OD-5

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/376/2018

RAMESH KUMAR CHOWDHARY
VS
UNION OF INDIA & ORS

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 24th February, 2023

Appearance:
Ms. A. Bansal, Adv.
Mr. Varun Kothari, Adv.
Ms. P. S. Roy, Adv.
…for the petitioner

Mr. P. K. Dutta, Adv.
Mr. S. K. Dutta, Adv.
Mr. S. Banerjee, Adv.
…for the respondent nos. 2 and 3

The Court:- Despite previous service, none appears for the respondent nos. 1, 4 and 5.

Learned counsel for the petitioner contends that, undisputedly, certain shares of the Titan Company stood in the name of the petitioner at all material points of time. Subsequently, due to loss of the share certificates in the year 2011, the petitioner had sought for issuance of duplicate share certificates. However, such issuance was refused by the authorities on the ground that the petitioner was required to produce an order from a competent Civil Court.

It is argued that an order from a Civil Court is not contemplated within the ambit of the Companies Act, 2013. By placing specific reliance on Section 58 of the 2013 Act, it is contended that the same envisages an appeal by the transferees to the Tribunal against refusal as stipulated therein. However, in the present case, although apparently there were several applications by different alleged transferees as various points of time, none of those had been allowed. As such, it was the prerogative of the said alleged transferees to prefer appeals against the order of rejection within the purview of Section 58 of the 2013 Act.

Learned counsel further hands over a copy of a computer print-out which indicates that the Titan Company Limited has been depositing dividends in the name of the petitioner in connection with the said missing shares even subsequently. As such, it is argued that the title of the petitioner with regard to the shares was never disputed. Learned counsel for the petitioner submits that the procedure for issuance of duplicate share certificates, as laid down by the NSDL, also do not contemplate the filing of a Civil Suit.

In any event, the petitioner is agreeable to subject himself to whatever legal procedure is amenable. However, the unnecessary insistence on a Civil Court's order was patently *de hors* the authority of the respondent.

Learned counsel appearing for the SEBI submits that the SEBI does not keep track of the details of individual shareholders of the company. However, SEBI had disposed of the application of the petitioner on the basis of the report of the transfer agents of the company-in-question.

Upon a perusal of the materials on record, it is clear that the basic premise on which an order from a Civil Court had been insisted upon is that there were several applications of transfer by subsequent transferees during the relevant period.

However, there is nothing on record to indicate that even one of such applications for transfer was ever allowed. As such, the presumption is that the petitioner, who was at the inception the owner of the shares-in-question, remain so in the absence of any evidence to rebut the continuance of such ownership even on a *prima facie* footing.

Inasmuch as the alleged transferees are concerned, it is rightly submitted by learned counsel for the petitioner that it was their prerogative, if aggrieved, to prefer appeal before the appropriate authority as contemplated in Section 58 of the 2013 Act. The said alleged transferees having not done so, it is not the duty or liability of the petitioner to re-establish his title before a Civil Court as there is no pending dispute regarding the title of the petitioner at all in respect of the shares.

Moreover, since it is alleged that the Titan Company Limited is even currently depositing dividends in favour of the petitioner with relation to the shares-in-question, the insistence upon production of the Civil Court's order was entirely without jurisdiction and ought to be set aside.

Accordingly, WPO/376/2018 is allowed, thereby directing respondent nos. 4 and 5 to take immediate steps for proceeding with the issuance of duplicate share certificates in the name of the petitioner, who appears to be the legitimate holder of the said shares, and to complete such exercise in accordance with law as expeditiously as possible, preferably within two months from the date of communication of this order to the said respondents.

(SABYASACHI BHATTACHARYYA, J.)

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