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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/67/2022
IA NO. GA/1/2022
BEJOY KUMAR KARNANI KARTA
VS.
WEALTH TAX OFFICER, 1 WARD COMPANIES DISTRICT 1 AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : NOVEMBER 03, 2022.

Appearance:
Mr. Pranit Kr. Bag, Adv.
...for appellant
Mr. Om Narayan Rai, Adv.
...for respondent

The Court :- This intra-Court Appeal filed by the writ petitioner is directed against the order dated 13th June, 2022 passed in WPO 305 of 1966 in IA :GA/1/2022. The said application was filed in GA/1/2022 with a prayer to the Registrar, Original Side to return the 80,000 ordinary shares of Karnani Properties limited to the petitioner bearing Nos. 377506 to 457506. The learned Single Bench by the impugned order dismissed the said application on the ground that the Court has become functus officio and the application cannot be entertained as the writ petition stood disposed of by an order dated 28th July, 1966.

We have heard Mr. Pranit Kumar Bag, learned Advocate appearing for the appellant and at our request Mr. Om Narayan Rai, learned standing Counsel appearing for the department assisted us in the proceedings. The first aspect which has to be verified was whether the original share certificates which were sought to be returned were submitted before this Court as contended by the petitioner. In the writ petition being WP 305 of 1966 an order was passed on 4th July, 1966 which reads as follows :

"*The Court: A/o by 3 weeks, A/R within 2 weeks thereafter, adjourned till a week thereafter.*

Upon the petitioner furnishing security to the satisfaction of the Registrar for the sum of Rs.1,92,000/-, there will be an order for stay of realisation of the assessed amount from the petitioner. The petitioner will be at liberty to offer as security the wealth which is the subject matter of these proceedings, including the shares of Karnani Properties Ltd. which stand in his name. The petitioner will furnish security within 3 weeks from date. In default of the security being furnished within the time aforesaid, the interim order will stand vacated. In any event, there will be adinterim order for 3 weeks from date.

Registrar to act on a signed copy of the minutes upon the undertaking of the petitioner's solicitors to have this order drawn up, completed and filed."

In terms of the above order the petitioner was directed to furnish security to the satisfaction of the Registrar for a sum of Rs.1,92,000/-. The petitioner was at liberty to offer as security the wealth which is the subject matter of the proceedings including the shares of Karnani Properties Limited, which stands in the name of the petitioner. As could be seen from the proceeding of the Registrar 27th July, 1966 the original of 80,000 shares certificates of Karnani Properties Limited standing in the name of the petitioner were deposited before the Registrar and the security bond was approved. Thus it is clear that share certificates were deposited by the petitioner to comply with the order passed by the Court on 4th July, 1966. When the appeal came up for hearing before us we had directed the Registrar to submit reports from time to time and the last of such report is of dated 31st August, 2022. From the said report it is clear that the original share certificates as mentioned above had been submitted to the Registrar Insolvency under reference 89 of 1966 and it was accepted by him and the draft security bonds were approved with alteration which were suggested by proceedings dated 28th July, 1966. The report of the Registrar, O.S. dated 31st August, 2022 states that in spite of diligent search no share certificates were found in the custody of the cashier Original Side. As mentioned above, several reports were called for which show that the Registry had taken diligence to trace out the original share certificates but were unsuccessful in their attempt. Therefore, in terms of Section 46 of the Companies Act, the petitioner is entitled to issuance of duplicate shares. For such reason this appeal is allowed and there will be a direction to the board of M/s. Karnani Properties Limited to issue 80,000 duplicate shares in favour of the petitioner in lieu of original share certificates bearing Nos. 377506 to 457505 and in those share certificates it shall be specifically mentioned that they are duplicate share certificates issued pursuant to the orders passed by this Court in this appeal. Upon such issuance of duplicate share certificates the appellant shall be entitled to treat the same as original share certificates.

With the above direction the appeal stands disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH