3

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

TP No. 66/58-59/NCLT/AHM/2016 with TP 66-A/2016(New)
Co. Appeal No. 20/58-59/CLB/MB/2014 with CA 255/2014 (Old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.02.2017

Name of the Company: E. Rama Rao
V/s.
Gandhidham Developers Pvt. Ltd. & Ors.

Section of the Companies Act: Section 58-59 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

Order Pronounced in open Court vide separate sheet.

23/2/17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 23th day of February, 2017.

NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI REVEENDRA BABU, MEMBER (JUDICIAL)

Date: 23rd day of February, 2017

TP NO. 66/58-59/NCLT/AHM/2016 (NEW)

Company Appeal No. 20/58-59/CLB/MB/2014 (OLD)

1. Mr. E. Rama Rao
Block No. 52, House No. 62
Gujarat Housing Board,
Near KASEZ
Gandhidham 370 201
Gujarat State

Petitioner

Versus

1. M/s. Gandhidham Developers Private Limited
Plot No. 46, Sector 8
Gandhidham 370 201
Gujarat State

2. Ranjitsingh Bakhatawarsingh Batth
Plot No. 46, Sector 8
Gandhidham 370 201
Gujarat State

Respondents

Appearance:

1. Learned PCS Mr. Kunjal Dalal for petitioner.
2. Learned advocate Mr. Aayog Doshi for Respondents

FINAL ORDER

1. This petition under Section 58 of the Companies Act, 2013 is filed by Mr. E. Rama Rao, through his power of attorney Mr. Tarjitsingh Bakhatawarsingh Batth seeking reinstatement of his name in the register of members of the first respondent company and for delivery of equity share certificate.

2. This petition is filed before the Company Law Board, Mumbai on 03/07/2014 and it was registered as appeal No. 20 of 2014. The same has been transferred to this Tribunal and re-numbered as TP No. 66 of 2016.

3. The facts in brief that are necessary for disposal of this petition, are as follows:-

4. The petitioner was holding 10000 equity shares in the first respondent company. Mr. Tarjitsingh Bakhatawarsingh Batth is the power of attorney holder for the petitioner.

5. It is stated by the petitioner that, in the annual return filed with Registrar of Companies for the Annual General Meeting held on 29/09/2006 it is mentioned that the shares of the petitioner had been transferred to Mr. Ranjitsingh Bakhatawarsingh Batth i.e. the second respondent, on 16/03/2006. According to the petitioner he had never transferred his shares to anybody by executing transfer deed or by giving power of attorney.

6. It is also stated in the petition that, as per clause 15 of the Articles of the Association, a person proposing to transfer any shares shall give notice in writing to the company that he desires to transfer his shares. But no such procedure has been followed in this case.

7. The second respondent filed reply on his behalf and also on behalf of the first respondent. It is the case of the respondents that Section 58 of the Companies Act, 2013 pertain to denial of shares by the company and in this case the first respondent company has not denied any transfer of shares. It is also plea of the respondent that the transfer of shares was effected on 20.03.2006 and therefore this petition is time barred under the provisions of Limitations Act, 1963.

8. Second respondent admits that the petitioner was holding 1000 equity shares of Rs. 10/- each. It is the case of the second respondent that the transfer deed was duly executed in the year 2006 transferring shares of the petitioner to the second respondent. It is also the case of the respondent that after passing necessary

resolution by the Board of Directors the attorney of the petitioner was authorised to give effect to the transfer of shares including endorsement of share certificate. The share certificate which is in the name of the petitioner was duly endorsed by the attorney to give effect to the said transfer of shares. It is also the case of the respondents that the petitioner and his attorney were informed about the proposed transfer. Now, the petitioner, in connivance with Mr. Tarjitsingh Bakhatawarsingh Batth is trying to invoke the provisions of Articles of Association of the respondent company. It is also stated in the reply that the petitioner is working as a mechanical supervisor with M/s. Heavy Movers which is a proprietory firm of Mr. Tarjitsingh Bakhatawarsingh Batth.

9. The respondents also state that the petitioner worked as a Mechanic Supervisor in M/s. Heavy Movers which is a proprietory firm of Mr. Tarjitsingh Bakhatawarsingh Batth who is attorney of the petitioner. Further, Mr. Tarjitsingh Bakhatawarsingh Batth has siphoned Rs. 17,42,980/- of the respondent company and in that connection the company had initiated legal action. Mr. Tarjitsingh Bakhatawarsingh Batth, similarly, siphoned money of one of the sister concerns of the respondent company viz. Surya Salt P. Ltd. to the tune of Rs. 49,15,620/-. Mr. Tarjitsingh Bakhatawarsingh Batth, in order to bring undue pressure on the Board of Directors of the respondent company filed company petition No. 20 of 2014 under section 397 and 398 of the Companies Act, 1956.

10. During the pendency of this petition, the second respondent filed company application No. 255 of 2014 praying to dismiss the petition on the ground of limitation. In the said application the original petitioner filed his reply and applicant therein also filed rejoinder. The pleadings in TP No. 66 of 2015 have been reiterated in the application No. TP/66-A of 2016 also.

11. Section 58 of the Companies Act, 2013 deals with denial of transfer of shares and in this case the first respondent has not denied any transfer and therefore Section 58 of the Companies Act, 2013 is not applicable.

12. In this case transfer of shares was effected on 20/03/2006, hence the petition filed on 03/07/2014 is barred by limitation.

13. In the reply, the respondent has admitted that, the petitioner was holding 10000 equity shares of Rs. 10/- each. But it is the case of the respondent that the petitioner sold his entire shareholding of 10000 shares to the second respondent in the month March, 2006 by executing a transfer deed on 16th March, 2006. Thereafter, necessary resolution has been passed by the Board of Directors of the Company. At that time, attorney of the petitioner, by name, Mr. Tarjitsingh Bakhatawarsingh Batth was director of the company and in his capacity as director duly endorsed on the share certificate standing in the name of petitioner and had given effect to the transfer of shares from petitioner to second respondent. Further, according to the respondents, petitioner and his attorney were duly informed about the proposed transfer. Mr. Tarjitsingh Bakhatawarsingh Batth in connivance with the petitioner is trying to take undue advantage by filing this petition.

14. Further, Mr. Tarjitsingh Bakhatawarsingh Batth has siphoned Rs. 17,42,980/- of the respondent company and in that connection the company had initiated legal action. Mr. Tarjitsingh Bakhatawarsingh Batth, similarly, siphoned money of one of the sister concerns of the respondent company viz. Surya Salt P. Ltd. to the tune of Rs. 49,15,620/-. Mr. Tarjitsingh Bakhatawarsingh Batth, in order to bring undue pressure of the Board of Directors of the respondent company filed company petition No. 20 of 2014 under section 397 and 398 of the Companies Act, 1956.

15. Based on the pleadings of both the sides and the rival contentions, the following points emerge for determination in this petition:-

(1) Whether this petition (appeal) is filed within time ?
(2) Whether the petitioner is entitled to the relief of reinstatement of his name in the Register of Members of the company and for delivery of his share certificates.

16. This petition is filed under section 58 of the Companies Act, 2013 on 03/07/2014. Section 58 of the Companies Act, 2013 came into force with effect from 12/09/2013. Section 58 deals with refusal of registration and appeal against refusal. Sub-section (3) of Section 58 provides that the transferee may appeal to the Tribunal against the refusal of registration within a period of 30 days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of such transfer, as the case may be, was delivered to the company. Sub-section (4) of Section 58 deals with public companies.

17. Now it has to be seen whether the relief prayed in this case by the petitioner comes within the purview of section 58 or not. According to the petitioner, he is having equity shares of the first respondent company, and his shares were illegally transferred to the second respondent without executing any transfer deed and without following procedures laid down in Articles of Association.

18. The relief prayed by the petitioner is to reinstate his name in the Register of the members of the first respondent company, that means rectification of the Register of members of the first respondent company. Section 58 of the Companies Act deals with only refusal of registration and appeal against refusal. Therefore, the relief claimed by the petitioner cannot be granted under section 58 of the Companies Act, 2013.

19. Section 59 of the Companies Act, 2013 deals with rectification of the Register of members. It says that, if the name of any person, without sufficient cause entered, is entered in the register of members of a company or after having been entered in the register is, without sufficient cause, omitted therefrom, the person aggrieved or any member of the company may prefer an appeal to the Tribunal. The relief prayed by the petitioner in this petition is covered by Section 59 of the Companies Act, 2013.

20. No period of limitation is provided in Section 59 of the Companies Act, 2013. But section 433 of the Companies Act says that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be. The Hon'ble Supreme Court in the case of ***Kerala State Electricity Board v/s T.P. Kunjali (1976) 4 SCC 634 SC 282*** held that Article 137 of Limitation Act, 1963 will apply to any petition or application under any act to a Civil Court. Therefore, Article 137 of the Limitation Act, 1963 is applicable to a petition or appeal filed under Section 59 of the Companies Act, 2013 before this Tribunal.

21. In the case on hand the share transfer deed was executed on 16/03/2006 and the transfer was effected in the register of members of the first respondent company on 20/03/2006. Therefore, the right to sue accrued to the petitioner on 20/03/2006. This petition was filed on 03/07/2014.

22. It is the contention of the learned Company Secretary appearing for the petitioner that the petitioner has got knowledge of the transfer of his shares only before filing this petition, but there is no such pleading by the petitioner either in the petition or in the reply to the application filed by the second respondent. On the other hand it is mentioned in the petition in page No. 3 and para No. 6, as follows:-

> *"Further it is also observed from the Annual Return filed with the ROC for the AGM DATED 29/09/2006 that, the said shares had been transferred to Mr. Ranjitsingh B. Hatth on 16th March, 2006. However, the petitioner had never transferred his shares to anybody by executing any transfer deed or giving power of attorney in this regard"*

23. From the above stated pleading in the petition, it is clear that in the Annual Return filed with Registrar of Companies for the year 2006, it is mentioned that the shares of the petitioner were transferred to the second respondent. Therefore, it must be concluded that the petitioner has got knowledge of transfer of shares since the date of filing of Annual Return for the year 2006 by the first respondent company. The plea in sur-rejoinder dated 16/02/2015 filed in CA No.

254 of 2014 the original petitioner has got knowledge of transfer of the shares only in March 2014 is an afterthought to overcome the period of limitation. In the present case it is the case of the respondent company, which is being impugned, that the petitioner did not allege fraud in the petition and invoked Section 17 of the Limitation Act, 1963. Hence the right to sue accrued to the petitioner on 20/03/2006. Therefore, this petition is not within time and it is barred by limitation.

24. Another controversy involved in this case is whether the second respondent as HUF can transfer the shares which are in the name of the petitioner to himself or not. It is a question involving civil rights of the parties and that cannot be decided by this Tribunal in a summary manner.

25. In view of the findings on the point of limitation, this petition is liable to be dismissed and it is accordingly dismissed. No order as to costs.

26. In view of the final disposal of TP/66/2016, there is no need to pass any separate order in TP 66-A/2016 and therefore, it is accordingly, closed.

23.2.17

BIKKI RAVEENDRA BABU
MEMBER (JUDICIAL)

Pronounced in the open court on this 23rd day of February, 2017 by me.