

(1993) 10 DEL CK 0042

In the Delhi High Court

Case No : Civil Petition No. 94 of 1984

Ammonia Supplies Corporation (P) Ltd.

APPELLANT

Vs

Modern Plastic Containers (P) and Others

RESPONDENT

Date of Decision : 11-10-1993

Acts Referred:

Citation : AIR 1994 Delhi 51 : (1994) 79 CompCas 163 : (1993) 52 DLT 252 : (1993) 27 DRJ 482 : (1994) 1 ILR Delhi 498 : (1994) 1 ILR Delhi 371 : (1994) RLR 83

Hon'ble Judges : Y.K. Sabharwal, J;R.L. Gupta, J;J.K. Mehra, J

Bench : Full Bench

Advocate : Satish Chander, Sarat Chandra and S.K. Kaul, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) The short point for determination in this matter is the nature of jurisdiction the Company Court exercises u/s 155 of the Companies Act, 1956 (for short "the Act") while dealing with petitions seeking rectification of register of members. Whether the jurisdiction is of summary nature and can the Company Court decline to entertain a petition which involves complicated and disputed questions of facts requiring extensive evidence, is the main question that is required to be answered by us in this reference. The other question is whether the jurisdiction of the Civil Court to entertain disputes relating to title of shares is barred.

(2) One of us(J.K.Mehra,J.)after noticing the conflict of opinion in judgments of this Court has made the order of reference so that the conflict may be resolved by a larger Bench. It would be useful to reproduce the order of reference dated 12th May, 1993 which reads as under:-

"THE question has arisen in this case whether complicated and disputed questions of facts which require extensive evidence should be dealt with while adjudicating the title of equity shareholder to certain shares and the rectification of the register be ordered u/s 155 or such a dispute should be resolved by filing

a Civil Suit which unlike the petition u/s 155 is not a summary proceeding. This Court in two cases, one of Punjab Distilling Industries Vs. Baremen's Paper Cooking Limited, 1973 (43) Comp Cas 189 and in the case of Anil Gupta Vs. Delhi Cloth and General Mills Co. Limited, 1983(54) Comp Cas 301 (Del) had taken a view to the effect that having regard to the language used in Section 155 of Companies Act, it was clear that proceedings under this section can from its very nature be only a summary proceeding and that in all the cases where serious questions are in dispute and the intensity, the depth and the sweep of allegations on either side are such as it is not possible for a Court to come to any conclusion except upon the basis of evidence, oral and documentary, the Court will not ordinarily exercise its jurisdiction in such matters. This view was also taken by a Division Bench of Calcutta High Court in Dady S.Mazda Vs.K.R.Irani, 1977 (47) Comp Cas 39. Inspire of these clear pronouncements of Delhi as well as Calcutta High Court another Single Bench of this Court presided over by Mahinder Narain, J. in Satnam Singh & Others Vs. Bhagwan Singh & others, 1992(74) Comp Cas 726 has taken the view that the Companies Act is a special statute which provides for special and specific remedies and in view of the fact that the powers of a Company Judge to try and dispose of the matters are co-extensive with those of the Civil Court in terms of Rule 6 of the Companies (Court) Rules, it would not be right for the Civil Court to entertain matters, which relate to rectification of register of members or which involve determination of title to shares in companies, when, specially, under the provisions of Section 155(3)(a), questions of title can be determined by the Company Court. He has relied upon a Single Bench judgment of Gujarat High Court in Gulabrai Kalidas Naik Vs. Laxmidas Lallubhai Patel, 1978(48) Comp Cas 438 and has taken a view which is contrary to the two judgments of this Court, the earlier of which is by a Division Bench. Mr. Satish Chandra has contended that since the Company in the present case was already in liquidation, he could not approach Civil Court straightaway and had to move this Court u/s 446. An application u/s 446 does not in any way take away such person's right to institute suit because all that the said provision requires is that he should seek permission of Company Court for initiating such proceedings u/s 446. In any event, I need not deal with this aspect at this stage. I agree with the submission that the conflict between the judgments of this Court must be resolved by a reference to a larger Bench where the matter should be thrashed out after hearing the parties. Accordingly, the papers be placed before the Hon"ble Chief Justice for Constituting a larger Bench and referring the matter to it to resolve the conflict. Mr. Satish Chandra should file the additional paper books for this purpose."

(3) For facility of reference, we may also reproduce Section 155 of the Act asunder-

"SECTION 155: Power of Court to rectify register of members- (1) If- (a) the name of any person - (i) is without sufficient cause, entered in the register of members of a company, or (ii) after having been entered in the register, is, without sufficient cause, omitted there from; or (b) default is made, or unnecessary

delay takes place, in entering on 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 apply to the Court for rectification of the register. (2) The Court may either reject the application or order rectification of the register; and in the latter case, may direct the company to pay the damages, if any, sustained by any party aggrieved. In either case, the Court in its discretion may make such order as to costs as it thinks fit. (3) On an application under this Section, the Court (a) may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and (b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification, (4) From any order passed by the Court on the application, or on any issue raised therein and tried separately an appeal shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (5 of 1908)- (a) if the order be passed by a District Court, to the High Court; (b) if the order be passed by a single Judge of a High Court consisting of three or more Judges, to a Bench of that High Court. (5) The provisions of sub-sections (1) to (4) shall apply in relation to the rectification of the register of debentures holders as they apply in relation to the rectification of the register of members."

(4) We may notice that by Companies (Amendment) Act. 1988, Section 155 of the Act has been omitted from the Act. With effect from 31st May, 1991 the power to rectify the Register of Members has been vested in the Company Law Board.

(5) The remedy provided by section 155 of the Act is summary in nature, has been the view of various High Courts (See: Smt. Soma Vati Devi Chand Vs. Krishna Sugar Mills Ltd. and Others, ; In Re: Dhelakhat Tea Co. Ltd., ; Punjab Distilling Industries Ltd Vs. Biermans Paper Coating Mills Ltd and another, 1973(43) Comp Cas 189 Del-, Public Trustee Vs. Rajeshwar Tyagi and others, 1973 (43) Comp Cas 371 Del; Anil Gupta Vs. Delhi Cloth and General Mills Co. Ltd. 983(54) Comp Cas 301; Vishnu Dayal Jhunjhunwalla and Others Vs. Union of India (UOI) and Others, : Rao Saheb Manilal Gangaram Sindore and Another Vs. Western India Theatres Ltd. and Others, .

(6) Similar has also been the view of English Courts (See: Halsbury's Law of England, 4th Edition 309; In re London, Hamburgh, and Continental Exchange Bank, 1867(2) C A 431, Buckley Company Law, 14th Edition Page 310.

(7) Prior to the enforcement of Companies (Amendment) Act, 1988, in the event of refusal by a Company to register the transfer of shares, an appeal could be filed before the Central Government as provided by Section 111 of the Act. Further, as provided by Section 155 of the Act, an aggrieved person could also apply to the court for rectification of the Share register. The provisions of the Act relating to transfer of shares received the attention of Sachar Committee. The

said Committee recommended that section 111, and 155 should be assimilated into a single statutory provision. The recommendations have been accepted bypassing of the Amendment Act of 1988 and the powers of the court u/s 155 have been conferred on the Company Law Board as also the power of the Central Government u/s 111 of the Act. The existing section 155 has been omitted from the Act and the existing section 111 has been substituted by new Section 111, which, inter-alia, confers power on Company Law Board to direct rectification of the share register and requires the Company to give reasons in case of refusal to register the transfer of shares and also provides for an appeal to the Company Law Board against any refusal of the Company to register the transfer of the shares. Now Section 111 reads as under:-

"SEC.111 :(1) If a Company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal. (2) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Company Law Board against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in sub-section (1), either to register the transfer or transmission or to send notice of its refusal to register the same. (3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company- (4) If- (a) the name of any person- (i) is, without sufficient cause, entered in the register of members of a company, or (ii) after having been entered in the register, is, without sufficient cause omitted there from; or (b) 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 (including a refusal under subsection (1)); the person aggrieved, or any member of the company, or the company, may apply to the Company Law Board for rectification of the register. (5) The Company Law Board, while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing the parties, either dismiss the appeal or reject the application, or by order - (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved. (6) The Company Law Board, while acting under sub-section (5), may, at its discretion, make- (a) such interim orders, including any orders as to

injunction or stay, as it may deem fit and just; (b) such orders as to costs as it thinks fit; and (c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares. (7) On any application under this section, the Company Law Board- (a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register; (b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification. (8) The provisions of sub-sections (4) to (7) shall apply in relation to the rectification of the register of debentures holders as they apply in relation to the rectification of the register of members. (9) If default is made in giving effect to the orders of the Company Law Board under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to one thousand rupees and with a further fine which may extend to one hundred rupees for every day after the first day after which the default continues. (10) Every appeal or application to the Company Law Board under subsection (2) or sub-section (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed (11) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company is transmitted by a sale thereof held by a Court or other public authority, the provisions of sub-sections (4) to (7) shall apply as if the company were a public company: Provided that the Company Law Board may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid, within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him Therefore or such other sum as the Company Law Board may determine to be a reasonable compensation for the right in all the circumstances of the case. (12) If default is made in complying with any of the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues. (13) Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company."

(8) The report of Sachar Committee shows that with a view to provide adequate protection to investors against refusal to register transfer of shares, it was recommended that provision be made at one place for a person aggrieved to apply for redressal of his grievances and reason for it seems to be that there should be a quick and speedy remedy in such matters and for the same reasons it seems the Committee recommended that the. Companies shall give reasons for refusal to register the transfer of shares. Consequent upon acceptance of the recommendations Section 111 as aforesaid was enacted. This also shows the conferment of summary nature of power with a view to provide speedy remedy

to the aggrieved persons.

(9) In the case of Krishna Sugar Mills (Supra) H.R. Khanna, J.(as his Lordship then was) after considering various earlier decisions came to the conclusion that although the power conferred by section 155 on Courts is very wide, the law seems to be well settled that remedy provided by the section is summary, it can be invoked in non controversial matters, requiring quick decisions and is not meant to be used for deciding disputes requiring investigations. It was held that in case of dispute of complicated nature involving controversy under several heads and necessitating a regular investigation this section ought not to be allowed to be used and the party concerned should be directed to proceed by way of a regular suit and it would not be proper to decide those questions in summary proceedings u/s 155. In that case the petitioner was directed to establish her claim in a regular suit ..Similar views have been expressed by two Division Benches and one single Bench decision of this court, as noticed hereinbefore .

(10) The Supreme Court in The Public Passenger Service Limited Vs. M.A. Khader and Others, has observed that where by reason of its complexity or otherwise the matter can more conveniently be decided in a suit, the court may refuse leave u/s 155 of the Act and relegate the parties to a suit.

(11) Keeping in view the views expressed in the aforesaid decision now let us examine the views expressed by Mahindar Narain J. in Harnam Singh and others Vs. Bhagwan Singh &Ors, 1992 (74) Comp Cas 726 which has led to the reference being made to this Bench. That case arose out of a civil suit. Harnam Singh had filed a suit for declaration and injunction in respect of shares of M/s J.B.S. Builders and Traders Pvt. Ltd. The plaint has been rejected by Mahindar Narain J. under Order 7 Rule 11(d) of Cpc, holding that the suit is barred.

(12) Though there is a divergence of opinion on the question of jurisdiction u/s 155 being summary in nature or not, in none of the judgments, except in Harnam Singh's case, it has been held that the suit would be barred. On being repeatedly asked whether in any other judgment it has also been held that the suit would be barred, Mr. Satish Chandra, learned counsel for the petitioner, replied in negative. Here, we may also notice the provisions of Section 9 of CPC and certain well established principles in regard thereto. Section 9, inter-alia, provides that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. The jurisdiction of the civil court is wide, unrestricted and unlimited. The ouster of the jurisdiction of the civil court is not to be readily inferred. Such exclusion should either be explicitly expressed or clearly implied. There is a presumption in favor of the jurisdiction of a civil court and a provision of law ousting the jurisdiction of a civil court has to be strictly construed. We have no difficulty in appreciating the well established principle of law that when a Statute requires a particular thing to be done in a particular manner it can be done only in that manner or not at all and that all other methods are forbidden (AIR 1936 253 (Privy Council)). The

difficulty, however, is in the applicability of the said principle. A civil suit would not be barred when a summary remedy may have been provided in some other enactment also. In our view the object of section 155 is not to whittle down or abrogate the provision of filing a suit as available u/s 9 of the Code of Civil Procedure. We see neither express nor any implied bar.

(13) Dealing with the Division Bench judgment of this Court in the case of Punjab Distilling Industries Ltd cited in support of the contention that the suit was maintainable as it raises some complicated questions of title to the shares and as suit raises complicated questions of title the same could not be dealt with u/s 155 of the Act, learned Judge in Harnam Singh's case opines:-

"IN my view, however, that judgment does not help the contention of Mr. Khanna for the reason that the same related to proceedings u/s 155 of the Companies Act. That judgment was not delivered in a suit."

(14) With great respect we are unable to agree with the aforesaid reasoning. The fact that the Division Bench judgment was not delivered in a suit and was delivered in an appeal against an order made on a petition u/s 155 of the Act will not make any difference. In our view, the relevant factor to be considered is the ratio of a judgment and not in which proceedings i.e. suit or petition u/s 155 it is delivered. The ratio decided of the said Division Bench judgment is that the remedy provided by section 155 is summary and is not meant to be used for deciding disputed and complicated questions necessitating a regular investigation and Section 155 ought not to be allowed to be used in such cases and the party concerned should be directed to proceed by way of a regular suit. While dealing with a suit involving the complicated questions of title, in our view, it would not be legally permissible for a smaller Bench to say that the judgment of a larger Bench is not applicable as it was not delivered in a suit. The comity existing between the courts requires a smaller bench to either follow the ratio of a larger bench judgment or else to make an order for reference to a larger bench.

(15) In the case of Public Trustee Vs. Rajeshwar Tyagi and others, a Division Bench of this Court was considering the appeal filed by the defendant challenging the order of the learned single Judge entertaining the suit. Two points were agitated before the Division Bench. Relying upon a Full Bench decision of this Court in University of Delhi Vs. Hafiz Mohd. Said Air 1972 Del 104, on one point agitated before it, the Division Bench held that the appeal was not maintainable. On the second point agitated before the Division Bench in regard to the nature of the jurisdiction the Company court exercises while considering petitions u/s 155 of the Act, the Division Bench held that:-

" REFERENCE to Section 155 of the Companies Act is not helpful. It is well-established by decisions there under that the scope of section 155 is restricted to a summary inquiry. If, on the other hand, the very title to the holding of shares is challenged then the company judge will not inquire into such a dispute u/s 155. For such inquiry a civil suit is the proper remedy. It is only the rights and

liabilities which arise out of the provisions of the Companies Act which can be inquired into in a company petition."

(16) While dealing with the aforesaid judgment Mahindar Narain. J. opines:-

" IN that case, the Division Bench relied upon the judgment and order of a Full Bench of this court in University of Delhi and Another Vs. Hafiz Mohd. Said and Others, as to what the meaning of the word "judgment" was. The views expressed in Public Trustee Vs. Rajeshwar Tyagi, 1973 (43) Comp Cas 371 (Del) are primarily based upon the views of the Full Bench of this court in University of Delhi and Another Vs. Hafiz Mohd. Said and Others, . The judgment of the Full Bench of this court in University of Delhi and Another Vs. Hafiz Mohd. Said and Others, was overruled by the Supreme Court. In any event it is not good law in view of Shah Babulal Khimji Vs. Jayaben D. Kania and Another, ."

(17) The learned single Judge did not say anything on the second point considered by the Division Bench. The fact that the Division Bench had relied upon a Full Bench of the court which had been overruled by the Supreme Court, in our opinion, was not of any relevance while dealing with the scope and ambit of power u/s 155 of the Act and this we say with great respect to learned single Judge.

(18) In Harnam Singh's case an earlier judgment of a single Judge of this court in the case of Delhi Cloth and General Mills Co.Ltd (Supra) was not followed for the same reasons which weighed with learned single Judge for not following the Division Bench judgment in the case of Punjab Distilling Industries Ltd. For reasons as noticed by us hereinbefore while dealing with the case of Punjab Distilling Industries Ltd, we, with great respect are unable to agree with the reasoning of learned single Judge.

(19) Mr. Satish Chandra, learned counsel for the petitioner, in support of the contention that complicated and disputed questions of fact requiring detailed investigation and examination of oral and documentary evidence, can be gone into by a Company Judge in a petition u/s 155 of the Act has placed strong reliance on a single bench judgment of Gujrat High Court in Gulabrai Kalidas Naik Vs. Laxmidas Lallubhai Patel, 1978(48) Comp Cas 438. The said judgment has also been cited with approval by Mahindar Narain.J. in Harnam Singh's case. That judgment was delivered in a petition u/s 155 of the Act. Certain observations made in that case do lend support to the contention of Mr. Chandra .Relying upon the language of section 155 D.A.Desai,J. (as his Lordship then was) held that section 155 does not indicate that jurisdiction conferred by the section is one hedged in with a condition that it can only be exercised when relief can be granted in a summary manner. The learned Judge has observed that:-

"Abare perusal of section 155 on its own language does not indicate that jurisdiction conferred by the section is one hedged in with a condition that it can only be exercised when relief can be granted in a summary manner. There is

nothing in the language of Section 155 which excludes decision of question of title to shares that may arise in an application for rectification of register. On the contrary, the language of sub section (3) makes it abundantly clear that in such application, court has power to decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register and the court would have further jurisdiction to decide the question of title even when it arises between members or alleged members or between members or alleged members on the one hand and the company on the other. Sub clause (b) of Sub Section (3) further widens the jurisdiction of the court u/s 155 when it permits or enables the court generally to decide any question which it is necessary or expedient to decide in connection with the application for rectification."

(20) The main question for consideration, however, is not about the wide powers of court under section 155 of the Act. The main question is whether remedy provided by this section is summary or not and whether the remedy of suit is barred. We would assume that the power conferred by section 155 on the courts is very wide but at the same time it has to be kept in view that it is a discretionary power. The question, Therefore, is whether this wide though discretionary power, is summary in nature or not and whether the remedy of suit would be barred. In Gujrat judgment also it does not seem to have been held that the suit would be barred as seen from the following observations:-

" THEREFORE, both on principle and on authority, it becomes crystal clear that a petition u/s 155 cannot straightaway be disposed of by merely saying that as complex and complicated questions of title are raised, the matter ought to be decided by way of a suit and the party ought to be relegated to a suit. At best it can be said the question is addressed to the discretion of the court and if the court exercises discretion one way, namely, to undertake to hear the petition, its decision cannot be said to be one without jurisdiction."

(21) The object of section 155, in our view, is to provide remedy in non controversial matters or in matters where a quick decision is necessary and can be rendered in order to obviate irreparable injury to a party. Section 155, is ordinarily not intended for settling controversies necessitating a regular investigation and in such cases the Company Court can decline to entertain petitions in exercise of its discretionary power and say that since serious disputes are involved, the proper forum for their adjudication is a civil court. Section 155(3) only shows that question relating to title can also be examined by the Company court but that is also possible without detailed examination of complicated questions of fact and law, requiring extensive oral and documentary evidence and it cannot be inferred from Section 155(3) that the remedy is not summary. It would depend on facts of each case. It is not necessary in every case where the question relating to title may be involved that there has to be a detailed examination and determination of oral and documentary evidence. The question is not whether the Company court has no jurisdiction but is that can the

court in its discretion decline to exercise it where disputed and complicated questions are involved requiring examination of extensive oral and documentary evidence. We do not think that a respondent would be able to oust the jurisdiction of the Company Court by a mere assertion in the reply about fraud or forgery or want of consideration. In such a case the Company court can and certainly would examine whether the said assertion is being made only with a view to oust the jurisdiction of the company court or assertions are such which would require detailed examination of the evidence. In the former case the company court would proceed with the adjudication of a petition u/s 155. In the later case the Company court would be justified in exercise of its discretion to reject the petition and relegate the parties to a regular civil suit. It has to be borne in mind that the power to rectify the register of members is discretionary and so also the power to decide questions relating to title as is apparent from bare reading of sub section (3) of section 155 of the Act. We do not agree with the contention that jurisdiction of wide amplitude would be rendered fruitless and nugatory and purpose behind introducing section 155 would be defeated if it is held that the Company court exercises summary jurisdiction u/s 155 of the Act. Further, in our view, the procedure by which a party can come to court and file an application seeking rectification of register, by a petition and not summons for judgment, is not relevant for determining the nature of the jurisdiction the company court exercises. A long line of decisions has clinched the issue and in our view the matter is no more rest integra and is covered by the decision of the Supreme Court in the case of Public Passenger Services Ltd(Supra) holding that the court may refuse relief u/s 155 in exercise of the discretionary jurisdiction and relegate the parties to a suit where by reason of its complexity or otherwise the matter can be more conveniently decided in a suit. We may also notice two other judgments cited by learned counsel for the petitioner; one of Kerala High Court in Mathew Michael & Ors. Vs. Teekoy Rubbers (India) Ltd. , and another, reported in (1983) 54 Comp Cas 88 and other of Madras High Court in Mrs. E. V. Swaminathan Vs. K.M.M.A. Industries and Roadways Pvt. Ltd and others, reported in (1993) 76 Comp Cas 1. As both the decisions are primarily based on the judgment of Gujrat High Court, which has been discussed by us hereinbefore, it is not necessary to again separately deal with these cited decisions. In our view the law has been correctly laid down by this court in the case of Punjab Distilling Industries Ltd. (Supra). The contrary view expressed in Harnam Singh (supra) is not correct.

(22) CONCLUSIONS:

1)The jurisdiction exercised by the Company Court u/s 155 of the Act is discretionary and summary in nature. 2) In exercise of discretionary and summary jurisdiction the Company Court can decline to entertain petition involving disputed and complicated questions requiring examination of extensive oral and documentary evidence. 3) The remedy of suit for adjudication of disputes relating to title to shares is not barred.

(23) The reference is answered accordingly.