

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 6543 OF 2025
IN
Suit (L) NO. 35408 OF 2023**

Hilaire D'souza and others ... Applicants

In the matter between

Lascelles Symons and others ... Plaintiffs

V/s.

Hilaire D'souza and others ... Defendants

Mr. Shanay Shah i/b Ms. Pooja Yadav a/w Ms. Hetal Jobanputra i/b Jayakar & Partners for Plaintiffs.

Mr. Sanjay Jain a/w Mr. Gurdeep Singh a/w Mr. Praful B. Valvi for Defendant No. 1.

Mr. M. S. Bhardwaj for Respondent No. 9 in IA/35447/2023.

CORAM : FARHAN P. DUBASH, J.

**RESERVED ON : 2nd FEBRUARY 2026
PRONOUNCED ON : 5th FEBRUARY 2026**

ORDER:

1. The present Interim Application has been filed by the Applicant/Original Defendant No. 1 seeking rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code, 1908 (CPC).

2. Briefly stated, the Application contends that the Suit is barred by

law viz. under Section 59 r/w Section 430 of the Companies Act, 2013 (**said Act**). The Application further contends that the Suit is also bad for non-joinder of necessary parties inasmuch as, despite the Plaintiffs' own admission of there being other legal heirs of the deceased persons from whom, they claim a share, such parties have not been impleaded in the Suit.

3. Mr. Sanjay Jain, learned Counsel who appears in support of the Application, contends that Section 59 of the said Act contains provisions relating to rectification of the Register of Members of a company and confers exclusive jurisdiction in that regard on the National Company Law Tribunal (**NCLT**). He then relies on Section 430 of the said Act which ousts jurisdiction of civil courts in respect of matters which the NCLT is empowered to adjudicate and submits that since the main grievance raised in the plaint relates to the transmission / transfer / restoration etc. in the Register of Members of various companies, this Court would not have jurisdiction to deal with and/or adjudicate upon the same.

4. Mr. Jain relies on the decision of the Supreme Court in ***Shashi Prakash Khemka (Dead) through legal representatives and another Vs. NEPC Micon (now NEPC India Ltd.) and others*** reported in (2019) 18 SCC 569 which holds that under Section 59 of the said Act, all disputes relating to rectification of the Register of Members are required to be adjudicated before

the NCLT and accordingly, under Section 430, the civil court would not have jurisdiction to entertain any Suit in respect thereof. Mr. Jain also relies on the subsequent decision of the Supreme Court in ***Chalasani Udaya Shankar and Ors Vs. Lexus Technologies Pvt. Ltd. and Ors.*** reported in (2024) 10 SCC 303 which reiterates its earlier decision in ***NEPC Micon*** (*supra*).

5. Mr. Jain then relies on the decision of the Delhi High Court in ***M/s. Karyan Global LLP Vs. Vivek Kumar Mishra and Ors.*** reported in 2025 SCC OnLine Del 8740 in which the Delhi High Court, whilst discussing the scope and ambit of Section 430 of the said Act has reiterated that if the core controversy in the matter is one which the NCLT is empowered to decide under the Companies Act, the jurisdiction of the civil court would stand excluded to that extent and clever drafting or bare allegations of fraud cannot be used to evade a jurisdictional bar. Mr. Jain also relies upon this judgment which states that in cases of an '*open and shut case of fraud*' involving issues truly relating to rectification, NCLT is also empowered to examine such issues and it is only complex questions of title which would fall outside its jurisdiction. Accordingly, Mr. Jain submits that this Court has no jurisdiction to entertain and adjudicate the disputes raised in the plaint, since exclusive jurisdiction to adjudicate the same, vests in the NCLT and accordingly, the Suit is barred under Section 430 of the said Act. He accordingly prays that the Application be allowed.

6. Mr. Shanay Shah, learned Counsel appears on behalf of the Respondents/Original Plaintiffs and submits that his clients are the legal heirs of the deceased Everard Symons (**Everard**). He further submits that his clients also claim a right in the estate of the deceased Estelle Symons (**Estelle**). He points out that whilst Plaintiff Nos. 1, 3 and 4 are the children of Everard, Plaintiff No. 2 is his widow. He adds that, Everard is the son of Estelle whilst, Defendant No. 1 is the brother of Everard. Estelle is stated to have 6 children including Everard and Defendant No.1. Mr. Shah submits that the Plaintiffs have filed the present Suit for various reliefs including *inter alia* a declaration that they are entitled to the estate of Everard, which in turn, is entitled to a share in the estate of Estelle, which mainly comprises of shares in various companies, details of which are more particularly set out in the plaint. The Plaintiffs have also sought a declaration against Defendant No. 1 that he is not entitled to transmission of any shares held jointly with Everard and/or with Estelle and for a permanent injunction restraining him from liquidating and/or transferring the said joint shares and also a permanent injunction restraining the companies on transmitting shares on which the Plaintiffs claim a right. In the alternative, the Plaintiffs have also a decree against Defendant No. 1 to pay them a liquidated sum of money.

7. Mr. Shah has taken me through various paragraphs of the plaint and the submissions made therein and then submits that the reliefs claimed

in the Suit could never be granted by the NCLT since it cannot declare the entitlement of his clients, as the legal heirs of Everard, which he submits is the exclusive domain of this Court exercising civil jurisdiction and for which, the present Suit has been instituted. He submits that rectification and transmission of shares are only consequential reliefs that would result subject to and post grant of decree and therefore the Suit does not *per se* relate to transmission / rectification of shares, as erroneously contended. He adds that it is the Plaintiffs case (in the plaint) that Defendant No. 1 has played a fraud on them by usurping the shares which would otherwise form part of the Everard's estate and on such basis, protective reliefs have been sought so as to preserve the estate of Everard, which reliefs, he submits cannot be adjudicated by the NCLT.

8. To support his said submission, Mr. Shah relies on the decision of the Supreme Court in ***IFB Agro Industries Ltd. Vs. SICGIL India Ltd. and Ors.*** reported in **(2023) 4 SCC 209** which holds that whilst exercising jurisdiction under Section 59 of the said Act, the power of the NCLT is narrow since the power of rectification is a summary power and needs no serious inquiry and it has been further held that the NCLT cannot adjudicate complex questions whilst considering rectification of Register of Members.

9. My attention is also invited to the decision of the Delhi High

Court in *Shazia Rehman Vs. Anwar Elahi and Ors.* reported in 2023 SCC OnLine Del 4807 and the decision of the Calcutta High Court in *Phool Chand Gupta and others Vs. Mukesh Jaiswal and others* reported in (2024) 249 CC 185, both of which hold that the exclusion of jurisdiction of civil courts cannot be readily inferred and the same must be express and clear. It is further held that issues alien to rectification of the Register of Members would not fall within the exclusive domain of the NCLT and that a challenge to a fraudulent transfer of shares does not constitute seeking rectification but would eventually lead to rectification being a consequential and/or subsequent step, only upon the grant of reliefs and once a party establishes the question of title and ownership in a civil Suit. The said High Courts have also held that disputed questions of fact cannot be conveniently decided in a summary procedure by the NCLT which is empowered to deal with disputes that relate to a simpliciter rectification of Register of Members and nothing more. Mr. Shah therefore submits that there is no merit in the present Interim Application and the same is required to be dismissed.

10. I have heard the parties and with their assistance also gone through the Application and the Reply filed thereto. I have also perused the plaint filed by the Plaintiff. Upon careful consideration, I am of the view that the Application lacks merit and is required to be dismissed. The reasons for my decision are set out below.

11. At the outset, I do not agree with the submissions made by Mr. Jain in support of the Application that the said Suit only seeks reliefs relating to transmission / transfer / restoration of shares in the Register of Members of various companies. Instead, on a careful reading of the plaint as a whole, it is revealed that though such reliefs are in fact sought by the Plaintiffs, such reliefs are consequential to the main declaratory reliefs that are prayed for in the plaint where the Plaintiffs seek their entitlement to the $\frac{1}{6}$ th share of Everard in the estate of his deceased mother, Estelle. In fact, the plaint is replete with several categorical allegations of fraud that is stated to have been committed by Defendant No.1 who is stated to have deliberately usurped such share/part thereof. Hence, this is not a case where all the shares that the Plaintiffs seek transmission of, stand in the name of either Estelle and/or Everard but this also involves shares which originally stood in such names and which were thereafter, taken over by Defendant No. 1 (illegally and without any authority, according the Plaintiffs) who seek rectification in such shares and accordingly, claim their share therein. As a result, as more particularly set out in the plaint (in paragraph 8), the Plaintiffs have filed the Suit owing to the conduct of Defendant No.1 in unlawfully usurping the shares into his sole name, and to the exclusion of the others, including the Plaintiffs. In such circumstance, the Plaintiffs would first have to make out a case entitling them to claim the estate of Everard and then, his share, in the

estate of Estelle. Only thereupon, would there be any occasion to transmit / transfer / restore shares in the Register of Members, so as to recognize and give effect to their such entitlement. This is clearly a dispute which the NCLT would not have jurisdiction to adjudicate upon under Section 59 of the said Act and consequently, there would be no occasion for the applicability of Section 430 of the said Act to oust the jurisdiction of this Court, as contended by Mr. Jain.

12. Accordingly, the decisions in ***Shashi Prakash Khemka (supra)***, ***Chalasani Udaya Shankar (supra)*** and ***Karyan Global LLP (supra)*** relied upon by him are of no assistance since none of them involved such a factual matrix, as described above. Whilst the dispute involved in ***Shashi Prakash Khemka (supra)*** was under Section 111-A of the Companies Act, 1956, ***Chalasani Udaya Shankar (supra)*** dealt with a case where oppression and mismanagement and it is under such circumstances, that rectification of the Register of Members was sought. Likewise, in ***Karyan Global LLP (supra)*** also, there was a petition already filed in the NCLT for oppression and mismanagement and in addition thereto, a civil Suit was filed. It was under such peculiar circumstances that the Delhi High Court passed the said order, in a revision petition challenging the order passed by the trial court which had dismissed the application filed under Order VII Rule 11 of the CPC holding that once the issues raised in the plaint have already been agitated in

the company petition filed in the NCLT, a civil Suit ought not to have been filed unless, it is found at a subsequent stage while determining the issues at hand that the matter requires detailed and extensive trial into the allegations which cannot be undertaken by the NCLT.

13. The core controversy of the dispute raised in the plaint is not one that is covered under Section 59 of the said Act but instead, appears to be the wrongful and illegal usurpation of the estate of Estelle and Everard stated to have been done by Defendant No.1. Hence, I do not agree with Mr. Jain that the plaint is cleverly drafted and/or contains bare allegations of fraud only to evade the jurisdiction of the NCLT. As a result, the decision of the Delhi High Court in ***Karyan Global LLP (supra)*** goes against the Applicant since this is not an '*open and shut case*' of fraud but instead, is one in which complex questions of title would be required to be adjudicated and determined, which the NCLT is not empowered or competent to hear and decide. Moreover, as held in ***IFB Agro Industries (supra)*** since the power of rectification is a summary power and needs no serious inquiry, such power of the NCLT is narrow whilst exercising jurisdiction under Section 59 of the said Act, and NCLT cannot adjudicate the complex questions which are raised in the plaint.

14. Besides, I am in agreement with Mr. Shah that the decision of

the Delhi High Court in ***Shazia Rehman*** (*supra*) and that of the Calcutta High Court in ***Phool Chand Gupta*** (*supra*) would clearly be applicable to the present case since they also involved a challenge to a fraudulent transfer of shares. Moreover, as held in these decisions, the dispute raised in the plaint between the Plaintiffs and Defendant No. 1 involves several disputed questions of fact which cannot be decided in a summary procedure before the NCLT. In the premises, the reliefs sought in the plaint cannot be said to merely seek rectification of the Register of Members, which would eventually be the consequential and/or subsequent step, only after the Plaintiffs make out and establish their entitlement to the shares. Hence, this Court has jurisdiction to decide the disputes raised in the Suit.

15. There is also no merit in the other submission made by Mr. Jain that the Suit is bad on account of non-joinder of necessary parties inasmuch as, the plaint (*in paragraph 6*) expressly sets out that the Plaintiffs have no knowledge about the other siblings of Everard, who are stated to have left the country several decades ago and settled in the United Kingdom and Canada. In any event, the Plaintiffs seek to challenge the acts of Defendant No. 1 and on such basis, seek a declaration of their entitlement to the shares/part thereof.

16. Considering the above, there is no merit in the Application,

which accordingly fails. Accordingly, the following order is passed:

:: ORDER ::

- (a) Interim Application No. 6543 of 2025 is hereby rejected.
- (b) There shall be no order as to costs.

(FARHAN P. DUBASH, J.)

Shubham Gadhavepatil