Court No. 9

15.05.2024

(AD 49)

(S. Banerjee)

WPA 25588 of 2023

Harsh Lohia
Vs.
Union of India & Ors.

Mr. Anirban Ray
Mr. Varun Kothari
Mr. S. Jhunjhunwala

… for the petitioner

Mr. Rudraman Bhattacharya
Mr. S. K. Tiwari
Ms. Shivansi Indoria

… for the Union of India

Mr. Mayank Shah

… for the respondent no. 2

Learned counsel for the petitioner contends that the petitioner has been the owner of 1,000 shares of the respondent no. 3 company. In view of the shares having been lost on November 13, 1992, a complaint was lodged. Subsequently complaints were lodged before different forums.

A suit was filed by a third-party claiming title to the said shares. However, the said suit was ultimately dismissed for non-prosecution. It is submitted by learned counsel for the petitioner that by dint of such dismissal, the claims of the said third-party to the shares were automatically rendered academic. Even during pendency of the suit, it is contended, there was a subsisting order of injunction.

Learned counsel for the petitioner places particular reliance on Sections 56 and 58 of the Companies Act, 2013. It is argued that since the purported transfer of shares were never registered within the stipulated time limit, the transfers were never completed at all, thereby the petitioner retaining title in the said shares. Accordingly, the petitioner now seeks issuance of duplicate share certificates in favour of the petitioner with regard to the said 1,000 shares, the details of which have been given in paragraph 5 of the writ petition.

Learned counsel also cites a judgment of this court dated February 24, 2023 in the unreported case of WPO 376 of 2018 (Ramesh Kumar Chowdhary –Vs.- Union of India & Ors.) where this court had observed that in such circumstances, the law does not contemplate the filing of any civil suit to vindicate the right, title and interest of the shareholder in respect of the shares. The provision of Section 58 of the Companies Act, 2013 was also considered by the court.

Learned counsel for the Securities and Exchange Board of India ('SEBI', for short) contends that the petitioner's complaint before the said authority was rejected on the ground of limitation. If aggrieved by the same, the petitioner has an appellate authority to go to.

Upon hearing learned counsel, it is evident that the scope of the present dispute does not pertain to rejection of the complaint of the petitioner by the SEBI. The short question which arises is whether the petitioner retained his ownership with regard to the concerned shares.

As per Section 56 of the Companies Act, 2013, a company shall not register a transfer of securities of the company or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer in prescribed form, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the details as contemplated therein is in existence.

Section 58 of the said Act provides that if a private company limited by shares refuses to register the transfer, the remedy lies in appeal as provided therein.

The petitioner is justified in contending that the petitioner has all along refuted the claim of third-parties regarding any transfer having been effected by the petitioner. As such, no question of registration of transfer under Section 56 of the Act arises, as there is no question of any signature being put by the petitioner as transferor to any share transfer document, which is itself disputed.

The premise of the petitioner has all along been that the concerned shares were lost and subsequently fraudulent transfers had been effected in relation thereto.

In the absence of any document on record to indicate that any of the said purported transfers of the shares in favour of the third-parties was ever registered under the purview of Section 56 of the Companies Act, 2013, it cannot but be said that the petitioner all along retained ownership of the said shares.

In fact, the respondent no. 4, the share registry agent, by a communication dated June 6, 2023 annexed at page 53 of the writ petition, clearly intimated the petitioner that as per records of the company as available with the said respondent, the shares held by the petitioner were lodged with the said respondent for transfer. However, the transfer could not be processed and the transfer documents were returned to the proposed transferees in lieu of Suit No. 642 of 1992. It was also recorded that hence, the shares continue to reside in the account of the petitioner.

In view of the said suit itself having been subsequently dismissed for non-prosecution, the premise of further withholding issuance of duplicate share certificates to the petitioner loses relevance.

Hence, in consonance with the judgement rendered by this court in *Ramesh Kumar Chowdhary*, no further decree from a civil court is necessary to be obtained by the petitioner for vindicating his pre-existing rights in the shares in question. In the absence of any valid transfer, the petitioner still retains ownership in the shares.

Accordingly, WPA 25588 of 2023 is allowed, thereby directing the respondent nos. 3 and 4 to ensure that duplicate share certificates with regard to the disputed shares, the particulars of which have been given in paragraph 5 of the writ petition, are issued in favour of the petitioner, subject of course to the petitioner applying in due format and complying with all formalities in that regard, preferably within four weeks after such compliance of formalities by the petitioner.

While doing so, the respondent nos. 3 and 4 shall also take into consideration the fact that the interim order dated June 10, 2005 passed in CS 642 of 1992 (with GA 3302 of 2004), as annexed at page 47 of the writ petition, automatically stood vacated with the dismissal of the said suit for non-prosecution as recorded in the order dated March 22, 2023 passed by a coordinate bench of this court in CS 642 of 1992 as annexed at page 48 of the writ petition and take consequential steps accordingly.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the respective parties upon compliance of requisite formalities.

(Sabyasachi Bhattacharyya, J.)