IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO. 19 OF 2016

1. Smt. Asha Sudesh Banthia, R/o Plot No.11, Chitnavis Layout, Byramji Town, Nagpur – 440 013

2. M/s. Arti Investments, Office situated at F/19, First floor, Amarjyoti Palance, Lokmat Square, Wardha Road, Nagpur.

   (Which shut down business on 12/03/2005)

…. **APPLICANTS**

// **VERSUS** //

1. Smt. K. Ratnakumari w/o K. Ramu, aged about 42 years, Occupation Household, R/o BHEL, PS-WR(HQ), 345, Kingsway, Nagpur – 440 001 (M.S.)

2. M/s Manglore Refinery and Petro Chemicals Ltd., Manglore, through its director, Administrative Office Acradia, 7th floor, 195, N.C.P.A Marg, Nariman Point, Mumbai – 400 021

3. M/s Birla Consultancy and Services Ltd., Registered Office at A/65, MIDC Siemet Work Building, Mumbai – 400 093

4. M/s MCS Limited, Registered Office at Shri Venkatesh Bhavan, Plot No.27, Room No.17, MIDC Area, Andheri (East), Mumbai – 400 093

5. Smt. Aruna Modi, Aged : Adult, R/o 9, Shreenilay Jaishri Cooperative Housing Society, Parvas Nagar, Distt. Hoogly, Calcutta 712249

6. Smt. Sharmila Bhattacharya Aged : Adult, R/o Plot No. K BJ-23 Sector – 11, Salt Lake City, Calcutta – 700 091

(Deleted as per Courts order dated 20.03.2017.

7. Mr. Sanatandas, Aged : Adult, R/o Rajbalhat, Nandipara, Distt. Hoogly – 712408, Calcutta.

.... RESPONDENTS

Mrs. R. Bajaj, Advocate for applicants.

CORAM : M.S. KARNIK, J.
DATED : 12.04.2022.

ORAL JUDGMENT :

1. Heard the learned Counsel for the applicants. Despite service of notice, none appeared on behalf of the respondents.

2. On 08.03.2016, this Court issued a notice for final disposal of this Civil Revision Application (for short 'CRA') and the same was made returnable on 20.04.2016. The respondent no. 1/decree holder was directed to be served through her Counsel appearing in execution proceedings being Regular Darkhast No. 1116 of 2012. The office notes indicate that the respondents are duly served. The respondents have not put in their appearance. As a notice for final disposal was issued pursuant to which the respondents have not filed any appearance nor contested the CRA, I have no alternative but to proceed with the hearing of this CRA in the absence of the respondents. With the assistance of the learned Counsel, I have gone through the memo of the CRA, the relevant exhibits and the impugned orders.

3. This CRA under Section 115 of the Code of Civil Procedure, 1908 ('CPC', for short) takes an exception to the order dated 18.08.2015 passed by the 2nd Joint Civil Judge, Junior Division, Nagpur below Exhibits 1 and 28, thereby dismissing the objection of the judgment-debtor/applicants raised by them in the execution proceedings. The plaintiff-present respondent no. 1 ('K. Ratnakumari', for short) filed a suit before the Civil Judge, Senior Division, Nagpur bearing R.C.S. No. 108 of 2000 for declaration and permanent injunction against the defendants. In the said suit, K. Ratnakumari , inter alia, prayed for the following substantive reliefs :

> *"(i) to declare that the defendant no. 3 has no right to transfer the said shares of plaintiff in favour of anybodies name;*
>
> *(ii) to declare that the transfer of shares made by the defendant no.3 is null and void;*
>
> *(iii) to restrain the defendants no. 1, 2 and 3 from further transferring of the shares in favour of any other persons permanently;"*

4. In the plaint, it is the case of K. Ratnakumari that she approached the applicant no. 1-original defendant no. 4 (for short 'Asha') with an intention to invest money in share purchase. According to K. Ratnakumari, Asha was a proprietor of M/s Arti Investments (applicant No. 2) dealing in the business of sale and purchase of shares of various companies as agent. K. Ratnakumari was desirous of purchasing 300 shares of respondent No. 2 - original defendant no. 1 M/s Mangalore Refinery and Petro Chemicals Ltd. (for short 'M/s. Mangalore Refinery) in the open market through 'Asha'. The said shares were purchased on 22.12.1994. Asha issued a purchase confirmation voucher dated 22.12.1994. K. Ratnakumari paid the

amount of Rs.17,895/- through cheque no. 819713 drawn on the State Bank of India, Kingsway Branch, Nagpur. M/s Mangalore Refinery also issued the debit bill No. A01/31B/94-95/20 dated 11.02.1995. After purchase of the shares, necessary intimation was sent by Asha to respondents no. 3 & 4 - original defendant nos. 2 and 3 who are the share transfer agents of M/s Mangalore Refinery vide share transfer voucher no. 560 dated 03.03.1995. Necessary charges for the transfer of the shares was also paid by K. Ratnakumari to Asha vide bill No.446 dated 03.03.1995, amounting to Rs.315/-. K. Ratnakumari sent the purchased shares to respondent no. 3 - original defendant no. 2 M/s Birla Consultancy and Services Ltd. for transfer as per procedure of Stock Exchange providing that that as soon as anybody purchases the shares, the purchaser has to get the shares transferred in his/her name to complete the transaction. It is K.Ratnakumari's case that she did not receive any information from Asha or from the defendant no. 3 - M/s MCS Limited, regarding the application made for transfer of shares in the name of K. Ratnakumari. K. Ratnakumari, therefore, enquired with Asha about the further progress, whereupon Asha took up the matter with the General Manager, Stock Investors Service Cell vide her communication dated 20.11.1995. Though eight months passed, no information was received on the request so made. K. Ratnakumari entered into a personal correspondence with M/s Mangalore Refinery as well as M/s Birla Consultancy with a request for transfer of the shares in her vide communication dated 04.04.1996. K. Ratnakumari avers in the plaint that she took all efforts to get the transfer of the shares in her name as she is a *bona fide* purchaser, but all her efforts were in vain. The suit therefore came to be filed on 12.01.2000 for the reliefs

afore mentioned. It is averred that share transfer matters pertaining to the Mangalore Refinery are now dealt with by M/s. MCS Limited (defendant no. 3) as M/s. MCS has taken over the business of M/s Birla Consultancy and Services Ltd.

5. The plaint was amended during the pendency of the suit and defendant nos. 5, 6 and 7 came to be impleaded as party defendants. Respondent nos. 5, 6 & 7 - original defendant nos. 5, 6 and 7 are the persons in whose favour the shares to which K. Ratnakumari stakes her claim came to be transferred by M/s Manglore Refinery. The suit proceeded *ex-parte* against the defendants. The Trial Court decreed the suit. The Trial Court by the judgment and decree dated 24.08.2010 declared the transfer of the shares by M/s. MCS Limited in the name of respondent nos. 5, 6 and 7, as illegal.

6. The Trial Court also granted the refund of an amount of Rs.17,895/- with 12% interest to K.Ratnakumari recoverable from the defendants. During the course of execution of the decree, Asha filed an objection to the execution proceedings under Section 47 of the CPC, vide an application at Exhibit 28 in Regular Darkhast No.1116 of 2012. At paragraph 7 of the application, an objection was raised by Asha that the Trial Court exceeded the scope of its jurisdiction by entertaining the suit in respect of the subject matter, which could only be decided by the Company Law Board Tribunal, under the relevant provisions of the Companies Act. It was further stated in the application that the *lis* in question was the dispute

regarding the transfer of shares. Asha objected to the jurisdiction of the Civil Court and submitted that the judgment and decree of the Trial Court dated 24.8.2010 is without jurisdiction, in view of the provisions of Section 391 read with Sections 397 and 398 of the Companies Act.

7. K. Ratnakumari opposed the said application of Asha by filing a reply before the Executing Court on 10.12.2015. The Executing Court rejected the application on the ground that all the objections raised in the application, could have been the grounds for defense in the civil suit in which the decree came to be passed or in an appeal against the decree. The Executing Court was of the opinion that if there is an error in passing of the decree, the error is required to be rectified by adopting appropriate remedy. This order is under challenge in the present CRA.

8. Heard learned Counsel for the applicants. I did not have the advantage of hearing the contesting respondent no. 1 . The averments made in the plaint clearly reveals that K. Ratnakumari has a dispute with Asha and other defendants as regards the transfer of the shares which she claims to have lawfully purchased. K. Ratnakumari's contention is that the transfer of the shares ought to have been registered by M/s Mangalore Refinery and other defendants, in her name. Asha was the agent who facilitated the purchase of the shares. Later on, the shares which are purchased by K. Ratnakumari are transferred in the name of respondent nos. 5, 6 and 7 arbitrarily, instead of registering the transfer in the name of K. Ratnakumari. The Trial Court proceeded *ex-parte* and it is only during the course of

execution proceedings that an objection was raised by Asha as regards the jurisdiction of the Civil Court to try and entertain the suit.

9. The Trial Court was of the opinion that the objection as regards the jurisdiction of the Court and other objections were matters of defense which Asha should have taken up in the course of the proceeding in the suit and not in the course of execution proceedings.

10. Learned counsel submits that objection to the jurisdiction of the court can be raised at any stage including execution or even in collateral proceedings. To appreciate the submission of learned Counsel for the applicants, it would be material to refer to the provisions of Section 111 of the Companies Act, 1956, substituted by Act 31 of 1988 with effect from 31.05.1991. For ease of reference, Section 111 needs to be reproduced and which reads thus :

> *"111. Power to refuse registration and appeal against refusal : (1) If a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register, the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee, and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal."*

11. Thus, Section 111(1) of the Companies Act contemplates that if a company refuses to register the transfer of any shares of the company, it

shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, giving reasons for such refusal.

12. As can be seen from the averments made in the plaint, K. Ratnakumari as well as Asha took up the matter with the Stock Exchange and thereafter pursued the matter with M/s Mangalore Refinery vide Registered Post letter dated 02.02.1999. It is therefore obvious that the grievance of K. Ratnakumari is regarding the failure/refusal on the part of M/s Mangalore Refinery and its agents (defendant nos. 2 and 3) to transfer the shares in the name of K. Ratnakumari which she claims to have lawfully purchased through Asha.

13. Section 111(2) of the Companies Act provides a remedy to the aggrieved person in such matters. K. Ratnakumari being a transferee had a remedy to prefer an appeal under sub-section (2) of Section 111 of the Companies Act to the Tribunal (substituted by Act 11 of 2003 for Company Law Board). No such appeal is preferred by K. Ratnakumari. Sub-section (4) of Section 111 of the Companies Act provides for a situation when the default is made or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member [including a refusal under sub-section (1)] in which case, the person aggrieved, may apply to the Company Law Board for rectification of the register. Sub-

sections (5) and (6) of Section 111 of the Companies Act empowers the Company Law Board to pass such orders and make directions as indicated thereunder.

14. In the context of the question whether the Civil Court has jurisdiction to grant relief in the nature of the one the Tribunal is competent to grant under the Companies Act, in support of her submission, learned Counsel placed reliance on Section 10-GB of the Companies Act , which reads thus :

> *"10-GB. Civil Court not to have jurisdiction. - No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force."*

15. However, it is noticed that Section 10-GB is included in part I-B which was inserted by Act 11 to 2003 with effect from 01.03.2003. The suit was filed on 12.01.2000. Learned Counsel was not in a position to demonstrate whether Section 10-GB applies retrospectively.

16. However, regard must be had to Section 10 of the Companies Act, 1956 which reads thus;

> ***10. Jurisdiction of Courts***
>
> *(1) The Court having jurisdiction under this Act shall be -*

(a) 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 Courts subordinate to that High Court in pursuance of subsection (2); and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred -

(a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 to 407, both inclusive;

(b) in respect of companies with a paid- up share capital of not less than one lakh of rupees, by Part VII (sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up."

17. Relevant in the present context, the Apex Court in the case of Dwarkaprasad Agrawal vs. *Ramesh Chandra Agrawal (2003) 6 SCC 220* has held that Section 9 and 10 do not oust the jurisdiction of the Civil Court. The dispute between the parties, if it is eminently a civil dispute and not the dispute under the provisions of the Company Act, could be tried by the Civil Court. However, in the absence of any contra submissions and having regard to the relief claimed in the plaint, I am inclined to accept the contention of learned Counsel for the applicants that in view of the provisions of Section 111 of the Company Act, it is only the Company Law Board, providing an

elaborate procedure for dealing with the dispute regarding the transfer of the shares of a company, will have jurisdiction to decide K. Ratnakumari's claim and not the Civil Court. To come to this conclusion, I draw support from the decision of the Supreme Court in the case of ***Canara Bank vs. Nuclear Power Corporation of India Ltd. And ors., 1995 Supp (3) Supreme Court Cases 81,*** more particularly, paragraphs 30 and 31, which reads thus :

> *"30. These passages, from the earlier edition of Halsbury, were cited by this court in* Thakur Jugal Kishore Sinha v. The Sitamarhi Central Co-operative Bank Ltd.*, (1967) 3 SCR 163. The question there was whether the provisions of the Contempt of Courts Act applied to a Registrar exercising powers under Section 48 of the Bihar and Orissa Co-operative Societies Act. It was held that the jurisdiction of the ordinary civil and revenue courts of the land was ousted in the case of disputes that fell under Section 48. A Registrar exercising powers under Section 48, therefore, discharged the duties which would otherwise have fallen on the ordinary civil and revenue courts. He had not merely the trappings of a court but in many respects he was given the same powers as were given to the ordinary civil courts of the land by the Code of Civil Procedure, including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and to exercise the inherent jurisdiction of courts mentioned in Section 151. In adjudicating a dispute under Section 48 of the Bihar Act, the Registrar was held to be, "to all intents and purposes a court discharging the same functions and duties in the same manner as a court of law is expected to do."*
>
> *31. Now, under Section 111 of the Companies Act as amended with effect from 31-5-1991, the CLB performs the functions that were therefore performed by courts of civil judicature under Section 155. It is empowered to make orders directing rectification of the company register, as to damages, costs and incidental and consequential orders. It may decide any question relating to the title of any person who is a party before it to have his name entered upon the company's register; and any question which it is necessary or expedient to decide, it may make interim orders. Failure to comply with any order visits the company with a fine. In regard to all these matters it has exclusive jurisdiction (except under the provisions of the Special Court Act, which is the issue before us). In exercising its function under Section 111 the CLB must, and does, act judicially. Its orders are appealable. The CLR, further, is a permanent body constituted under a statute. It is difficult to see how it can be said to be anything other*

than a court, particularly for the purposes of Section 9-A of the Special Act."

18. A useful reference can also be had to the decision of the High Court of Delhi in the case of ***Vishnu Manglani and anr. vs. M/s Reliance Industries (F.A.O. 347-48/2005)*** decided on 08.12.2010 reported in 180 (2011) Delhi Law Times 236. Paragraph 19, which is relevant in the context of the jurisdiction of the Civil Court, reads thus :

> ***"19.*** *In the light of the law as discussed above and particularly observation made by the Apex Court in the case of Canara Bank Vs. Nuclear Power Corporation of India Ltd., & Ors. the jurisdiction is that of the Company Law Board to decide the lis which has been raised by the appellant, of course it is the Board which can decide even to direct the parties to approach the Civil Court in case they find that the claim was based upon some seriously disputed civil rights or title. However, before such a power is exercised by the Company Law Board and directions are given to the parties to approach the Civil Court it cannot be said that civil Court will have the jurisdiction which is sought to be pressed in service by the appellant. Consequently, the appeal filed by the appellant is dismissed with no orders as to costs."*
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> *(emphasis supplied by me)*

19. In my considered opinion, on the basis of the averments made in the plaint , I am inclined to hold that the jurisdiction of the Civil Court is ousted to decide K.Ratnakumari's claim and it is for the Company Law Board to decide the lis.

20. The next question is whether the objection to the jurisdiction of the Civil Court can be raised in the course of execution proceedings for the first time after passing of the decree, it is useful to note that the Supreme

Court has answered this question in the case of ***Balwant N. Viswamitra and ors. vs. Yadav Sadashiv Mule (dead) thr. LR's and ors. ,in(2004) 8 Supreme Court Cases 706***. A reference to paragraphs 9 and 10 makes the position clear. Paragraphs 9 and 10 reads thus :

> *"9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be 'null' and 'void'. In our opinion, the law on the point is well settled. The distinction between a decree, which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est an void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.*
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> *10. Five decades ago, in Kiran Singh v. Chaman Paswan this Court declared : (SCR p. 121)*
>
> > *"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, … strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."*

21. Thus, in my opinion, the defect of jurisdiction of the Civil Court to entertain the suit of the nature presented by K. Ratnakumari strikes at the very authority of the Civil Court to pass a decree or make an order. Such defect has always been treated as basic or fundamental and a decree or order passed by the Court or an authority having no jurisdiction is a nullity.

Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings. Therefore, I have no manner of doubt that the impugned order of the Executing Court suffers from an infirmity, being a jurisdictional error calling for interference in this CRA. This is not a case of going behind the decree, but a case where the Civil Court did not have jurisdiction to pass a decree. The Executing Court committed a patent error in dismissing the application filed by Asha below Exhibit 28 in Regular Darkhast No. 1116 of 2012. The Executing Court has failed to exercise jurisdiction vested in it by law while refusing to declare the decree a nullity for lack of jurisdiction on the part of the Civil Court to entertain the suit. The impugned order calls for interference.

22. The Civil Revision Application is allowed in terms of prayer clause (b) which reads thus: -

> "(b) quash and set aside the order dated 18-08-2015 passed by the 2nd Joint Civil Judge, Junior Division, Nagpur, below Exhibits – 1 & 28, in R. D. No.1116/2012 and be further pleased to dismiss the execution petition of the respondent no. 1 set aside the judgment and order passed by the learned Civil Judge Junior Division, dated 24/08/2010 in the interest of justice."

23. The impugned order dated 18.08.2015 passed by the 2nd Joint Civil Judge, Junior Division, Nagpur below Exhibits 1 and 18, in R.D. No. 1116 of 2012, is quashed and set aside.

24. No order as to costs.

(M.S. KARNIK, J.)

Trupti