

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI
BENCH, MUMBAI

Transfer Company Appeal No. 24/2014

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

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

Between

M/s. Oriental Insurance Company Ltd.

..... Appellant

Versus

M/s. Siemens Ltd. & Ors.

.... Respondents

Appellant

M/s. Oriental Insurance Company Ltd.

Respondents

1. M/s. Siemens Ltd.
2. M/s. TSR Darashaw Ltd.
3. M/s. Innova Securities & Investments Ltd.
4. Mr. Dominic Cajetan Viegas

Present on behalf of the parties:

1. Mr. Kamal Agrawal, CA-AR for the Appellant.
2. Mr. Rohit Walavalkar, Advocate for the R-1 & 2).

ORDER

(Heard & Ordered on 15.11.2016)

The Petitioner filed this Company Petition u/s.59 of the Companies Act, 2013 against Siemens Ltd. (R1), TSR Darashaw Ltd. (R2- Transfer Agent of R1), Innova Securities and Investment Ltd. (R3 – Broker and Member of National Stock Exchange, acted as Share Broker for purchase of the impugned shares) and Mr. Dominic Cajetan Viegas (R4) – original Registered Shareholder) seeking relief for rectification of Share Register of Members in respect of 1000 shares of Re. 1/- each of R1 company and insert the name of the Petitioner in the place of R4 and also for issuing duplicate Certificates/new Share Certificates in the name of the Petitioner and any other order entitling the Petitioner to the corporate benefits ensued relating to the impugned shares.

2. The case of the Petitioner, the R3 entered into a Contract for purchase of 100 shares at NSE and issued Contract Note to the Constituent on 24.6.1997, on 2.7.1997 R3 received delivery of Share Certificate of 100 shares along with Transfer Deed executed by R4 from NSE Clearing House, on the same date R3 handed over consignment to Prakash Airflight Ltd. under Airway Bill No.5873532 for delivering to R3 office situated at Bangalore. But whereas the flight, upon which consignment, was crashed, on 04.07.1997 it was intimated to the Agent of R3 about loss of shipment on account of crash of flight carrying consignment. R3 lodged claim with the Petitioner on 11.7.1997 for the consignment was already insured by R3 with the Petitioner. On receipt of such intimation, the Petitioner, on 10.7.1997 intimated R3 about appointment of M/s. H. Kannan & Co. as Surveyors, the same is marked to NSE as well. In furtherness to its action, R3 on 26.01.1997 lodged a Police complaint reporting loss of its shares in Air crash. The Petitioner also filed a Civil Suit bearing No.1116/1998 on the file of City Civil Court, Bangalore against R1 and other companies whose shares were lost in the air crash. In the meanwhile, the Surveyor appointed by the Petitioner, on 12.03.1998, considering the report issued by courier, gave a report assessing the claim for Rs. 8,42,000/-. As a way of rechecking, the Petitioner on 23.03.1998 appointed Mr. Mahendra Choksi, for investigating the claim decided by the Surveyor, in pursuance of the case that investigation on 16.8.1998 confirmed that the consignment of R3 was lost in the air crash flight ELBEE Courier. Then the Petitioner on 10.8.1998 intimated NSE about the approval of the claim of R3 as 8,92,000 rupees with a request to NSE for letter of subrogation from R3. R3 on 5.9.1998, sent an acknowledgement of receiving the claim aforementioned by sending a subrogation letter to the Petitioner. Basing on Subrogation letter, the Petitioner filed a Civil Suit bearing No.3662/1999 at Bombay High Court but the same was dismissed for default on 20.09.2013. Likewise, the suit filed by R3 was also dismissed for default on 12.07.1997. Soon after

dismissal of Civil Suit for default, the Petitioner sent a letter to R1 company on 24.12.2013 for issuing duplicate Share Certificate to the Petitioner in lieu subrogation letter given by R3. In reference to the said letter, R2 (Transfer Agent) intimated the Petitioner to obtain an appropriate order from the Court of law for rectification of Share Register. The Petitioner has also submitted these 1000 shares for which it made a claim for only 100 shares of Rs.10/- each, when these shares were bought by R3, and also they were only 100 shares at a premium of Rs.250/-. Now this Petitioner claim for 1000 shares because these 100 shares split into 500 shares of Rs.2/- each in the year 2007, 500 Bonus shares were allotted at the rate of 1:1 to the existing shares, that is how the Petitioner made a claim for 1000 shares. Accordingly, the Petitioner being subrogated to the claim of R3, filed this Company petition for registering its name in the place of R4 against the impugned shares and for receiving duplicate Share Certificate to the impugned shares mentioned above.

3. The case of the R1 & R2 that the Petitioner is not entitled to re-agitate this claim before this Forum after the suit filed by the Petitioner was dismissed for default on the file of Hon'ble High Court of Bombay, and the claim is hit by limitation for this transaction of transfer took place on 24.6.1997.

4. On verification of the record it appears that R3 and R4 have never appeared in this proceedings, therefore, this Bench on 22.8.2016 set this case exparte against R3 & R4.

5. On hearing the submissions of either side, the point for consideration before this Bench is,

- (i) whether this Petition is maintainable after the suit for the claim was dismissed for default.
- (ii) Whether this Petition is hit by limitation as claimed by R1 & R2 or not

- (iii) Whether the Petitioner is entitled to the claim as prayed by it or not.

Point.1: *whether this Petition is maintainable after the suit for the claim was dismissed for default.*

6. It is a settled proposition of law whereas suit is dismissed for default, it cannot be said as a case decided on merit. When any proceeding has been initiated or pending before a Court competent enough to decide the same issue, the party is at liberty to agitate on the same subject matter.

Point 2: *Whether this Petition is hit by limitation as claimed by R1 & R2 or not*

7. As to delay for filing this Company Petition before the Bench, the Petitioner initially filed company suit in good faith remaining under the impression that this Petitioner is entitled to file suit before Civil Court, thereafter when the suit was dismissed for default, realizing the fact, instead of filing for restoration of civil suit, it has filed this Company Petition praying this Bench that the delay in filing this Company Petition may be excluded by invoking Section 14 of the Limitation Act, 1963.

8. Since the earlier suit was filed in good faith before Civil Court, this Bench hereby hold that it is fairly covered u/s.14 of Limitation Act, 1963, though it has not been explicitly held by the Civil Court. On perusal of this fact in this case, this technicality of dismissal for default will not prevail upon deciding this case on merits filed by this Bench, accordingly, this Bench hereby holds that this Petition is not hit by limitation as prayed by R1 & R2.

Point 3: *Whether the Petitioner is entitled to the claim as prayed by it or not.*

9. The R1 Company has not stated anywhere that the impugned shares do not belong to R4. It is also not said that R3 has not insured the consignment with the Petitioner. The case of the Respondent is that this Petition is hit by resjudicata and limitation. Since those two points have

already been discussed and held in favour of the Petitioner, those points will not have any merits to dismiss this Company Petition.

10. Now the point 3 decided is whether the Petitioner has established this case to prove that the Petitioner is entitled to the relief as sought by it.

11. The Petitioner has filed proof showing Contract Note on 24.6.1997 issued by R3 to one Alan J. Chaves & Sons, Stock & Share Broker for an amount of Rs. 26,045 disclosing that 100 shares of R1 are being agreed to be sold to the above Alan J. Chaves, to accomplish this transactions, NSE also issued a delivery slip showing adjustment in between buying broker (R3) and selling broker. To make it full proof, the Petitioner filed proof of consignment of the shares to courier, thereafter courier booking this consignment to the flight involved in air crash, basing on all these proof, the Petitioner cleared the claim of the insured i.e. R3 and obtaining subrogation letter dated 31.8.1998. By these material proof available, this Bench believe this Petitioner is entitled for registration of impugned shares in the name of it since it is not the case of Respondent that these shares are showing in the name of any other person, other than R4, it is to be construed no other claim is made against these shares except the Petitioner. Therefore, this Bench, for the reasons stated above, allows the reliefs sought by the Petitioner and the R1 company is directed to register the Petitioner's claim against these shares in the place of R4 with direction to R1 Company to issue new Share Certificates to the impugned shares to the Petitioner and also to extend whatever accrual over these shares till disposal of this Company Petition.

sd/-

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

sd/-

V. NALLASENAPATHY
Member (Technical)