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Ct-08

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FA 298 of 2008

with

I.A No. CAN 2 of 2008 (Old CAN No. 1493 of 2008)

**Murarilal Choudhury, since deceased,
Represented by his legal heirs and representatives,
Dipti Agarwal & Ors.**

Vs.

Wipro Ltd. & Ors.

Mr. Tanmoy Mukherjee

Mr. Aditya Mondal

Ms. Anuradha Poddar

.... For the Appellants

Mr. Manab Kumar Gupta

Ms. Moumita Gupta

... For the Respondent no. 1

Mr. U.S Menon

Mr. Abhirup Chakraborty

... For the Respondent no. 3/
Reliance Industries Ltd.

The matter is appearing in today's list under the heading "Civil Application". By consent of the parties, accordingly, the appeal is treated as on day's list and is taken up along with CAN 1493 of 2008 and disposed of by this common order.

The plaintiff filed a suit for declaration and injunction against the defendants in relation to the shares. The plaintiff claims to be the bona fide purchaser of shares for value and he is entitled to dividends and bonus shares, on transfer of the shares, in the name of the plaintiff by the defendants. In paragraph 11 of the plaint the plaintiff claimed for declaration that the plaintiff being the owner of the said shares of defendant nos. 1,2,3,4 and 5 is entitled to dividends and bonus shares and all other benefits arising out of the said shares. The defendant nos. 2 to 5 did not contest the suit.

On the basis of the pleadings, oral and documentary evidence, the suit was decreed against the defendant nos. 2 to 5. However, in doing so, the learned Trial Judge did not give a decree with regard to the dividends and bonus shares.

Learned counsel for the appellants submits that the appellants have received shares from the defendant nos. 2 to 5 along with all accrued benefits. It is, however, submitted that in so far as the respondent no. 3, Reliance Industries Ltd., is concerned, they have not received the dividends and bonus shares.

Mr. U.S Menon, learned counsel appearing for the respondent no. 3, Reliance Industries, submits that the respondent no. 3 has already delivered shares and there was no further obligation of discharge. It is also submitted that due to long passage of time it is not possible at this stage without a proper instruction with regard to the other claims made by the plaintiff towards dividends and bonus shares, if issued in the mean time. However, having regard to the fact that the ownership of the share certificates of the respondent no. 3 has been declared in favour of the plaintiff and the plaintiff has already received share certificates, we are of the view that the Trial Court ought to have decided the said issue.

In so far as the Wipro Ltd. is concerned, we find that the suit had proceeded ex parte against the respondent no. 1 but no decree was passed against the respondent no. 1. However, having regard to the fact that Wipro has filed a written statement, we permit the respondent no. 1 to contest the suit.

Learned Trial Judge is directed to rehear the suit against the Wipro Ltd. and decide the issue raised by the plaintiff with regard to the payment of dividends and bonus shares, as claimed by the plaintiff in the plaint.

Learned Trial Judge is requested to decide the said issue within a period of six months from the date of commencement of trial.

All procedural formalities should be completed within the stipulated period.

The interim order passed on 10th March, 2008 stands confirmed till the disposal of the suit.

In view of the above, the appeal being FA 298 of 2008 is disposed of.

In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 1493 of 2008 and the same is accordingly disposed of.

The department is directed to send down the lower court record along with a copy of this order to the 12th Bench, City Civil Court at Calcutta.

As rightly pointed out by the learned counsel representing the Wipro Ltd. that there is a clerical error committed by the department in recording the death of Murarilal Choudhury, as it appears from the application that Murarilal died on 2nd January, 2013, but the department in carrying out the amendment mentioned the date of death of Murarilal as 2nd January, 2012, the department is directed to immediately carry out the necessary correction before sending down the lower court record.

Registrar Administration (L & OM) must ensure that after necessary correction by the department, a copy of this order along with lower

court record be sent to XIITH Bench, City Civil Court at Calcutta on or before 30th September, 2022.

(Uday Kumar, J.)

(Soumen Sen, J.)