

(2003) 07 CAL CK 0048
In the Calcutta High Court
Case No : A.C.O. No. 76 of 1999

Bhagwati Developers Private Limited

APPELLANT

Vs

Peerless General Finance and Investment Company Limited
and Another

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Companies Act, 1956 — Section 10F, 111
Securities Contracts (Regulation) Act, 1956 — Section 13, 16

Citation : (2003) 3 CALLT 593 : (2005) 128 CompCas 444 : (2013) 3 CompLJ 257 : (2004) 51 SCL 204

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Utpal Bose, Aniruddha Chatterjee and P.K. Jhunjhunwala, for the Appellant; Sudipta Sarkar, Abhijit Chatterjee and D. Chaudhury, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mukherjee, J.—This is an appeal against judgment and order dated November 25, 1998 passed by the Company Law Board, Eastern Region Bench at Calcutta in Original Petition No. 15(111)/ERB/1995. The said appeal has been filed u/s 10F of the Companies Act, 1956.

2. When the appeal is taken up for hearing, Mr. Sudipta Sarkar, learned senior advocate, appearing on behalf of the respondent No. 1, submits that this appeal is barred by limitation. Mr. Sarkar argues that an aggrieved person can file an appeal u/s 10F of the said Act to the High Court within sixty days from the date of communication of the decision or order Of the Company Law Board to him; however, the said aggrieved person can obtain extension of time for filing the appeal for a further period not exceeding sixty days provided that he has been prevented by sufficient cause form filing the appeal within the said period of sixty days. Mr. Sarkar argues that the appellant got the certified copy of the order of the Company Law Board on November 27, 1998 and as such the present appeal,

which has been presented on May 14, 1999, has been filed out of time. Mr. Sarkar submits that the appellant failed to show sufficient cause for the late filing of the appeal.

3. Mr. Utpal Bose, learned advocate for the appellant, in reply, argues that the hearing of the case before the Company Law Board was concluded on August 25, 1998 and the Company Law Board reserved its judgment. As the appellant did not hear from the Company Law Board till third week of February 1999, the appellant sent a letter dated February 22, 1999 to the Bench Officer of the Eastern Region Bench of the Company Law Board. The said Bench Officer by a letter dated February 23, 1999 informed the learned advocate for the appellant that the case was disposed of by judgment and order dated November 25, 1998 and a copy of the said judgment and order had been sent to the learned advocate for the appellant under certificate of posting. The said letter dated February 23, 1999 was received by the learned advocate for the appellant on March 8, 1999 and on March 9, 1999 an application was filed for a certified copy of the said judgment and order. The learned advocate of the appellant, however, informed the Bench Officer concerned, in reply to his letter dated February 23, 1999, that the certified copy of the judgment and order, sent under certificate of posting, did not reach the learned advocate for the appellant. The appellant received the present certified copy on March 25, 1999 and the present appeal has been presented on May 14, 1999. Mr. Utpal Bose, therefore, submits that the appeal is not barred by limitation, but the same has been filed in time.

4. It is a matter of regret that an important document like a certified copy of the judgment and order of the Company Law Board could be sent by the Bench Officer concerned under certificate of posting, particularly, when u/s 10F of the said Act the limitation to prefer appeal runs from the date of communication of the decision or the order of the Company Law Board to the aggrieved person. Such a valuable right cannot be allowed to be frustrated due to omissions on the part of the office of the Company Law Board. The appellant contested the matter in the tribunal below seriously and I refuse, therefore, to accept the allegation that in spite of knowledge of the order, the appellant did not prefer the appeal in time. It is admitted before me that the judgment was not pronounced in the open Court. I accept the contentions of Mr. Utpal Bose that the learned advocate for the appellant did not receive the certified copy of the judgment and order sent under certificate of posting. In any event, the statements made in paragraph 29 onwards of the application and the annexures, which have been marked collectively as annexure "F" to the application filed before this Court, clearly establish sufficient cause for extension of time for filing the appeal. I, therefore, condone the delay, if any, and propose to deal with the appeal on merits.

5. The brief fact leading to filing of this appeal before this Court are summarised as under:

Tuhin Kanti Ghosh (hereinafter referred to as Tuhin") approached Bhagwati

Developers Private Limited, formerly known as Lodha Services Private Limited (hereinafter referred to as "Bhagwati") for a loan of Rs. 38,83,000/- (Rupees thirty eight lakh eighty three thousand) only for purchasing 3530 (three thousand five hundred thirty) equity shares in the Peerless General Finance and Investment Company Limited (hereinafter referred to as "Peerless").

6. On July 25, 1986 Bhagwati advanced Rs. 38,83,000/- (Rupees thirty eight lakh eighty three thousand) only as loan to Tuhin.

7. On November 10, 1986 Bhagwati and Tuhin entered into a formal agreement in respect of the said loan and Tuhin assured to repay the loan on or before December 31, 1991.

8. On October 30, 1987 Tuhin agreed to transfer the said 3530 (three thousand five hundred thirty) shares of Peerless to Bhagwati by way of repayment of the aforesaid loan. Consequently, Tuhin handed over the shares scrips as also transfer deeds for doing the needful by Bhagwati. It was stated by Tuhin in his letter dated October 30, 1987 that Bhagwati would be entitled to all the benefits, that is, the dividends, bonus shares etc. accrued in respect of the said shares.

9. On December 28, 1987 Bhagwati wrote a letter to Tuhin contending that the transfer deeds were not properly filled in and executed and asked Tuhin to put his signatures in the fresh transfer deeds and to return them to Bhagwati. Bhagwati, also, asked Tuhin to send the bonus shares and the dividends received by Tuhin from Peerless.

10. In the meantime Peerless declared bonus shares in the ratio of 1 : 1 and being the registered shareholder Tuhin received further 3530 (three thousand five hundred thirty) bonus shares.

11. As Bhagwati did not hear anything from Tuhin, Bhagwati on July 6, 1988 asked Tuhin to furnish fresh transfer deeds in respect of the total shares, namely, 7060 (seven thousand sixty) shares.

12. In 1991 Peerless declared further bonus shares in the ration of 1 : 1 and Tuhin being the registered shareholders was allotted further 7060 (seven thousand sixty) bonus shares.

13. On May 29, 1991 Bhagwati filed a suit against Tuhin and Peerless being No. 282 of 1991 in the Court of a learned Civil Judge at Allahabad and obtain an ad interim order of injunction restraining Tuhin from claiming any right, title and interest in respect of those 14120 (fourteen thousand one hundred twenty) shares of Peerless.

14. On November 21, 1994 Bhagwati and Tuhin entered into" an agreement wherein Tuhin admitted that he has lawfully sold the shares to Bhagwati and Bhagwati has been entitled to bonus shares declared by Peerless in 1997-1998. The relevant Clauses of the said agreement are as under:

"1.1. It recorded the TKG has lawfully sold the original shares to BDPL on 30th

October, 1987 and thereupon TKG ceased to have any beneficial interest in the original shares or any part or portion thereof subject to the other provisions hereof."

" 1.3. It is further recorded that in view of the sale of the said original shares, the loan granted by BDPL to TKG on the terms as recorded in the agreement dated 10.11.86 shall be deemed to be repaid and adjusted and nothing remains due and payable by TKG to BDPL either on account of Principal or interest thereon."

"1.5. It is declared by the parties that the original shares are lying with BDPL. It is further declared by TKG that the first bonus shares are lying with him and second bonus shares have not been delivered by Peerless to TKG in view of injunction order in the Civil Suit. It is also declared by TKG that he has not obtained any duplicate certificate of the said shares from Peerless. It is therefore represented by TKG that as a Registered holder of the said shares he has not created any charge, encumbrances nor pledged, sold or entered into any agreement for transfer of rights of the original shares, first bonus shares and second bonus shares or any part or portion thereof in favour of any other person or persons. If however BDPL has created any charge or pledge, attachment, lien or dealt with or encumbered the original shares in any way TKG shall not be liable or held responsible for the same."

"2.1. Notwithstanding anything contained anywhere in this document, it is agreed that TKG shall be entitled to retain as absolute owner the dividend on the entire shares up to the accounting year 1989-90 amounting to Rs. 8,64,850/- (Rupees Eight Lac Sixty-four thousand eight hundred fifty only) (including the benefit of the TDS deducted) as part of consideration for the settlement and which has been received and encashed by him save and except a sum of Rs. 28,522.40p. (Rupees Twenty-eight thousand five hundred twenty-two and paise forty only) which has been made over by TKG to BPL. Save as aforesaid, TKG shall not be entitled to any other claim on account of dividend in respect of the entire share nor shall BDPL claim any right, title or interest in the dividend already received and so retained by TKG."

"3.3. TKG shall co-operate with BDPL and execute an irrevocable Power of Attorney in favour of nominees of BDPL and also execute all other documents, transfer deeds as may be required by BDPL to enable BDPL to get the entire shares transferred and registered in its name or in the name of its nominees and/or assigns and also to exercise all rights and powers in respect of the entire shares and all entitlements thereon including Dividend, Bonus Shares, Right Shares, Debentures, Warrants etc. in the name and on behalf of TKG subject to the conditions that all costs and expenses in connection therewith shall be borne and paid by BDPL or its nominees and/or assigns and TKG shall have no liability financial or otherwise."

"5. In further consideration of the aforesaid, BDPL has this day paid a further

sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) to TKG by pay order No. 397744 dtd. 21.11.1994 drawn on Federal Bank, 8, C.R. Avenue, Calcutta in full and final settlement of all its right, title, interest and claim in the matter, the receipt whereof, TKG hereby admits and acknowledges as also by the Memo of Consideration recited hereunder."

15. Consequently, on November 28, 1994 the learned Civil Judge at Allahabad disposed of the said suit on compromise recording the aforesaid terms as agreed by and between Tuhin and Bhagwati.

16. On December 12, 1994 Bhagwati lodged the transfer deeds in respect of the said 14120 (fourteen thousand one hundred twenty) shares with Peerless for transfer.

17. On February 8, 1995 Peerless refused to register the said shares in favour of Bhagwati, inter alia, on the ground that the said transfer of shares by Tuhin in favour of Bhagwati was in violation of the provisions of the Securities Contract (Regulation) Act, 1956 since the contract for sale of shares was not on spot delivery basis. It was, further, stated that the signatures of Tuhin differed from the signatures on the record of Peerless and the stamps affixed on the instruments of transfer had not been cancelled.

18. On February 14, 1995 Bhagwati re-lodged the shares for transfer and registration. As Peerless did not register those shares in the name of Bhagwati, Bhagwati filed an application u/s 111 of the Companies Act, 1956 before the Company Law Board, Eastern Region Bench.

19. By the order impugned dated August 25, 1998 the Company Law Board dismissed the petition holding, inter alia, that the transfer of the shares in favour of Bhagwati was against the provision of the Securities Contract (Regulation) Act, 1956 relating to spot delivery contract and as such was illegal in terms of Sections 13 and 16 of the said Act. Therefore, Peerless was within its power to refuse registration of transfer.

20. Being aggrieved Bhagwati has come up with this appeal u/s 10F of the Companies Act, 1956.

21. Any Person aggrieved by an order or decision of the Company Law Board is entitled to maintain an appeal in the High Court u/s 10F of the Company Act, 1956 on any question of law arising out of such order. Therefore, the jurisdiction of the High Court in an appeal arising out of an order passed by Company Law Board is confined to the determination of any question of law arising out of such order. As a consequence thereof a finding of fact recorded by the Company Law Board is final and cannot be reversed by the High Court. .

22. The only point that was raised before the Company Law Board was that the transaction between Bhagwati and Tuhin was a case of spot delivery contract. Bhagwati heavily relied upon the contract between Bhagwati and Tuhin dated October 30, 1987 by which Tuhin agreed to transfer the said shares to Bhagwati

on account of repayment of loan received by Tuhin as also the agreement between Tuhin and Bhagwati dated November 21, 1994.

23. I have quoted herein above the relevant terms from the said agreement dated November 21, 1994. It appears to me from the said agreement dated November 21, 1994, on the basis of which a compromise decree was passed by Allahabad Court, that although Tuhin sold the said 3530 (three thousand five hundred thirty) shares of Peerless in favour of Bhagwati on October 30, 1987, but a part of consideration therefore has been passed only on November 21, 1994. It has been recorded in the said agreement that in further consideration of the aforesaid Bhagwati paid a further sum of Rs. 10,00,000/- (Rupees ten lakh) only on November 21, 1994 in full and final settlement of all its right, title and interest and claim in the matter. The said payment was admitted and acknowledged by Tuhin. Moreover, under the said agreement Tuhin retained as absolute owner the dividends paid in respect of the said shares up-to the accounting year 1989-90 as a part of consideration.

24. In the aforementioned background it is necessary, in my view, to note the findings of fact arrived at by the Company Law Board. The Company Law Board found, as findings of fact, that the provisions of the Securities Contract (Regulation) Act, 1956 would be applicable to public limited company even though it's shares might not be listed on any recognised stock exchange. It was, further, held that it was obvious that the part of consideration for the sale of shares passed on much after the date on which the sale of shares took place on October 30, 1987. The payment of Rs. 10,00,000/- (Rupees ten lakh) only by Bhagwati to Tuhin on November 21, 1994 was a part of consideration for the sale of the said shares and, further, it was agreed between the Bhagwati and Tuhin that Tuhin would be entitled to retain as absolute owner of the dividends on the entire shares including the bonus shares up to the accounting year 1989-90 as part of consideration. The transaction did not satisfy the definition of a spot delivery contract since part of the consideration passed on much after the transfer of shares on October 30, 1987. Moreover, the shares transfer forms were all dated November 21, 1994, that is, on the date on which the consideration of Rs. 10,00,000/- (Rupees ten lakh) only passed from the Bhagwati to Tuhin. Therefore, the transfer of shares in question was hit by the provisions of the Sections 13 and 16 of the Securities Contract (Regulation) Act, 1956 and, therefore, was illegal, void and a nullity.

25. In view of the language of Section 10F of the Companies Act, 1956 appeal lies to the High Court only on a question of a law arising from any decision or order of the Company Law Board. The High Court, therefore, has no jurisdiction to reverse any conclusion of fact except to see if there is material evidence on record to justify such findings and that whether proper legal tests have been correctly applied. Even a finding of fact cannot be reversed if there is possibility of a different conclusion on evidence and, in such circumstances, the findings of fact should be accepted without further enquiry. The Company Law Board has

considered all the materials placed before it and, thereafter, arrived at the findings of fact that the impugned transactions is hit by the provisions of the Securities Contract (Regulation) Act. 1956 and the guidelines issued by the Government of India. The Company Law Board correctly formulated the points for determination before it and the decision of the Company Law Board cannot be termed as perverse in the sense that no normal person would have arrived at. The Company Law Board found, as findings of fact, that the consideration for transfer of shares included Rs. 10,00,000/- (Rupees ten lakh) only paid by Bhagwati to Tuhin on November 21, 1994. The said findings is sustainable from the reasoning given by the Company Law Board and, therefore, cannot be interfered with in this appeal.

I, therefore, do not find any merit in this appeal. The appeal is, accordingly, dismissed.

I direct the parties to bear their respective costs in this appeal.

Xerox certified copy of this judgment and order, if applied for, is to be supplied to the applicants within seven days from the date of putting in the requisition for the same.