

(1995) 12 DEL CK 0005

In the Delhi High Court

Case No : Interim Application Nos.7749 and 7750 of 1994 and 2928 of 1995 and Suit No. 2488 of 1993

Bharati Chadha

APPELLANT

Vs

Ranbaxy Laboratories Ltd.

RESPONDENT

Date of Decision : 01-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Companies Act, 1956 — Section 108

Citation : (1996) 1 AD 120 : (1996) 61 DLT 146 : (1996) 36 DRJ 225

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : J.P. Singh, Mukul Rohatagi and Amit Prabhat, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) This order will dispose of application of the plaintiff under Order 39 Rules 1 & 2 Civil Procedure Code, the application of the defendant under Order 39 Rule 4 CPC as well as the application of the defendant u/s 10 of the CPC.

(2) The short point which arises for consideration in the present suit is whether a person who has transferred the shares in a joint stock company to another person, is a trustee of the transferee in respect of the dividends, bonus shares and the right shares which may be issued by the company before the transferee applies for transfer of shares in his name and as to whether the principle of equity which makes the transferor a constructive trustee extends even to a case where a transferee does not take active interest to get on to the register.

(3) Before dealing with this question, I may give the facts in short which have resulted in the filing of the present suit.

(4) The plaintiff was holding 6,000 or so equity shares of defendant No. 1 company and in or about September/October, 1991 he sold 2,950 shares out of the aforesaid 6,000 shares to a stock broker, namely, Bhutani Associates -

defendant No.2. The said shares were not lodged for transfer by the transferee. In or about August, 1992 defendant No.3 claiming himself to have purchased 800 equity shares out of the above from a stock broker in Calcutta, namely, V.G.K. Share Stock Broking Services Private Limited lodged them with the defendant No.1 company for transfer in his name. Before the said shares had been lodged for transfer, defendant No.1 company had issued bonus shares as well as offered right shares in 1991 against the shares held by the plaintiff. The said bonus and right shares were offered to the plaintiff against the total 6,000 shares as he was the recorded holder of the said shares with defendant No.1. Right shares were applied and paid for by the plaintiff and the same were, accordingly, issued in his name. On the basis of further holding of the plaintiffs having been augmented by purchase of the right shares, further bonus shares were issued by defendant No.1. As on date, the plaintiffs are stated to be the holders of 3,360 shares of defendant No.1, for consideration, as recorded in the register of members of the said defendant. On 7th October, 1993 defendant No.1 again offered right shares and when the plaintiff is alleged to have applied for the right issue in accordance with their holdings with defendant No.1, they learnt that at the behest of defendant No.3 the plaintiffs were being sought to be allegedly, deprived of the right issue with respect to 1,520 shares which stood registered in their names with defendant No.1. It is stated in the plaint that plaintiffs have come to know that on 1st November, 1993 defendant No.3 had obtained some order from the City Civil Court, Calcutta as a result of which defendant No. 1 was not issuing the rights application forms to the plaintiffs in respect of the aforesaid 1,520 shares. It is stated that the plaintiffs have not been served with any orders from the Court at Calcutta. The contention of the plaintiff is that in terms of Section 20 of the Companies Act read with Section 27 of the Securities Contracts (Regulation) Act 1956, the plaintiffs were entitled to the dividend as well as further shares offered by defendant No. 1, as on the date of entitlement their names were recorded as holders of those shares in the register of members. It is stated that claim of defendant No.3 was untenable. The plaintiffs have, Therefore, claimed a decree for declaration that the plaintiffs were entitled to the rights issue offered by defendant No. I on the basis of the holding duly recorded in the register of members including 1,520 shares allotted vide folio No.29055.

(5) On 3rd November, 1993 ex parte order of injunction was granted restraining defendant No.1 from allotting right shares in respect of the aforesaid 1,520 shares to anyone. Defendant No.3 after service of summons upon him, has filed an application under Order 39 Rule 4 CPC for vacating the ex parte order of stay as well an application u/s 10 of the CPC for stay of this suit.

(6) The case of defendant No.3 as set up in the application u/s 10 of the CPC is that prior to the Filing of this suit, defendant No.3 had instituted a title Suit No.1952/93 before the 5th Judge of City Civil Court at Calcutta against the plaintiff and an ad-interim order of injunction was passed by the Court restraining defendant No.1 from transferring 1,899 equity shares described in the

schedule to any person and defendant No.1 was further restrained from issuing any right share to defendants 2 to 5 in the said suit till the hearing of the injunction application. The shares in respect of which a restraint order was passed by the Court at Calcutta included 1,520 shares held by the plaintiffs under folio No.29055. The further stand of defendant No.3 is that the plaintiffs have duly entered appearance in the said title suit at Calcutta and they had full knowledge of the said suit prior to the filing of this suit. Order sheet of title S.No-1952/93 has been placed on record which shows that on 7th December, 1993 the present plaintiff had entered appearance in the Court at Calcutta and had filed an application under Order 7 Rule 10 of the Code of Civil Procedure. The relief claimed in the said suit is that a decree for declaration be passed to the effect that defendant No.3 was the owner of 1,899 equity shares of defendant No.1 which included 1,520 shares which are the subject-matter of the present suit. The said suit was filed on or about 6th September, 1993 and an interim order was passed on 7th September, 1993. The present suit was filed on 2nd November, 1993.

(7) The contention in the application under Order 39 Rule 4 CPC is that the plaintiff in this case had full knowledge of the pendency of the title suit in the Court at Calcutta and as the plaintiff has deliberately concealed the fact of the issuance of an order of injunction in the said suit, they are not entitled to the equitable relief of injunction from this Court. It is stated that ex parte order has been obtained by the plaintiffs on 4th November, 1993 by concealment of material particulars from the Court and by practicing fraud. It is also stated that the suit as well as the application contains irrelevant, misleading and confusing statements and the plaintiffs had no right to file or maintain the application for injunction nor the application has allegedly disclosed any case warranted by law. The suit as well as application is stated to be a hit by the doctrine of waiver estoppel and acquiescence and it is, Therefore, prayed that ex parte order of injunction dated 4th November, 1993 be vacated.

(8) From the perusal of the copy of the plaint of the suit filed in Calcutta Court, I find that out of the total 1,520 disputed shares, 533 were issued as bonus shares in 1991 against 800 shares which had been purchased by defendant No.3. 480 shares were issued as right shares in 1991. 507 bonus shares were issued in the year 1993 against the above 533 bonus shares and 480 right shares issued in the name of plaintiff in 1991. The main contention of learned counsel for the plaintiff is that u/s 41 of the Companies Act "Every person who has agreed to become a member of the company and whose name is entered in the register of members, shall be a member of the company". It is submitted that the definition of "member", "holder of the share" and "shareholder" are synonymous and there is no difference in any of the said definitions. He refers to a Supreme Court decision reported as Balkrishan Gupta and Others Vs. Swadeshi Polytex Limited and Others 1985 (58) Comp Cas 563, to rely upon his submission that the words "member", "shareholder" and "holder of share" are synonymous. It is contended that in case the person, to whom 800 shares were sold, has chosen not to lodge

the said shares for transfer with the company, he cannot later on complain that any benefit which has been derived by the transferor on account of his continuing to be a recorded holder of the said transferred shares, should be given to him on account of the transferor allegedly being in the position of a trustee for him as the principle of equity will not be extended in a case where the transferee has not taken active steps for transfer of shares. Reliance has been placed upon a judgment of Hon"ble the Supreme Court of India reported as Life Insurance Corporation of India Vs. Escorts Limited 1986 (1) Comp L J 91, wherein at page 138-139 it has been held as under : -

"INDEED until the transfer is registered in the books of the company; the person whose name is found in the register alone is entitled to receive the dividends, notwithstanding that he has already parted with his interest in the shares. However, on the transfer of shares, the transferee becomes the owner of the beneficial interest though the legal title continues with the transferor. The relationship of trustee and "cestui que trust" is established and the transferor is bound to comply with all the reasonable directions that the transferee may give. He also becomes a trustee of the dividends as also of the right to vote. The right of the transferee to get on the register must be exercised with due diligence and the principle of equity which makes the transferor a constructive trustee does not extend to a case where a transferee takes no active interest to get on the register."

(9) In the present case, though the shares were sold in September/October, 1991, an application for transfer was made in 1992. By a letter dated 27th February, 1993 defendant No.3 is stated to have written that it was by oversight and inadvertence that the shares could not be lodged for transfer. The contention, Therefore, is that the plaintiff being the recorded holder of the shares, became entitled to not only .the bonus shares but also the right shares which have been given by the company and it was not his obligation to apply for the said shares for and on behalf of defendant No.3 unless the said defendant had specifically required him to apply for such right shares.

(10) The argument of learned counsel for the defendant is that plaintiff being aware of the pendency of the suit in Calcutta and also of the order of injunction passed therein, was duty bound to disclose particulars of the said suit in the present plaint. Though appearance have been put in by the plaintiff in the Court at Calcutta for the first time on 7th December, 1993, it is submitted by defendant No.3 that plaintiff was aware of the said order, as by letter dated 1st October, 1993 defendant No.1 company had informed the plaintiff about the said order of injunction and had also enclosed the order of injunction Along with the said letter to the plaintiff. The plaintiff has himself annexed the said letter dated 1st October, 1993 Along with the suit. What has been stated in the plaint about the pendency of the suit in Calcutta is mentioned in paragraph 8 of the plaint which reads as under : -

"THAT the plaintiffs have now been informed on 1.11.1993 that the defendant

No.3 has obtained some orders from the city civil Court at Calcutta on account of which the defendant No.1 is reluctant to issue the rights application forms to the plaintiffs in respect of 1520 shares. The plaintiffs have not been served with any orders from the Court and they understand that the Court are closed in Calcutta for vacations till 16th November, 1993."

(11) It is also the contention of defendant No.3 that the said defendant had lodged a caveat in this Court on 6th October, 1993 which was received by the plaintiff on 7th October, 1993. Along with the application under Order 39 Rule 4 Cpc, defendant No.3 has annexed a copy of the caveat which shows that the said caveat was lodged on 6th October, 1993. Photocopy of the postal receipts indicating that the caveat had been sent to the plaintiffs and defendant No.1 by registered post has also been enclosed as Annexure A-1. It is alleged that the caveat was duly received by the plaintiff as well as defendant No.1 as was evident from the acknowledgement cards which have been duly signed by the defendants and appears as annexure to the said application. In spite of the caveat having been received by the plaintiffs on 7th October, 1993, they did not disclose the same to their counsel when the suit was filed and instead a note has been given that no caveat has been received from any of the defendants. It is contended by Mr. Rohtagi that the plaintiffs have deliberately tried to mislead this Court by stating that no caveat has been received whereas they had actually received the caveat which had been lodged in this Court on 6th October, 1993.

(12) I find that the plaintiff has, in fact, in paragraph 8 of the plaint stated that he has been informed on 1st November, 1993 that some orders have been passed by the City Civil Courts at Calcutta, whereby defendant No.1 was not issued right application "forms to the plaintiff. The said information is stated to have been received by the plaintiff on 1st November, 1993. The contention of the defendant No.3 is that this statement, on the face of it, is incorrect and false inasmuch as the defendant has himself placed on record a letter dated 1st October, 1993 written by defendant No.1 to her informing her that in terms of an order of injunction passed by Courts at Calcutta, the company will not be in a position to release the forms for rights entitlement. During arguments, it was stated by the counsel for the plaintiff that date 1st November, 1993 has been wrongly mentioned in the plaint and in fact it was by letter dated 1st October, 1993 that he had come to know about the stay granted by the Calcutta Court and he has already mentioned about the same in the plaint. The plaintiff has also denied the receipt of caveat and it has been stated by him in reply to the application of the defendant under Order 39 Rule 4 that no intimation of the caveat alleged to have been lodged by defendant No.3 was received by him. He has also denied the service of the caveat upon him and it is stated that no such caveat was received vide acknowledgement card which has been placed on record by the defendant No.3.

(13) On the basis of the pleadings and documents on record, it is not possible for me to come to any Finding at this stage as to whether the caveat had been

received by the plaintiff. The plaintiff had not in any case concealed from the Court the factum of the order passed by the Calcutta Court, as is evident from paragraph 8 of the plaint. I am, Therefore, not inclined to dismiss the application only on the ground that the plaintiff has not come to the Court with clean hands or has suppressed material facts from the Court.

(14) MR. ROHTAGI has referred to the judgments of Hon''ble Supreme Court in the case reported as R. Mathalone Vs. Bombay Life Assurance Company Limited 1954 (24) Comp Cas 1, and Vasudev Ramchandra Shelat Vs. Pranalal Jayanand Thakar and Others 1975 (45) Comp Cas 43 and judgment of the Madras High Court in the case reported as R. Subba Naidu Vs. Commissioner of Gift-Tax, Madras 1969 (39) Comp Cas 766. The contention of Mr. Rohtagi is that plaintiff was holding the shares in trust and he is, Therefore, liable to account for the same. The contention is that it is obligatory upon the plaintiffs to not only transfer the shares which had been issued to them either as bonus shares or right shares but also return the dividend which has been received by them against the said shares.

(15) The transferor of the shares is in equity a trustee in regard to the shares sold until the name of the transferee is brought on the register of shareholders. However, can this principle of equity be extended even in the case of a transferee who was not taken active steps for transfer of shares for a considerable long time? The question for consideration is also as to whether it was obligatory on the part of the transferor to apply for right shares for and on behalf of the transferee. Mr.Rohtagi has placed reliance upon R. Mathalone Vs. Bombay Life Assurance Company (Supra), in support of his contention and states that if the transferor of his own volition has obtained the new shares pertaining to the shares sold, transferee would be entitled to call upon him to hand over those shares on payment of the amount spent by him. The contention, Therefore, is that as the transferor has obtained shares of his own volition in the defendant No.1 company, he is bound to hand over the same on payment of amount spent by him to defendant No.3. According to Mr. Rohtagi, Therefore, there is no case made out by the plaintiff for the grant of any relief in the application for injunction.

(16) In Life Insurance Corporation Vs. Escorts (Supra}, it was been held that on transfer of shares, the transferee becomes the owner of beneficial interest and relationship of trustee and "CESTI Que TRUST" is established and the transferor is bound to comply with all the reasonable directions that the transferee may give and he also becomes a trustee of the dividends as also of the right to vote. The right of the transferee "to get on the register must be exercised with due diligence and the principle of equity which makes the transferor a constructive trustee does not extend to a case where a transferee takes no active interest" to get on the register".

(17) On a conjoint reading of both the judgments mentioned above, it is clear that though the transferor, on transfer of the shares, is a trustee of the

transferee till such time the transferee takes steps to get on the register of the company. However, the transferor is not obliged to apply for right shares for and on behalf of the transferee. In the case in hand, there are two types of shares. One type of shares are those which have been given as bonus shares and the others are those which have been purchased by the transferor as right shares against the shares which have been sold by him to defendant No.3. In case, the plaintiff had not applied for right shares, the company would not have issued such shares in his name, and consequently, the defendant No.3 would not have been entitled to any such shares even assuming the plaintiff to be a trustee of the said defendant. However, in respect of the bonus shares the plaintiff has not done anything for obtaining them and the company had issued those bonus shares to the plaintiff against the shares sold to defendant No.3 as she continued to be the recorded holder in the books of the defendant No.1.

(18) In my opinion, the plaintiff will be a trustee at least in respect of those shares which have been issued as bonus shares by the company in the name of the plaintiff against the shares which had already been transferred by him to defendant No.3. Prima facie, I am of the opinion that plaintiff does not have any right to retain the said shares "and claim any right therein and, consequently, he will also not be entitled to claim any right shares which may be issued by the company against the said bonus shares. Out of the total shares, in the first instance, the Company had issued 533 bonus shares in 1991 and 480 right shares against 800 shares which had been sold by the plaintiff and which have ultimately come in the hands of defendant No.3. Against these 1013 shares, the company had again issued 507 bonus shares, probably, in the ratio of 2 : 1, meaning thereby, one bonus shares against two shares held by the holder of the shares. These 507 shares which have been issued as bonus shares in 1993 are against both the right shares which had been subscribed by the plaintiff in 1991 as well as the bonus shares which had been issued by the company on 1991. Taking this discussion to its logical end that the plaintiff did not have any right to retain the bonus shares, the plaintiff will also not be entitled to further bonus shares which have been issued against the initial 533 bonus shares. As per the ratio mentioned above, the company would have issued 267 bonus shares in 1993 against 533 bonus shares issued in 1991, making a total of 800 bonus shares issued against those 800 shares which had been sold by the plaintiff.

(19) I am, Therefore, prima facie, of the opinion that the plaintiff does not have any right to retain these 800 shares with him and he will not be entitled to any injunction at least in respect of these 800 shares.

(20) Now, coming to the remaining 720 shares, I feel that at this stage, it will not be proper to issue a direction to defendant No.1 to issue the right application forms in respect of the said shares to the plaintiff. In case this relief is granted, it will virtually amount to decreeing the suit in so far as it relates to 720 shares. Moreover, there is already a stay granted by the Courts at Calcutta and in view of the said stay continuing, I am not inclined to grant any relief to the plaintiff in

respect of the said shares. I will consider the question to grant or not to grant any relief only after the decision of stay application by the Courts at Calcutta.

(21) With these observations, both the applications stand disposed of. I.A.No-7750/94

(22) I have already mentioned above that the defendant No.3 has filed a suit against the plaintiff as well as defendant No.1 in Calcutta Courts for a declaration that the plaintiff is the owner of 1,899 equity shares of defendant No.1, as mentioned in paragraph 12 of the plaint, which include 1,520 shares which are subject matter in the present case". In the said suit the Court at Calcutta had granted an interim stay restraining defendant No.1 from transferring 1,899 equity shares and also from issuing any right shares to defendants 2 to 5 in that case, which include the present plaintiff, till the hearing of the injunction application. It is not disputed that the matter in controversy in the suit at Calcutta is the same as the controversy in the present case. The only objection taken by the plaintiff is that the Courts at Calcutta have no jurisdiction to try the suit and, Therefore, the present suit is not liable to be stayed.

(23) I am not inclined to decide this question as to whether the Courts at Calcutta have the jurisdiction to decide that suit as it is for that Court to decide that issue. For the application of Section 10 of the Code of Civil Procedure, the following conditions must be satisfied :-

(A)The matter in issue should be substantially the same in the two suits.

(B)The previously instituted suit should be pending in a Court having jurisdiction to grant relief claimed.

(C)The two suits should be between the same parties or through their representatives and these parties should be litigating in the two suits under the same title.

(24) In my opinion, the words "having jurisdiction to grant the relief occurring in Section 10 of the CPC does not have any reference to the territorial jurisdiction of the Court. It only means that the Court where the previously instituted suit is pending should not have the inherent lack of jurisdiction to decide that suit.

(25) The basic test as to whether the subsequently instituted suit should be stayed or not, is as to whether the judgment in one suit will operate as res judicata in the second suit and in case this test is satisfied, the subsequently instituted suit must be stayed. In the suit filed by defendant No.3 in Calcutta, the relief claimed is that the said defendant is the owner of 1,899 shares mentioned in the plaint which include 1,520 shares which are subject matter in the present case and it is further claimed that defendant No. 1 company has no right to issue any right shares against the said shares to the plaintiff, subject to the objection of territorial jurisdiction, the Calcutta Court has the jurisdiction to grant the relief claimed in that suit. In case the said relief is granted to defendant No.3 in the suit at Calcutta, in my opinion, the said finding will operate as res judicata as far

as the present suit is concerned.

(26) I am, Therefore, of the considered opinion that matters in issue in both the suits, one pending in Calcutta Courts and the other pending in this Court, are substantially the same because the crucial question which has to be decided is as to who is the owner of 1,520 shares which are subject matter in the present suit. I, Therefore, in the interest of justice, stay the present suit till the disposal of the suit pending in the Courts at Calcutta.

(27) The application is, accordingly, disposed of.