingly, the Second Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
   Fast Track Court – III,
   Chennai.

2. The VII Assistant City Civil Court,
   Madras.

3. The Section Officer,
   V.R.Section,
   High Court, Madras.

+1cc to M/s.Norton & Grant, Advocates, S.R.No.26548

+1cc to M/s.S.Raghunathan, Advocate, S.R.No.26540

+1cc to M/s.King & Pantridge, Advocates, S.R.No.26840

S.A.No.106 of 2008

SJ(CO)
SU(11/10/2021)