

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

T. Co. Appeal No. 20 of 2016

Under Section 58 & 59 of the CA, 2013

In the matter of

Smt. Kasturi Bai (Deceased) ...  
Petitioner No.1  
Dr. Govind Goyal ... Petitioner No.2

Vs.  
Lupin Ltd.  
159, CST Road, Kalina,  
Santacruz (E),  
Mumbai-400 098 ... Respondent No.1

Mr. Harsh Kumar  
Miss. Seema Kumari  
Mrs. Neera Kumari  
...Respondent No.2

Order delivered on 15.01.2018

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)  
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioners: A. M. Bhat, Practising Company Secretary for P  
a/w Riddhi Patel Practising Company Secretary

For the Respondents: P. S. Gupchup Practising Company Secretary for R1  
Mandakini Sinh, Advocate  
a/w Olga Lume Pereira Advocate for R2

*Per: V. Nallasenapathy, Member (Technical)*

**ORDER**

1. This Company Petition was filed by Smt. Kasturibai (Deceased P1) and Dr. Govind Goyal (P2) under section 58 and 59 of the Companies Act, 2013 against the Respondent for the following reliefs:

- a) Declaration that P1 is the owner of impugned 100 shares of R1.

- b) *Declaration that P1 has absolute title over the impugned shares and accordingly, entitled for 1200 Equity shares of R1 Company.*
- c) *Direction to R1 to rectify its Register of members by inserting the details of 1200 shares of R1.*
- d) *Direction to R1 to issue/release share certificates for 1200 shares of R1.*
- e) *For any other relief as the Tribunal may deem fit and proper.*

2. P1 died on 22.8.2002, the Petition says that P1 is represented by her son who is P2 herein. The Death Certificate of P1 is enclosed but the legal heir certificate of P1 is not enclosed. In this situation, the right of P2 to file the Petition may be fractional if other legal heirs are there. The Petition with deceased P1 as the Petitioner is not maintainable. In spite of this lacuna, let us discuss the merits of the Petition.

3. The Petition reveals that P1 is the owner of 100 shares of Lupin Ltd. (R1) (formerly known as Lupin Laboratories Ltd.). P2, a Medical Doctor, son of P1, on 28.1.1996, while on professional visit to a patient, happened to carry some Share Certificates along with blank Transfer Deeds signed by the family members, for discussion with his Bankers to avail Bank finance by pledging the Share Certificates as collateral securities but unfortunately they had fallen in way. P2 searched these Share Certificates at home and on the road travelled by him but could not get back them. Nearly after two months i.e. on 26.3.1996, P1 lodged complaint of the lost items at Bhanwarkunva Police Station, Indore under reference DD No.1863 dated 26.3.1996.

4. P2 also informed R1 on 26.3.1996, about the loss of share certificates along with signed blank transfer forms. On 1.4.1996, R1 advised P2 to obtain an injunction order from appropriate authority for enabling R1 to stop transfer of shares in case someone submits the impugned shares for transfer.



5. The Petitioners along with other family members whose share certificates and transfer deeds were lost by P2, filed a civil suit (OA 96 of 1996) on the file of XII Additional District Court, Indore, for issue of duplicate share certificates and for an injunction not to transfer the impugned shares. The said suit was dismissed on 8.5.1996 on the ground that Civil Court did not have jurisdiction. Aggrieved by the Order of the Trial Court, Plaintiffs (the Petitioners herein) preferred First Appeal No.109/1996 before Hon'ble High Court of Madhya Pradesh, Bench at Indore, which was also dismissed on 11.5.2011, with an observation that the plaintiffs are having efficacious remedy to file necessary application before concerned Registrar of Companies.

6. During the period from the loss of shares and dismissal of appeal by Hon'ble High Court, there were many communications between the Petitioners and R1. It is to be noted that on 13.7.1996 itself R1 informed P1 regarding the receipt of impugned original share Certificate along with transfer deed for effecting transfer. However, since the appeal was pending in the High Court of Madhya Pradesh and an injunction order not to transfer the shares was in force against R1, R1 had not transferred the shares. After the dismissal of appeal on 11.5.2011, the Petitioner filed this Petition before the erstwhile CLB on 3.5.2016.

7. R1 filed its reply on 13.12.2016. R1 contended that the petition is not maintainable under Section 58 and 59 of the Companies Act, 2013; P1 is the registered holder of impugned shares; on 2.10.1996, R1 sent a letter to the Hon'ble High Court of Madhya Pradesh, Bench at Indore with a copy to P2, stating that the impugned share certificate for 100 shares of R1 was lodged for transfer in favour of R2, transfer has not been effected in view of the matter being subjudice and the stop transfer status shall be maintained until otherwise ordered by the Hon'ble High Court; R1 turned down the request for issue of duplicate share certificate by the Petitioner and his Counsel on the strength of injunction order passed by the Hon'ble High Court of Madhya Pradesh, Bench at Indore, in view of the fact that the

injunction is only for not to transfer the shares; the contention of P2 that he continues to be the legal owner of 1200 shares (including bonus shares) of R1 is wrong and the same is to be decided by the Tribunal.

8. R2 filed reply on 11.4.2017. R2 contends that P1 died on 22.08.2002, P2 who says he is authorized to file this Petition has not obtained any probate or orders of competent Court validating his ownership of impugned shares, and hence this Petition is not maintainable; Petition is barred by Limitation in view of the fact that this Petition has been filed on 03.05.2016 after a long lapse of five years after the dismissal of the First Appeal by the Hon'ble High Court of Madhya Pradesh, Bench at Indore; proceedings under sec.58 & 59 of the Companies Act, 2013 is a summary proceeding, however, the Petitioners seeks relief on an issue touching the title and ownership of the impugned shares, wherein R2 has also setup a rival title and ownership on impugned shares, stating that they are the bonafide purchasers from P1 for valuable consideration; R2 disputed the contention of the Petitioner that Article 113 of the Limitation Act has no application in respect of Petition filed under section 111 of the Companies Act, 1956 or Section 58 & 59 of the Companies Act, 2013; R2 purchased the impugned shares on or about 13.11.1996 through Padam Chand Jain, Delhi via Flora security, Indore, for valuable consideration; the Share Transfer form was duly stamped and executed by P1 in favour of R2, the shares were sent to R1 for transfer and the Registration and the Transfer of shares was completed in favour of R2; P2 clearly suppressing this fact made a concocted and put forth story that she lost the Shares on 28.1.1996 but realised the same only few months later, on 26.3.1996 lodged the FIR with Bhanwarkunwa Police Station with a fraudulent intent and no public notice in respect of the lost shares appears to have been placed in any newspapers and the conduct of P2 is suspect; on 12.1.2016, Flora securities, filed a suit before Hon'ble XX Civil Judge Class 2, Indore, in respect of 400 shares of R1 which includes the impugned shares herein. In nutshell R2 denied each and every averment in the Petition and sought for dismissal of the Petition.



9. P2 filed his rejoinder wherein he relies upon the order of the Company Law Board Mumbai Bench, in *Jagdish Gada v/s. Kotak Mahindra Bank Ltd.* to say that this Petition could not be dismissed on ground of delay and laches. P2 further says that the Civil Suit filed by Flora Securities and Giridhar Prasad is a dispute between two Brokers and sub-broker and he does not wish to make any comment on this aspect. He contended that under sec. 430 of the Companies Act, 2013 no Civil Court shall have jurisdiction to entertain the suit or proceedings in respect of which the Tribunal or Appellate Tribunal is empowered to decide.

10. The Petitioner filed this Petition under Section 58 and 59 of the Companies Act, 2013. Section 58 (4) 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 (1) provides that *"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"*.

11. The Section of law under which the petition is filed and the reliefs sought are totally different. The reliefs sought as stated in supra will not fall within the ambit of Section 58 or 59 as claimed by the Petitioner.

12. At the most the relief of rectification of Register of members by inserting 1200 shares of R1 is related to Section 59, in view of the fact R2 already submitted the transfer deeds in respect of impugned shares, unless the title in respect of those shares are decided one way or other, this relief also cannot be extended/granted at this stage.

13. The proper course of action for the Petitioner is to file a Civil suit before appropriate forum, for establishing their title as held in the case of *Indian Bank Vs. Deepak Fertilisers & Petro Chemicals Corporation Ltd.* (1999) 35 CLA 389.

14. A Division Bench of Hon'ble High Court of Karnataka in the case of *K. Ravinder Reddy vs. Alliance Business School* (2016) 72 173 SCL 314 held that if the question of title in whose favour the shares ought to be transferred, adjudication power under Section 58 is not available to the Tribunal or CLB.

15. The Hon'ble Apex Court in the case of *Jain Mahals Hotels Pvt. Ltd. Vs. Devraj Singh* (2016) 1 SCC 423, held that a seriously disputed question of title could be left to be decided by the Civil Court.

16. In view of the above discussion, the appeal is dismissed without costs, giving liberty to the petitioner to approach Civil Court by excluding the period from the date of filing of this appeal, i.e. 6.9.2016 to till date.

Sd/-

V. NALLASENAPATHY  
Member(Technical)

Sd/-

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