

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI
BENCH, MUMBAI

Company Appeal No. 33/2014

Coram: B. S. V. Prakash Kumar Member Judicial & V Nallasenapathy Member Technical

In the matter of Companies Act 2013 under sections 58(4) & 59.

Between

Shri. Kamlesh Kalida Shah Appellant
Versus

M/s. Asian Paints (India) Ltd. & Another Respondents

Appellant

Shri. Kamlesh Kalida Shah

Respondents

1. M/s. Asian Paints (India) Ltd.
2. M/s. Sharepro Services (India) Pvt. Ltd.
3. Shri. Jaiprakash K. Upadhyay
4. Shri. Kirtiprakash K. Upadhyay
5. Shri. Vijay K. Upadhyay

Present on behalf of the parties:

1. Mr. M.S. Bhardwaj, Mr. V.P. Verma, Advocates for the Appellant.
2. None for the Respondents.

ORDER

(Heard & Dismissed on 23.09.2016)

This case was dismissed on 23.09.2016 in the open court on hearing the submissions of the Appellant Counsel on, owing to paucity of time, vide order was not dictated in the open court. Thereafter, by oversight as the file had remained misplaced, this matter was left unnoticed. Now on file being located, vide order has been passed giving reasons for dismissal of the case.

This Company Appeal is filed u/s. 58(4) and 59 of the Companies Act, 2013, by one Mr. Kamlesh Kalidas Shah (Appellant) against 1. M/s Asian Paints (India)Limited (R-1), 2. M/s. Sharepro Services (India) Pvt. Ltd. (R-2), 3. Mr. Jaiprakash K. Upadhyay (R-3) 4. Mr. Kirtiprakash K. Upadhyay (R-4), and 5. Mr. Vijay K. Upadhyay (R-5), praying for the following reliefs:

1. That 25 (Twenty-Five) shares along with split share of Respondent no. 1 company be transferred in the name of Appellant;
2. That R-1 and 2 be directed to rectify the register of members and name of the Appellant be recorded in the Register of Members of R-1 & 2 in place R-3 to 5;
3. That if any benefit/ shares accrued in past and or due against the share in dispute, that shall be given to the Appellant.
4. That such any other order and/or further order this Hon'ble Authority may deem fit and proper be also passed;
5. For cost of this Appeal.

The Appellant in his Company Appeal stated that he is working as share and stock broker; purchased 25 shares of R-1 Company from R-3 to R-5 who are jointly holding the shares, through Ahmedabad Stock Exchange; R-2 is the Registrar and Share Transfer Agent of Respondent No.1 Company; the 25 shares purchased by him bears distinctive Nos.4085610 to 4087634, share certificate No.29001, the folio No.5764; R-3 to R-5, the transferors executed share transfer deed (Annexure-A) in his favour; the Appellant sent the transfer deed to R-1 Company for transfer of the shares in his favour; the R-1 company intimated the Appellant that the signature of the transferor did not match with the specimen signature recorded with the company and refused to transfer the shares in his name; the Appellant, in order to obtain fresh transfer deed from the registered shareholders, wrote a letter to the R-1 company in or about April, 2002; R-1 company by a letter dated 28.05.2002 intimated the address of the registered shareholders to him in response to his letter of April 2002; then the Appellant sent a letter to Mr. Jayayprakash Upadyay (R-3) and come to know that he had shifted to United States and his residence is closed; the Appellant on 03.10.2013 sent a letter to R-2, the share transfer agent of R-1 company, seeking to furnish the status of the shares since R-3 had shifted to United States; R-2 in its reply dated 08.10.2013 informed the Appellant that subdivided share certificate pertaining to folio number 0005764 was despatched to Jayprakash Upadhyay's registered address on 01.08.2013 and the same was not returned to it as undelivered, and in view of this, it is shown that

Jayprakash Upadhyay have made arrangement in India to receive the letters on his behalf.

The Appellant further contended that he is a bonafide purchaser of shares and paid the amount; he tried to contact and locate R-3 to R-5 in vain; if new share certificates are sent to R-3 to R-5, there would be multiplicity of proceedings to obtain share certificates, hence R-1 and R-2 be stopped from issuing share certificates to R-3 to R-5 and prayed for the reliefs mentioned in supra above.

The Company Appeal was posted on 30.03.2015 before erstwhile CLB and there was no representation on the side of R-1 to R-5. Hence the counsel from the Appellant was directed to take paper publication which was complied with. However, there was no representation from R-1 to R-5. Hence all the respondents were set ex-parte.

During the hearing of the Appeal this Bench has posed two basic questions, one being why there was an inordinate delay in filing this Appeal, the arguing counsel is not in a position to provide convincing reply. The Xerox copy of share transfer form enclosed in Annexure -A in the Appeal is dated 01-12-1986. There is no whisper in the Appeal when the transfer documents was lodged by the Appellant with the R-1 Company for effecting the transfer and when the R-1 Company refused to transfer the shares. The R-1 Company in response to the Appellant's request made in April 2002 provided the address of R-3 to R-5 on 28.05.2002 and also informed that the Company is unable to accede to the request of the Appellant for returning the corporate benefits or stop the transfer of shares in the absence of suitable Court order restraining the company to do so. This clearly shows that even though the cause of action relates to period between 01.12.1986 and 28.05.2002, this Appellant approached CLB only in November, 2014. The Appellant remained indolent from 29.05.2002 till 02.10.2013 and on 03.10.13 sends Annexure-C letter to R-2 asking for the status of split shares for which he got Annexure-D reply dated 08/10/13 stating the sub-divided shares were sent to R-3's registered address which was duly delivered. Finally, on 10/11/14 only the Appellant filed this Company Appeal

and thus it is crystal clear that there is an inordinate and unusual delay in filing and the same goes against the Appellant.

Section 433 of the Companies Act, 2013 categorically provides that the provisions of the Limitation Act, 1963 shall, as far as, maybe, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be. The next logical step is to find out which provision of the Limitation Act is applicable to the case on hand. It appears that there is no specific provision either in the substantive provisions of the Limitation Act or in the Articles given in the Schedule. An ordinary scanning of the Schedule reveals that Articles 1 to 112 discuss with various types of suits. In majority of the cases the period of limitation prescribed is three years. The matters relating to transfer of shares has not been specifically dealt with in any of the Articles. Hence, the question is which provision of the Limitation Act would apply for this case and answer is Article 113 which deals with the subject of suits for which there is no prescribed period of limitation and in this kind of cases the limitation is three years from the date when the right to sue accrues.

There is a chance for taking a view that the Limitation Act is not applicable on the ground that Section 433 of the Companies Act, 2013 is enforced with effect from 01.06.2016 and whereas the present Appeal was filed on 10.04.2014. If that view is taken, can the Appellant who got the transfer deed in 1986, transfer declined by the company on the ground that signature of transferor is not tallying, can get a remedy by filing an Appeal after a gap of around 27 years. It shall be certainly not. Because by this time the impugned shares might have been transferred and due to dematerialisation it will not be possible to find out who holds the impugned shares now.

It is well settled by a catena of judgments rendered by the Hon'ble Supreme Court that for proceedings initiated by invoking equitable jurisdiction under Article 226 of the Constitution, the maximum period fixed by the legislature as the time within which relief by a suit in a Civil Court must be claimed, may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. Where the delay is more than the period prescribed by the Limitation Act, then it would be appropriate for the Court to hold that it is unreasonable. In that regard, reliance may be placed on 7- Judge judgment rendered in the case of State of

Madhya Pradesh v. Bhailal Bhai & Ors. AIR 1964 SC 1006. The aforesaid view has been repeatedly followed and applied by the Hon'ble Supreme Court. In a recent judgment rendered in the case of MTNL v. State of Maharashtra and Anr. 2013(9) SCC 92 placing reliance on the judgment rendered in the case of Bhailal Bhai (Supra), Hon'ble Supreme Court observed that in equitable jurisdiction, the maximum period of limitation can reasonably held to be the same as has been provided by the Limitation Act. Where a person comes to the Court for relief under Article 226, then as general rule, if there has been unreasonable delay, the Court ought not ordinarily to lend its aid to a party guilty of delay. the Hon'ble Supreme Court proceeded to cite para 21 of the judgment in Bhailal Bhai's case (Supra) wherein it is observed that maximum period fixed by legislature providing for the time within which the relief by a suit in a Civil Court may ordinarily be taken to be a reasonable standard by which delay in seeking a remedy before the Court can be measured. Accordingly, we are of the view that even in the absence of application of the provisions of Limitation Act, the Appellant cannot surmount the difficulty of delay and laches.

The next question relates to the non-production of original share transfer deed dated 01.12.1986, for which the arguing counsel says that he could not produce the same due to the reason that it was taken by income tax department when there was a search in his premises and this fact was not disclosed in the petition. He ought to have filed the same. On his failure to produce the original deed, an adverse inference has to be taken against him. Further, without an original transfer deed no company will entertain any transfer of share.

Section 56 of the Companies Act, 2013

"56. (1) 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 such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the

certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

Provided *that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit."*

Sub-Section 4 of Section 58 of Companies Act, 2013 provides that:

"If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal."

Section 59 of Companies Act, 2013 provides:

- "1. If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted there from, or if a 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, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.*
- 2. The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved."*

It is to be noted that for invoking Section 58(4) of the Act it is mandatory that Section 56 has to be complied with. The compliance is that the party seeking registration of transfer shall file proper instruments of transfer duly

stamped along with share certificate. When the company disputes the signature of the transferor, the said instrument of transfer is no longer a proper instrument, and hence this Tribunal cannot give any direction to R1 as prayed. Where the instrument of transfer is lost, the Board of Directors at their discretion may register the transfer on such terms as indemnity, etc. Here it is not the case that the Appellant lost the transfer deed executed by the registered shareholder. It is the case that he sent transfer deed to the company and the company declined to register the transfer on the ground that the signature of the transferor does not tally with the specimen available with the Company. It is clear that the Appellant has not filed documents as required under Section 56.

It is to be noted that if the company says that signatures are mismatching the Appellant has to prove the same before a Civil Court for declaration that he is the rightful owner as held in Indian Bank vs. Deepak Fertilizers & Petrochemicals corporation Ltd., (1999) 35 CLA 389.

Considering all the above aspects, the Company Appeal was dismissed without costs for the reasons given above.

sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)

sd/-

V. NALLASENAPATHY
Member (Technical)