
(2000) 07 AP CK 0018

In the Andhra Pradesh High Court

Case No : AAO No's. 2614 and 2615 of 1999

Chowgule Matrix Hobs Ltd., Patancheru

APPELLANT

Vs

Chowgule and Co. (Hind) Pvt., Ltd., Mumbai and others

RESPONDENT

Date of Decision : 24-07-2000

Acts Referred:

Companies Act, 1956 — Section 108, 113, 206, 82
Constitution of India, 1950 — Article 54
Securities Contracts (Regulation) Act, 1956 — Section 27
Trusts Act, 1882 — Section 94

Citation : (2000) 5 ALD 332 : (2000) 5 ALT 776 : (2003) 115 CompCas 222

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : Mr. Milind G. Gokhale, for the Appellant; M/s. C. Kodandaram and M.S. Ramachandra Rao, for the Respondent

Judgement

1. These two appeals are at the instance of the plaintiff filed against the dismissal of the applications in IA Nos.59 and 60 of 1999 in OS No.6 of 1999 on the file of the Senior Civil Judge at Sangareddy, Medak, one seeking an injunction restraining the defendant No. 1 from exercising the rights of a member in respect of 1,31,930 shares of the plaintiff-company and other for appointment of a receiver in respect of the said shares with power to appoint the Managing Director of the company as the agent of the receiver.

2. For convenience sake, the parties are referred to as the plaintiff and the defendant, as arrayed in the lower Court.

3. In the suit, in which the present applications are filed, the plaintiff, a public limited company sought a declaration that the defendant No.1, ceased to be member of the plaintiff company in respect of 1,31,930 shares but continued to be a member only to the extent of 43,976 shares and consequent injunction from exercising any such rights of membership in respect of the said shares of the plaintiff company. As per the plaint, the plaintiff had paid up share capital of

Rs.88,26,670/-. The defendant No.1 is a private limited company.

4. The shares of a company being movable property, there has been a concluded sale by the defendant No.1 to the defendants 2 and 3 (who are father and son) on 29-3-1997 in respect of 1,31,930 shares, out of total shares of 1,75,906/- held under a valid instrument of transfer and lodged with the plaintiff company for transfer, but not entered in the register. Thus, the defendant No.1 ceased to be the member of the company to the extent of the sold shares except to the extent of being deemed holder. However, inspite of such sale, the defendant No.1 was doing acts which are detrimental to the interests of the company and filed earlier a false suit in OS No.59 of 1998 on the file of the same Court and managed to postpone the regular convening of the Annual General Meeting. Further, the defendant No.1 has been meeting financial institutions by making false representations and making wild allegations. The attempts of the defendants to take over the company were successfully thwarted by filing of another suit in OS No.344 of 1998 by the technical Director of the company. The defendant Nos.1 and 3 have already filed another suit in OS No.59 of 1998 in the same Court. Hence it necessitated seeking the said declaration and consequent injunction and pending the suit, these applications with the reiteration of same allegations came to be filed.

5. These applications were contested by the defendants on the ground that the company has no locus to file such suit nor any lien over the shares or disputes between the members, though admitting the transfer in between defendant No.1 and defendant Nos.2 and 3. In spite of the sold shares lodged with the company by the defendant No.1, it was not acted upon, though the plaintiff is a listed company and such inaction is also an offence under the provisions of the Companies Act. It was stated that as long as there is no proper registration of the transfer in the books of the plaintiff as required under the law, especially the provisions of the Companies Act and also the articles of the company, it cannot be said that there is a valid transfer and the defendant No. 1 in fact still continues to hold the shares in their entirety including to the extent of those which were sold to defendants 2 and 3. Further, there is no dispute or clash inter se the defendant No. 1 and defendants 2 and 3. Further the plaintiff itself having not acted and registered the transfer, it is not open for them to seek such a declaration. Further the plaintiff had paid dividends of Rs.2,63,859/- for the year 1996-97 for the entire shares of 1,75,966 vide demand draft dated 17-11-1997 with a covering letter dated 19-11-1997. And as per the list of members shown with the letter dated 20-10-1998 by the company, the defendant No.1 is shown holding all these shares. Thus, the plaintiff had treated the defendant No.1 as the holder of the shares and is now trying to deprive its voting rights. The plaintiff itself being at fault, no indulgence can be shown.

6. On a consideration of the rival contentions, the Court below has dismissed both the applications. Hence these two appeals.

7. In these appeals, the learned Counsel appearing for the appellant contends

that shares being movable property, there is a completed and concluded contract with the signing of the transfer documents. The formalities as required under the law viz., registration of the transfer in the books of the company etc., are only incidental and do not affect the transfer. Therefore, the defendant No.1 no longer can claim to be the holder to the extent of the shares which were already sold and it cannot act on the basis of any such shares to partake in the affairs of the company.

8. Sri C. Kodandaram and Sri M.S. Ramachander Rao, Counsel appearing for the defendants-respondents, contended that as per the provisions of the Companies Act and Article 54 of the articles of association, unless the transfer is registered with the company, it cannot constitute a valid transfer and, therefore, it cannot be said that the defendants 2 and 3 can act as transferees. Even otherwise, in the alternative, there being no dispute between the defendant Nos.1 and 2 and 3, it does not matter who ever is allowed to act to the extent of the transferred shares. It was pointed out that there are absolutely no bona fides in the plaintiff's claim as the plaintiff is apprehensive of the defendant No.1, who may seek any action to get into the control. Further, the plaintiff itself is responsible for non-registration of transfer and has paid the dividends to the defendant No.1 which is shown to be holder of all the shares in the register.

9. In view of the aforesaid contentions, the main question which falls for consideration in these cases is as to whether the plaintiff-company is entitled to the reliefs of injunction against the defendant No.1 on the transfer of shares but unregistered and any receiver has to be appointed?

10. The admitted facts of these cases are that the plaintiff is a public limited company and the defendant No. 1 is a private limited company, both registered under the provisions of the Companies Act. The plaintiff was incorporated with a paid up capital of Rs.88,26,670 whereas the defendant No.1 which is a member of the plaintiff company was holding in all 1,75,906 shares of which it sold shares to the extent of 1,31,930 to defendants 2 and 3, on 29-3-1997 under an instrument of transfer which was lodged with the plaintiff. However, the plaintiff did not register the transfer in its books. However, as against the non-registration of the transfer, neither of the defendants has carried the matter in appeal to the Company Law Board. Further, the plaintiff company paid the dividends vide a demand draft dated 17-11-1997 for Rs.2,63,859/- through a covering letter dated 19-11-1997 for the year 1996-97 to the defendant No.1 for the entire 1,75,906 shares. And as per its own letter dated 20-10-1998 with list of members, the defendant No.1 was shown as holder of all the said shares. The defendants 1 and 3 filed OS No.59 of 1998 and obtained interim orders in IA No.755 of 1998 against the annual general body meeting which was scheduled on 30-9-1998. The present suit was filed on 15-2-1999 along with these applications seeking interim reliefs. This has resulted into a very piquant situation.

11. The plaintiff approached the Court for a declaration that the defendant No.1

no longer holds the sold shares and consequent injunction to restrain him from acting as a member to the said extent on the ground that there is a concluded contract of transfer, even though the same was not registered with the plaintiff. The claim of the defendants is that in between themselves there is no dispute nor any clash of interest. The plaintiff having not registered the transfer, cannot take advantage of its own lapse and insist that there is a concluded contract of transfer. Further, by making payment of dividends and showing the defendant No.1 as holder of all shares, it does not lie in the mouth of the plaintiff to seek indulgence.

12. For appreciation of the questions involved, it is relevant to note the provisions of the Companies Act.

13. Section 82 of the Companies Act contemplates that the share or other interests of any member in a company, as a movable property, are transferable in the manner provided by the articles of the Company. u/s 108, the format and procedure for registration of the shares and their transfer are detailed along with other restrictions. Section 113 prescribes the period for registration of allotment or transfer of shares by the company within a period of three months after the application for registration of the transfer is delivered and the said period may be extended further by the Company Law Board. Any default therein is made an offence punishable with fine. And it also provides a remedy by way of application to the Company Law Board in the event of such defaults by the company, whereupon the Board can issue necessary directions to make good the default. As per Section 206 of the Act the dividend has to be paid by the company only to the registered holder of such shares or on order to his banker. Further, u/s 206A, in the case of a transfer, when such instrument is delivered to the company for registration and the same was not registered by the company, the dividend can be paid to the transferee under due authorisation from the registered holder and keep in abeyance of any payment in other cases. Article 54 of the articles of association of the plaintiff once again reiterates the modalities of the transfer and specifically enunciates that the transferor shall be deemed to be the holder of shares until the name of the transferee shall have been entered in the register of members in respect thereof. Section 27 of the Securities Contracts (Regulation) Act, 1956 says that it is the holder of any security whose name appears in the book of the company who should receive the dividends. Though both the Counsel have made submissions referring to other provisions to show intricacies of transfer and other incidents arising therefrom, it is not necessary to go into those detailed conundrum, in view of the reasons shown hereafter while considering these applications.

14. On the interpretation of these provisions vis-a-vis the articles of association, the following passages from the judgments cited across the Bar are worth considering.

"In cases of sale of shares contracts, as soon as the seller hands over the certificates and blank transfers and the buyer accepts them and gives the seller

the cheque, the goods become ascertained goods, the sale is complete and the property passes". *Maneckji v. Wadilal and Co.* AIR 1926 PC 38.

"On the transfer of shares, the transferee becomes the sole beneficial owner of those shares sold by the transferor, the legal title to which is vested in him.

Thus, the relation of trustee and cestui que trust is thereby established between them. The transferor holds the shares for the benefit of the transferee to the extent necessary to satisfy the demands of Section 94, Trusts Acts, 1882. As the transferee holds the whole beneficial interest and transferor has none, the transferor must comply with all reasonable directions that the transferee may give. In this situation, if he becomes a trustee of dividends he is also a trustee of the right to vote because the right to vote is a right to property annexed to the shares and as such the beneficiary has a right to control the exercise by the trustee of the right to vote.

The relationship arises by reason of the circumstance that till the name of the transferee is brought on the register of share holders in order to bring about a fair dealing between the transferor and the transferee, equity clothes the transferor with the status of a constructive trustee and this obliges him to transfer all the benefits of property rights annexed to the sold shares of the cestui que trust. That principle of equity cannot be extended to cases where the transferee has not taken active steps to get his name registered as a member on the register of the company with due diligence and in the meantime certain other privileges or opportunities arise for purchase of new shares in consequence of the ownership of the shares already acquired." *Mathalane Vs. Bombay Life Assurance Co. Ltd.*, .

"A share is transferable but while a transfer may be effective between transferor and transferee from the date of transfer, the transfer is truly complete and the transferee becomes a shareholder in the true and full sense of the term, with all the rights of a shareholder, only when the transfer is registered in the company's register. A transfer effective between the transferor and the transferee is not effective as against the company and persons without notice of the transfer until the transfer is registered in the company's register. 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 the 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." *L.I.C of India v. Escorts Ltd* AIR 1996 SC 1370.

"Where the directors under the articles of a company have uncontrolled and absolute discretion in regard to declining registration of transfer of shares, discretion does not mean a bare affirmation or negation of a proposal. Discretion implies just and proper consideration of the proposal in the facts and circumstances of the case. In the exercise of that discretion, the directors will act for the paramount interest of the company and for the general interest of the shareholders because the directors are in a fiduciary position both towards the company and towards every share holder. The directors are therefore required to act bona fide and not arbitrarily and not for any collateral motive. *Bajaj Auto Ltd. Vs. N.K. Firodia and Another etc.*, .

"Whether under the Companies Act or Transfer of Property Act, the shares are transferable like any other movable property. The only restriction on the transfer of the shares of a company is as laid down in its Articles, if any. *V.B. Rangaraj Vs. V.B. Gopalakrishnan and others*, .

"In the first place, there is the contract of sale followed by the execution of an instrument of transfer containing an agreement by the purchaser to accept the shares subject to the several conditions on which the vendor held the same immediately prior to the execution of the transfer-that is to say, subject, amongst other things, to the conditions imposing restrictions on the vendor's right to transfer to that particular purchaser. Upto this point, all that has been done is to pass an equitable interest in the shares to the transferee. There has been no legal assignment completed; indeed, the most crucial point in the transaction has not been reached-the acceptance of the transfer by the board of directors and the passing of it for registration; and even then the matter is not completed, because until the actual entry of the name of the transferee on the register, the transferor remains the legal holder of the share." *In Re Copal Varnish Company Ltd.* 1917 (2) Ch D 349.

15. Thus from the principles as laid down in the above decisions, it is clear that the transfer as such though complete inter se the transferor and the transferee, shall have to get the recognition of the company concerned by way of registration in its books without which there cannot be any participation by the transferee in the affairs of the company as the transferor continues to exist as the holder of the shares. Article 54 of the articles of association of the plaintiff-Company also specifically reiterates to the situation. There is nothing contra in this to any provision of the Companies Act to have over-riding effect. However, there is a clear inaction on the part of both the parties i.e. the plaintiff itself not acting upon the transfer instrument submitted before it--to register it or reject--and the defendants viz., the transferor and the transferee keeping silent on the inaction of the plaintiff company in registering the transfer in its records, without availing the remedy available to them u/s 113 of the Companies Act of appealing to the Company Law Board. Thus both the parties have passively allowed the things to come to this situation. The defendants are responsible for not taking steps for the registration with the intervention of Company Law Board and now

they come out with a defence that there is no dispute among themselves. Apart from the legalities involved, there is no consistency in the stand of the plaintiff and in its actions. Admittedly, it did not act on the transfer documents filed with it for registration and yet seeks approval from the Court by treating it as a concluded contract. Yet, it pays the dividends to the defendant No.1 on the entire shares and shows it as holder of all these shares. These two succeeding acts on 19-11-1997 and 20-10-1998 are staring at the stand now taken in the suit filed just after four months. Even by the date of the letter dated 20-10-1998 showing the list of members, a suit was already filed by the defendants 1 and 3 and obtained interim orders i.e., on 25-9-1998. It is thus evident that the present suit is only a counter blast to the earlier suit.

16. The basic ingredients required for grant of injunction such as prima facie case, balance of convenience and sufferance of any injury constitute the base. In *Gujarat Bottling v. Coca Cola*, 1995 (4) Scale 635, it is reiterated:

"The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the balance of convenience lies."

17. It is now well established that the plaintiff who approaches the Court for the relief of injunction has to come with clean hands and show its bona fides before complaining. In *Hyderabad Stock Exchange v. Rangnath Rathi and Co.* AIR 1958 A.P. 43 (DB), it was held:

"As the relief by way of a perpetual injunction is purely of equitable character, the plaintiff must satisfy the Court that his own conduct and dealings in the matter had been fair and honest."

18. However, in these cases, the plaintiff having received the transfer instrument, did not act on it -- either positively or negatively. Having thus failed to act on such a deed of transfer, and thus with open hands treated the defendant No.1 as the holder of all shares by paying dividends and showing it in the list of members, it is not now open for it to come out with a plea that there is a concluded contract and seek any equitable relief of injunction against the transferor on its own wrongs. In fact, both the parties have brought in a typical situation and are trying to over-reach the other to get into the reins and control of the affairs of the company. The allegations made in both the applications run on the same lines. There is no other ground made out to show any acts of waste, to warrant the extreme measure of appointment of receiver. In the circumstances of the case, the plaintiff failed to make out a prima facie case for either of the reliefs. Equally, it cannot be said that the defendants are right in their action in

not availing the appeal against the inaction of the plaintiff in registering the transfer. The Court cannot shut its eyes to the reality. Any collusion between the defendant No.1 and defendants 2 and 3 apart, the affairs of the company cannot be allowed to drift astray. Therefore, it would suffice in the interest of justice to observe that no injunction need be granted and no receiver need be appointed. It is however still open for the defendants to apply to the Company Law Board and seek directions for the registration. It is also open for the said authority to invoke the said powers and consider for issuance of necessary direction for registration of transfer in the interest of the company.

19. Accordingly, both the appeals stand dismissed subject however to the directions given above. No costs.