

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION**

**INTERIM APPLICATION NO. 3463 OF 2023**

**IN**

**SUIT NO. 528 OF 2023**

Ramesh Sippy

...Applicant/Plaintiff

**Versus**

Sunhil Ajit Sippy & Ors.

...Respondents/Defendants

\* \* \*

- Mr. Shanay Shah i/b Bachubhai Munim & Co., for Applicant.
- Mr. Archit Jayakar a/w Ms. Pooja Yadav and Parita Mashruwala i/b Jayakar & Partners, for Defendant Nos. 9 to 13.

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**CORAM : MANISH PITALE, J.**

**RESERVED ON : 27<sup>th</sup> MARCH, 2024**

**PRONOUNCED ON : 12<sup>th</sup> APRIL, 2024**

**ORDER:**

1. By this application, the applicant / plaintiff is seeking various interim reliefs, but interim reliefs have been specifically pressed in respect of flat 5/A in Shree Vijaya Bhavan, Altamount Road, Mumbai and 500 shares of Sippy Films Private Limited i.e. defendant No.11 Company. The application has been filed in the suit for declaration of shares of the plaintiff and the defendants in the estate of the deceased i.e. the deceased parents of the plaintiff. It is stated that the plaintiff is now the only surviving son of the deceased, as all his siblings have expired. Defendant No.3 is the widow of one of the brothers, while defendant Nos.1, 2 and 4 to 10 are the nephews and nieces of the plaintiff. Defendant No.11 is a company of which

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defendant Nos.5, 9 and 10 claim to be the directors. Defendant Nos.12 and 13 are also companies, which carry on business of distribution of cinematograph films.

2. The plaintiff claims that after the death of his father i.e. G.P. Sippy on 25<sup>th</sup> December, 2007 and his mother i.e. Mohini Sippy on 07<sup>th</sup> June, 2010, he is entitled to 1/5<sup>th</sup> share in their estate, while the other branches of the family i.e. defendant Nos.1 to 4, defendant No.5, defendant Nos.6 to 8 and defendant Nos.9 and 10 are entitled to remaining 1/5<sup>th</sup> share each in the estate of the deceased.

3. The interim reliefs claimed on behalf of the plaintiff are specifically opposed by defendant Nos.9 to 13. In order to appreciate the rival submissions, it would be necessary to briefly refer to the chronology of events, as also the documents relied upon by the rival parties.

4. The deceased i.e. G.P. Sippy and Mohini Sippy had four sons and one daughter. The plaintiff herein is one of their sons and as noted hereinabove he is the only surviving son, as all his siblings have expired. Since the applicant / plaintiff is really pressing for interim reliefs in the context of the aforesaid flat 5/A and 500 shares held by the deceased in defendant No.11 - Company and in that context the rights pertaining to 27 cinematograph films specified at Exhibit "J" of

the plaint, the events relevant to the said portion of the estate of the deceased shall be taken into consideration.

5. The said G.P. Sippy purchased a flat in Shree Vijaya Bhavan. The plaintiff claims that there are two flats i.e. Flats 5/A and 5/B. The share certificate in respect of the flat 5/B, is in the name of the plaintiff. It is further claimed that some time in the year 1977-1978, the plaintiff shifted out of flat 5/B into a larger flat belonging to his wife and for the sake of convenience flats 5/A and 5/B were being used together by G.P Sippy and his wife along with the sister of the plaintiff i.e. Soni Uttamsingh. It is alleged that after her husband passed away, the said sister came to India and with the consent of the plaintiff she started using part of flat 5/B along with her children i.e. defendant Nos.9 and 10.

6. Defendant Nos.9 and 10 claim that on 10<sup>th</sup> September, 1994, Mohini Sippy executed a Will and bequeathed all her properties in their favour. It appears that during various periods of time the brothers of the plaintiff i.e. Ajit Sippy, Vijay Sippy and Suresh Sippy did live in the said flats, which according to defendant Nos.9 and 10, were always treated as one single flat. In November, 2000, the plaintiff applied to the society, where the flats are located, to issue duplicate share certificate for flat 5/B in his name and when the society did not act upon the said letter, the plaintiff sent a reminder to

the society. It is alleged that G.P. Sippy expressed surprise about the claim made by the plaintiff with regard to flat 5/B and in that context the society wrote to the plaintiff requesting him to sort out the matter with G.P. Sippy in an amicable manner. The plaintiff through his advocate addressed another letter to the society staking his claim in respect of flat 5/B.

7. In this backdrop, defendant Nos.9 and 10 claimed that on 23<sup>rd</sup> December, 2003, G.P. Sippy executed a Will and bequeathed in their favour his entire estate, including the flat on the fifth floor. They propounded the said Will by filing probate petition bearing Testamentary Petition No. 1799 of 2012. The plaintiff filed his caveat and opposed the grant. The said petition is still pending.

8. The plaintiff filed Suit No. 552 of 2012 on 15<sup>th</sup> February, 2012, claiming title in flat 5/B, wherein defendant Nos.9 and 10 were added as defendants. In the said suit, the plaintiff claimed that G.P. Sippy and Mohini Sippy, both died intestate. In the said suit also, the plaintiff had moved for appointment of a Court Receiver, in respect of flat 5/B, but a learned Single Judge of this Court by an order dated 18<sup>th</sup> April, 2012, rejected the prayer. The appeal filed by the plaintiff was dismissed on 04<sup>th</sup> July, 2012, and a review petition filed by him also stood dismissed on 01<sup>st</sup> August, 2012. The suit bearing Suit No. 552 of 2012 is still pending in this Court.

9. Thereafter, on 15<sup>th</sup> January, 2013, the plaintiff filed Commercial IP Suit No. 20 of 2013, claiming rights in 5 cinematograph films on the basis that he was the author and sole owner of the copyrights pertaining to the said films. In the said suit also, the prayer for grant of interim reliefs was rejected on 01<sup>st</sup> April, 2013. The appeal filed by the plaintiff was also dismissed on 03<sup>rd</sup> December, 2013. It is an admitted position that the Special Leave Petitions filed by the plaintiff in respect of refusal of interim reliefs in both the suits i.e. Suit No. 552 of 2012 and Commercial IP Suit No. 20 of 2013, were rejected by the Supreme Court.

10. It is the case of the plaintiff that while he was attending a matter before the then Company Law Board on 10<sup>th</sup> June, 2013, he noticed a petition filed by one of his brothers, Suresh Sippy, which referred to a Will of G.P. Sippy dated 26<sup>th</sup> April, 2007, and also that Mohini Sippy, had obtained Letters of Administration in the context of the said Will on 13<sup>th</sup> April, 2010. He also came to know that Mohini Sippy in turn had also made a Will on 29<sup>th</sup> July, 2009, in favour of Suresh Sippy. As per the aforesaid alleged Will dated 26<sup>th</sup> April, 2007, G.P. Sippy had bequeathed all his properties to Mohini Sippy. It is an admitted position that G.P. Sippy expired on 25<sup>th</sup> December, 2007. In this backdrop, in January, 2008, Mohini Sippy submitted the said Will dated 26<sup>th</sup> April, 2007 of G.P. Sippy and requested the society to

transfer the flat in her name. Defendant No.9 also submitted the Will of G.P. Sippy dated 23<sup>rd</sup> December, 2003, asking for transfer of the flat in the name of defendant Nos.9 and 10. It is significant that the society sent a letter to Mohini Sippy, stating that while she had sought transfer of the said flat in her name, a similar application was received from defendant No.9 and that the society had not accepted either of the applications. In Suit No. 552 of 2012, filed by the plaintiff in respect of flat 5/B, he admitted that he was aware of the said letter dated 28<sup>th</sup> January, 2008, sent by the society.

11. It is also an admitted position that Mohini Sippy expired on 07<sup>th</sup> June, 2010. It is relevant to note that with passage of time, the society, on 30<sup>th</sup> September, 2019, transferred the share certificate of flat 5/A in favour of defendant Nos.9 and 10.

12. In this backdrop, the plaintiff filed the present suit, claiming that on 06<sup>th</sup> September, 2022, defendant No.8 i.e. the son of Suresh Sippy, one of the brothers of the plaintiff, handed over copy of an affidavit of the said Suresh Sippy dated 09<sup>th</sup> December, 2016, whereby he had relinquished all his rights under the alleged Will of Mohini Sippy dated 29<sup>th</sup> July, 2009. It is relevant to note that no probate proceeding or any other proceeding was initiated in respect of the said Will of Mohini Sippy dated 29<sup>th</sup> July, 2009.

13. The plaintiff claims that since the affidavit of Suresh

Sippy dated 09<sup>th</sup> December, 2016, was disclosed to the plaintiff only on 06<sup>th</sup> November, 2022, he is entitled to approach this Court by way of the present suit, claiming a declaration with regard to shares of the 5 branches of the Sippy family and the entitlement of plaintiff to 1/5<sup>th</sup> share in the right, title and interest of the assets forming part of the estate of the deceased parents i.e. G.P. Sippy and Mohini Sippy. It is specifically asserted that the plaintiff owns flat 5/B and that flats 5/A and 5/B were combined for the sake of convenience. It is also stated that defendant Nos.9 and 10 are seeking to oust the plaintiff from his rightful 1/5<sup>th</sup> share in flat 5/A, and therefore, partition of flat 5/A has become necessary. The plaintiff has also sought appropriate reliefs in the context of 27 cinematograph films specified at Exhibit "J", while pressing for interim reliefs in the present application.

14. Mr. Shanay Shah, learned counsel appearing for the applicant / plaintiff submitted that the present suit had to be filed in the light of the actions of defendant Nos.9 and 10, indicating their intention to oust the plaintiff from his 1/5<sup>th</sup> share in flat 5/A and also other movable and immovable assets of the deceased, including the 27 cinematograph films and shares of the deceased held in defendant No.11 - Company. It is the case of the plaintiff that appropriate orders ought to be passed by this Court for appointment of Court Receiver in respect of flat 5/A and 27 cinematograph films, for the

reason that defendant Nos.9, 10 and 11 are illegally, exclusively enjoying the said assets of the deceased, despite the fact that the plaintiff does have 1/5<sup>th</sup> share. According to the plaintiff he has a strong *prima facie* case with regard to his 1/5<sup>th</sup> share in the estate left behind by the deceased persons, because in the peculiar facts and circumstances of the present case, it has to be treated that the deceased died intestate. It is asserted that Mohini Sippy obtained Letters of Administration in her favour in the context of and claiming to be the beneficiary under the Will dated 26<sup>th</sup> April, 2007, executed by G.P. Sippy. It is claimed that the plaintiff became aware about the said Will and grant of Letters of Administration only in the year 2013, as also the purported Will dated 29<sup>th</sup> July, 2009, executed by Mohini Sippy in favour of Suresh Sippy.

15. The learned counsel for the plaintiff submits that even though the plaintiff could be said to be aware about the rival Wills of G.P. Sippy propounded by Mohini Sippy on the one hand and defendant Nos.9 and 10 on the other hand, when he filed Suit No. 552 of 2012, he was not aware that the Letters of Administration had been granted in favour of Mohini Sippy. It was asserted on behalf of the plaintiff that when he became aware about the alleged subsequent Will dated 26<sup>th</sup> April, 2007, as also the Letters of Administration obtained by Mohini Sippy, he found that she had executed Will dated

29<sup>th</sup> July, 2009, in favour of Suresh Sippy. On this basis, it is urged that when the plaintiff became aware about the affidavit executed by Suresh Sippy dated 09<sup>th</sup> December, 2016, only on 06<sup>th</sup> November, 2022, relinquishing all his rights under the said Will that cause of action arose for the plaintiff to assert his share in the estate left behind by the deceased parents. It was submitted that the allegation leveled by defendant Nos.9 and 10 in their reply affidavit to the effect that the plaintiff had been taking contradictory stands, is without any substance, for the reason that the cause of action to file the present suit arose only upon the plaintiff becoming aware about the aforesaid affidavit of Suresh Sippy.

16. According to the learned counsel for the plaintiff, there was no question of any suppression of facts or contradictory stands taken by the plaintiff, which could disentitle him to press for interim reliefs. It was further submitted that even if the plaintiff had stated that when he became aware about the Will dated 26<sup>th</sup> April, 2007, whereby G.P. Sippy had bequeathed all his properties to Mohini Sippy, he had instructed his advocates to take appropriate steps on the ground that no citation was served upon him, as on date, Letters of Administration dated 13<sup>th</sup> April, 2010 granted by this Court in favour of Mohini Sippy are very much in force. Mohini Sippy in turn executed the Will dated 29<sup>th</sup> July, 2009, bequeathing her interest in

favour of Suresh Sippy, but he swore an affidavit relinquishing all his rights, about which the plaintiff became aware only on 06<sup>th</sup> November, 2022.

17. It was submitted that the plaintiff was therefore, pressing for interim reliefs in the present application only in respect of flat 5/A, as he has already instituted Suit No. 552 of 2012 in respect of flat 5/B, which is pending. He is also pressing for interim reliefs only in respect of 27 cinematograph films, as he has already instituted the aforesaid Commercial IP Suit No. 20 of 2013 in respect of 5 cinematograph films, claiming to be the author and sole owner of copyrights of the said films. On this basis, it is alleged that unless appropriate interim reliefs are granted concerning flat 5/A, there is every possibility of the plaintiff suffering grave and irreparable loss, as the defendant Nos.9 and 10 would be free to deal with the said flat 5/A in which the plaintiff asserts 1/5<sup>th</sup> share.

18. Apart from this, it was specifically urged on behalf of the plaintiff that in the light of the documents filed by defendant Nos.9 to 13 themselves in their reply affidavit, particularly the copies of the share transfer certificates, it was evident that such transfer of shares by Mohini Sippy was in violation of Section 108 of the Companies Act, 1956. Since the transfer of shares itself is non-est, defendant Nos.9 to 13 cannot assert any rights in respect of the said shares and hence, a

clear case is made out for grant of interim reliefs in respect of said shares, as also the rights in the 27 cinematograph films being enjoyed by the said defendants. The learned counsel for the plaintiff placed reliance on judgement of the Supreme Court in the case of *Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others*<sup>1</sup> and judgement of the Calcutta High Court in the case of *Nuddea Tea Co., Ltd Vs. Asok Kumar Saha and Others*<sup>2</sup>

19. On the other hand, Mr. Archit Jayakar, learned counsel appearing for defendant Nos.9 to 13 vehemently opposed the prayer for grant of interim reliefs made on behalf of the plaintiff. It was submitted that the plaintiff has been continuously shifting stands in the litigations instituted before this Court. It is submitted that in the suit concerning flat 5/B i.e. Suit No. 552 of 2012, the plaintiff proceeded on the basis that the deceased G.P. Sippy and Mohini Sippy died intestate, but, in the present suit he is proceeding on the basis of the Will dated 26<sup>th</sup> April, 2007, allegedly executed by G.P. Sippy in favour of Mohini Sippy. This is also in the teeth of his stated stand that when the Letters of Administration dated 13<sup>th</sup> April, 2010, were granted in favour of Mohini Sippy in the context of Will dated 26<sup>th</sup> April, 2007, executed by G.P. Sippy, no citation was served on the plaintiff and that he had instructed his advocates to take appropriate

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1 (1977) 2 SCC 424

2 1986 SCC OnLine Cal 232

action in respect of the said grant of Letters of Administration. According to the learned counsel appearing for defendant Nos.9 to 13, the plaintiff has taken contradictory stands and, on this ground alone, the prayer for interim reliefs ought to be rejected.

20. He further submitted that the assertion in the present suit, that the plaintiff became aware about the aforesaid affidavit of Suresh Sippy dated 09<sup>th</sup> December, 2016 only on 06<sup>th</sup> November, 2022, has been made with a view to escape the consequence of Section 106 of the Limitation Act, 1963. It is submitted that the plaintiff ought to have approached the Court to claim his share in the estate of the deceased within 12 years of accrual of cause of action. In the present case, G.P. Sippy expired on 25<sup>th</sup> December, 2007 and Mohini Sippy expired on 07<sup>th</sup> June, 2010. The present suit ought to have been filed within 12 years from the aforesaid date and having failed to do so, the plaintiff was now raking up an artificial cause of action by making assertions with respect to the alleged affidavit of Suresh Sippy relinquishing his rights and his purported knowledge of the same only on 06<sup>th</sup> November, 2022. On this basis, it was submitted that the plaintiff had failed to make out a *prima facie* case and that this Court ought not to show any indulgence in his favour.

21. In respect of the submissions made on behalf of the plaintiff concerning Section 108 of the Companies Act, 1956, it was

submitted that the transfer of shares had taken place, as far back as in the year 1999-2000, while the plaintiff was seeking to rake up issue in the present suit filed in the year 2023. Apart from this, it was claimed that reliance placed by the plaintiff on the judgement of the Supreme Court in the case of **Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others** (*supra*), is misplaced, considering the contents of Section 108 of the Companies Act, 1956, at the relevant time. It was submitted that the question as to whether the said contention of the plaintiff can be accepted would be a matter for trial. It is further asserted that no such pleading exists in the plaint and only when defendant Nos.9 to 13 filed their reply affidavit that the plaintiff has come up with the said contention.

22. It was further submitted that the plaintiff, as on today, cannot claim any rights in respect of the 27 cinematograph films at Exhibit “J” to the plaint. It is submitted that even in respect of the 5 films in which the plaintiff claims to be the author and holder of copyrights, interim reliefs were rejected in Commercial IP Suit No. 20 of 2013, which stood confirmed up to the Supreme Court. Even with regard to interim reliefs sought in Suit No. 552 of 2012 pertaining to flat 5/B, the plaintiff lost up to the Supreme Court and that therefore, he deserves no indulgence in the present application also.

23. Having heard the leaned counsel for the rival parties, this

Court finds that the pleadings in the present plaint and the cause of action asserted by the plaintiff need to be appreciated. A perusal of the plaint shows that even according to the plaintiff, he was prompted to file the present suit after he became aware on 06<sup>th</sup> November, 2022, about the alleged affidavit dated 09<sup>th</sup> December 2016, of Suresh Sippy who allegedly relinquished all his rights in the estate of the deceased. The said rights had allegedly accrued to him under the Will dated 29<sup>th</sup> July, 2009, said to have been executed by Mohini Sippy in his favour.

24. It is relevant to note that in the suit filed by the plaintiff in respect of flat 5/B i.e. Suit No. 552 of 2012, he had asserted that G.P. Sippy and Mohini Sippy both had died intestate. In that very suit, he also claimed to have knowledge of letter dated 28<sup>th</sup> January, 2008, sent by the society in respect of the two applications, one received from Mohini Sippy on the basis of the said Will dated 26<sup>th</sup> April, 2007 of G.P. Sippy, bequeathing his estate in her favour and the second application of defendant No.9 claiming rights on the basis of Will dated 23<sup>rd</sup> December, 2003 of G.P. Sippy, whereby his estate was bequeathed in favour of defendant Nos.9 and 10. Thus, the plaintiff has conceded in the said suit about knowledge regarding the two Wills and it is also stated that the deceased parents had died intestate.

25. It is also to be noted that the plaintiff in the present suit has asserted that he became aware about the said Will dated 26<sup>th</sup>

April, 2007, only in June, 2013, while attending a proceeding before the Company Law Board. In this suit itself, it is claimed that no citation was served on the plaintiff when Testamentary Petition No. 619 of 2009 was filed by Mohini Sippy leading to grant of Letters of Administration in her favour on 13<sup>th</sup> April, 2010. It is difficult to understand as to what prevented the plaintiff to move with promptitude once he became aware about the said grant of Letters of Administration in favour of Mrs. Mohini Sippy on 13<sup>th</sup> April, 2010. As soon as he claims to have become aware about the same in June, 2013, he could have taken appropriate steps with regard to his claim that the deceased parents had died intestate. He had filed caveat in the probate petition filed by defendant Nos.9 and 10 in which they have sought probate of Will dated 23<sup>rd</sup> December, 2003 of G.P. Sippy. Yet, no steps till date were undertaken by the plaintiff, to either seek revocation of the grant of the Letters of Administration in favour of Mohini Sippy or filing his suit claiming share in the estate of the deceased parents on the basis of intestacy.

26. This Court finds *prima facie* substance in the contention raised on behalf of defendant Nos.9 to 13 that the entire story about cause of action in the present suit on the basis that the plaintiff became aware only on 06<sup>th</sup> November, 2022, about the alleged relinquishment affidavit of Suresh Sippy dated 09<sup>th</sup> December, 2016,

is a contrived set of circumstances to assert cause of action. The period of limitation of 12 years from the date of accrual of cause of action is an aspect that deserves to be taken into consideration while the prayer for interim relief made on behalf of the plaintiff is considered.

27. The stated stands taken by the plaintiff in Suit No. 552 of 2012, as also the caveat filed in the probate petition of defendant Nos.9 and 10 and now the stand taken in the present suit, *prima facie* give an impression that the plaintiff has been shifting stands and that the explanation for asserting cause of action in the manner in which it has been asserted in the present suit, appears to be tenuous. In such a situation, this Court is not inclined to show indulgence and exercise discretion in favour of the plaintiff.

28. In any case, there is hardly any material placed on record on behalf of the plaintiff to show as to in what manner flat 5/A is being dealt with by the defendant Nos.9 and 10, which could give rise to any apprehension on behalf of the plaintiff. No case is made out for appointment of Court Receiver in respect of the said flat.

29. It is relevant to note that the plaintiff himself concedes the fact that flat 5/A and 5/B were combined for the sake of convenience. Defendant Nos.9 and 10 are in possession of the entire

combined flat. The prayers for interim relief made on behalf of the plaintiff in Suit No. 552 of 2012 pertaining only to flat 5/B, have been rejected, despite the share certificate pertaining to the said flat being in his name. The rejection of interim reliefs has been confirmed right up to the Supreme Court. This is another factor indicating that the plaintiff has failed to make out a *prima facie* case for granting interim relief in respect of flat 5/A.

30. In respect of the 27 cinematograph films at Exhibit “J” of the plaint, this Court finds that defendant Nos.9 to 13 have been asserting rights in the said films for a considerable period of time. It is also pertinent that the plaintiff himself filed Commercial IP Suit No. 20 of 2013, only in respect of 5 cinematograph films, other than the aforesaid 27 cinematograph films. In the said 5 films, he claimed to be the author and sole owner of the copyrights. He applied for interim reliefs, but they were rejected and the rejection has been confirmed up to the Supreme Court. In respect of the said 27 cinematograph films stated in Exhibit “J” to the plaint, the pleadings in the plaint and the application show that the rights are claimed on the basis that G.P. Sippy had bequeathed the rights to Mohini Sippy under Will dated 26<sup>th</sup> April, 2007, as G.P. Sippy claimed to have sole and exclusive copyrights in the said films. Mohini Sippy in turn reiterated the said assertion in her Will dated 29<sup>th</sup> July, 2009 and it is further asserted

that since Suresh Sippy, who was the beneficiary under the Will dated 29<sup>th</sup> July, 2009, relinquished his rights by the affidavit dated 09<sup>th</sup> December, 2016, such rights ought to devolve on the five branches of the Sippy family.

31. As noted hereinabove, the entire assertion based on the said alleged affidavit dated 09<sup>th</sup> December, 2016 of Suresh Sippy, about which the plaintiff allegedly became aware only on 06<sup>th</sup> November, 2022, *prima facie*, is not convincing and it appears to be stretching facts to bring the suit within limitation. Apart from this, the aforesaid stand taken in the present suit, appears to be different from the assertions made in the earlier proceedings initiated by the plaintiff. Therefore, the plaintiff has failed to make out a *prima facie* case in his favour.

32. The contention regarding Section 108 of the Companies Act, 1956 and violation of its mandatory requirement is another ground raised by the plaintiff to claim interim reliefs. The transfer of shares took place in the years 1999-2000. It is important to note that there are no pleadings with regard to the said aspect of the matter in the plaint. This appears to be, for the reason that the copies of the transfer forms became available to the plaintiff when they were filed along with the reply affidavit of defendant Nos.9 to 13. It appears that after receiving copies of the said documents, the plaintiff has asserted

such violation of mandatory requirement. The judgement of the Supreme Court in the case of **Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others** (*supra*) does appear to indicate that the requirement is mandatory. Reliance is also placed on judgement of the Calcutta High Court in the case of **Nuddea Tea Co., Ltd Vs. Asok Kumar Saha and Others** (*supra*), to claim that since the stamps on the said forms were not canceled, the transfer was rendered illegal.

33. This Court is of the opinion that all such contentions are being raised at this stage only with a view to claim that the 500 shares of the deceased parents of the plaintiff were illegally transferred. It is relevant to note that in the plaint, the plaintiff has pleaded that the 500 shares in defendant No.11 – Company also ought to devolve equally upon the five branches of the Sippy family and hence, the plaintiff is entitled to claim interim reliefs. As noted hereinabove, the assertions in the plaint with regard to the assets in the hands of Mohini Sippy devolving equally in the light of alleged relinquishment by Suresh Sippy, *prima facie*, is a tenuous claim and therefore, this Court is not inclined to exercise discretion in favour of the plaintiff on the said aspect of the matter also.

34. Even otherwise, a perusal of the judgement of the Supreme Court in the case of **Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others** (*supra*) shows that it was concerned with

transactions prior to the year 1965. Sub-sections (1A) to (1D) of Section 108 were inserted by way of amendment with effect from 1<sup>st</sup> April 1966. This aspect was noted by the Madras High Court in its judgement in the case of *Dove Investments Private Ltd Vs. Gujarat Industrial Investment Corporation Ltd*<sup>3</sup>. The appeal filed against the said judgement was dismissed by the Supreme Court by its judgement in *Dove Investments (P)Ltd Vs. Gujarat Industrial Investment Corporation Ltd*.<sup>4</sup> Thus, the issue of mandatory nature of requirement under sub-section (1A) of section 108 of the Companies Act will have to be appreciated in the context of sub-section (1D) of section 108 thereof. In any case, the question as to whether mandatory requirement of Section 108(1A) read with (1D) of the Companies Act was violated, would be examined when the matter goes to trial and the parties have an opportunity to lead evidence. Therefore, on this count also, the plaintiff has failed to make out a *prima facie* case in his favour.

35. This Court has gathered an impression, on the basis of the pleadings in the present case, that the plaintiff has not approached this Court with alacrity and he has chosen to plead his cause of action for the present suit only on the basis of the alleged information given by defendant No.8 on 06<sup>th</sup> November, 2022, with regard to the alleged

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<sup>3</sup> 2004 SCC OnLine MAD 875

<sup>4</sup> (2006) 2 SCC 619

relinquishment affidavit dated 09<sup>th</sup> December, 2016 of Suresh Sippy. The relinquishment document, even as per the pleading is not a registered document and it is in the context of an alleged Will dated 29<sup>th</sup> July, 2009 of Mohini Sippy, in respect of which also no testamentary proceedings were ever initiated. In such set of circumstances, this Court is of the opinion that the plaintiff has failed to make out a *prima facie* case in his favour. In that light, no discussion is necessary on the aspects of grave and irreparable loss and balance of convenience.

36. In view of the above, the application is found to be without any merit and accordingly it is dismissed.

**(MANISH PITALE, J.)**