courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 31/08/2026

(2000) 03 BOM CK 0107

In the Bombay High Court

Case No : Company Appeal Lodg. No''s. 10 and 11 of 1999

Finolex Industries Ltd. APPELLANT

Vs

Mr. Anil Ramchand Chhabria RESPONDENT

Date of Decision : 15-03-2000

Acts Referred:
Companies Act, 1956 — Section 43
Depositories Act, 1996 — Section 28

Citation : (2000) 3 BomCR 644 : (2000) 2 BOMLR 336 : (2008) 144 CompCas 738 : (2000) 4 MhLj 81 : (2000) 4 MhLj 181

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : V.R. Dhond, Virag V. Tulzapurkar and Rishabh Shah, instructed by Crawford Bayley and Co, for the Appellant; S.M. Gorwadkar, for the Respondent

Judgement

S.S. Nijjar, J.

Since the order impugned in both these appeals viz. Company Appeal Lodg. Nos. 10 and 11 of 1999 is common they are being heard together and disposed of by this common order.

1. The appellants are Public Limited Companies registered under the Companies Act, 1956. Shares of the appellants are listed on the various Stock Exchange and the National Stock Exchange. One Mr. Ramchand Parsaram Chhabria was a shareholder of the Appellant Companies. He died intestate at Pune on 11th August, 1987 (hereinafter for brevity sake referred to as "the deceased") leaving "behind him his mother (i) Smt. Parvatibai Parsaram Chhabria, his widow (ii) Smt. Leela Ramchand Chhabria, his son (iii) Shri Anil R. Chhabria, the respondent herein, and his Daughter (iv) Smt. Rita Prakash Makhija, as his heirs and legal representatives. Thus the legal heirs are entitled to 25% share each of the estate of the deceased.

2. On 22-9-1987 the respondent made a written request to the Appellant

Company for transmission of the shares of the deceased to the joint names of the widow, son and the daughter. This application was signed by the three legal heirs. In this application it was not mentioned that the fourth legal heir is the mother of the deceased who was still living. Application was made for the transmission of all (100 per cent) the shares of the deceased whereas they were entitled only to transmission of 75% of the shares. On the necessary application being made the respondent was granted the succession certificate on 31-1-1989 which was issued on 24-2-1989. In the application before the Civil Judge, Senior Division, Pune, the interest of the mother was not disclosed. The mother filed Misc. Application No. 526 of 1989 for revocation of the succession certificate. She, however, died during the pendency of the application on 2nd September, 1989. She left behind a Will under which she appointed Shri Prahlad P. Chhabria, Shri Kisan P. Chhabria, Shri Bhagwandas P. Chhabria and Shri Narayan P. Chhabria as executors and trustees. These executors were brought on the record of the proceedings, on 31st October 1992. Thereafter the appeal was admitted on 9th October, 1995. However, the ad-interim order dated 18th August, 1992 was vacated. The appeal was ultimately numbered as First Appeal No. 762 of 1995. Application for condonation of delay was also allowed on the same date. On the stay having been vacated, Civil Judge, Pune, granted a fresh succession certificate on 20th March, 1997. In the meantime various requests made by the respondent for transmission of the shares were rejected by the appellants on the ground that he was not the sole legal heir and that the succession certificate had been obtained by suppressing material facts from the Court. However, the respondent by letter dated 14th April, 1997 again forwarded a notarised copy of the fresh succession certificate to the appellants and made the request for transfer of the shares. In answer to this request, the appellants on 18th June, 1997 requested the respondent to confirm that there are no legal proceedings pending with regard to the succession certificate or in relation to the estate of the deceased. By letter dated 30th June, 1997 the respondent informed the appellants that there are no Court order restraining transmission of the shares as mentioned in the fresh succession certificate dated 20th March, 1997 belonging to the deceased in his favour. Again on 22nd July, 1997 the company reiterated that the respondent is silent on the confirmation as to whether any legal proceedings are pending in any Court in relation to the issue of succession certificate in relation to the assets of the deceased. Taking this uncalled delay in transmission of the shares to be a deemed refusal, the respondent filed two company petitions. By its order dated 14th September, 1999, the Company Law Board (hereinafter referred to as "the CLB") has allowed the petitions and directed the appellants to transmit the shares held by the deceased in the name of the respondent as per his entitlement in terms of the succession dated 20th March, 1997. It is against this common order that the two appeals have been filed.

3. The submissions made before the C.L.B. have been reiterated by the learned Counsel in these two appeals. Mr. Dhond, learned Counsel appearing for the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

appellants, submitted that the petitions as framed were not maintainable u/s 111-A of the Companies Act. The petition would not be maintainable u/s 111-A(2) as it deals only with refusal to register "transfer of shares." Sub-section does not deal with refusal to register the "transmission of shares" by operation of law. This right of appeal would have been available u/s 111(2) of the Act. However, by virtue of subsection (14) of section 111, it applies now only to Private Limited Companies and deemed Public Companies u/s 43-A of the Act. The remedy u/s 111(2) would not be available to the respondent as the appellants are Public Limited Companies governed by provisions of section 111-A of the Act. Learned Counsel submits that only remedy open to the respondent is by way of a civil suit. In support of this argument, reliance is placed on the judgment of the C.L.B. in the case of Shashi Prakash Khemka v. NEPC Micon Ltd. 90 Comp.Cas. 228. In this case it is held by the C.L.B. as follows.

"Fourth issue:---This issue relates to the remedy available to an investor of a public company, in view of our finding that he cannot move the Company Law Board either through an application under 111(2) or an appeal under 111(4). Any right to move the Company Law Board in respect of a public company, could only be under the provisions of section 111-A. As far as transfer matters are concerned, now provision exists under the proviso to section 111-A(2) as well as section 111-A(3). However, the prayer for rectification in respect of non-transfer matters cannot be made before the Company Law Board as no jurisdiction in these matters has been conferred on the Company Law Board under that section. Therefore, under the existing provisions, perhaps, the only remedy available, as seems to us, is that one has to move the Civil Court. In this connection, we may also beneficially refer to the decision of the Full Bench of the Delhi high Court in Ammonia Supplies Corporation Put. Ltd. v. Modern Plastic Containers Pvt. Ltd. 1994 (79) Comp.Cas. 163, in which it was held that matters contained in section 111 could be agitated in a Civil Court."

He further submits that sub-section (3) of section 111-A of the Act would also not be applicable as it deals with rectification of the register of members after a wrong entry is made in the Register. According to the learned Counsel remedy of rectification is restricted to transfer matters. No rectification can be sought under this sub-section for transmission or other matters, such as bad delivery, loss, theft or forgery. He submits that under sub-section (3) the Applications can only be made by a depository, company, participant, investor or S.E.B.I. Respondent being none of these would have no locus stand to file a petition u/s 111-A(3) of the Act. Although before the C.L.B. the matter with regard to delay and laches was also canvassed but the same has not been seriously canvassed in this Court.

4. Mr. Gorwadkar, Counsel appearing for the respondent, has also reiterated the submissions which have been made before the C.L.B. by the Counsel for the petitioner therein. According to the learned Counsel, section 111A cannot be read in isolation. It is to be read in conjunction with section 111. Section 111A, according to Counsel, deals with transferability of shares of a public company

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

which should be deemed to include transmission also. He further submitted that a perusal of sub-section (5) of section 111 together with sub-section (7) of section 111A makes it clear that transmission of shares by operation of law is also governed by section 111-A, provided the transmission relates to shares in a Public Company. Sub-section (7) of section 111A provides that provisions of sub-sections (5), (7), (10) and (12) of section 111 shall apply to the proceedings before the C.L.B. u/s 111A as they apply to the proceedings u/s 111 of the Act. Sub-section (5) of section 111 in turn provides that C.L.B. while dealing with an appeal preferred under sub-section (2) or an application under sub-section (4) may pass certain orders. Sub-section (2) of section 111 enables a party to approach the C.L.B. on refusal or failure of a company to register transfer or transmission of shares. Sub-section (4) of section 111 provides the remedy of an application to the C.L.B. for rectification of the Register of Members. Thus the inaction of the appellants in the present case ought to be treated as a deemed refusal and the petition would be maintainable under sub-section (2) of section 111-A of the Act. The C.L.B. has, however, not considered the argument noticed above as it has interpreted the term "intimation of transfer" occurring in the proviso to section 111-A(2) of the Act to mean an "intimation of transmission".

5. I have considered the arguments put forward by the learned Counsel, The C.L.B. has not considered the argument of the respondent to the effect that the provisions contained in sub-sections (2) and (4) of section 111 would be applicable while considering the petitions u/s 111-A of the Act. In such circumstances, normally the Court would remand the matter to the C.L.B. for a fresh decision. But, from the facts narrated above, it can be seen that the deceased passed away 12 years ago. Thus the matter has been considerably delayed. This apart, even if the matter is remanded to the C.L.B. it would be an exercise in futility. If the argument of the respondent which was not considered by the C.L.B. is accepted on remand, the present appeals would still have to be decided on merits. Even if the submissions of the respondent is rejected still the present appeal on the present grievance would have to be decided on merits by this Court. Thus, in my view, it would be in the interest of all concerned if the matter is finally decided by this Court in the present proceedings.

6. The C.L.B. has held that the right of appeal u/s 111(2) has been retained in the proviso to section 111-A(2). It has further held that the term "intimation of transfer" occurring in proviso to section 111-A(2) is ambiguous and uncertain. Therefore, in order to give it a harmonies construction the term "intimation of transfer" has to be read as "intimation of transmission". Use of the term "intimation of transfer" in the proviso is said to be a "drafting error". This conclusion is justified on the ground that the expression "intimation" occurring in section 111(1), 111(2) and 111A(3) is always followed by the expression "transmission". Thus the term "intimation of transfer" has to be substituted by the term "intimation of transmission". It is held that without such a construction the term "intimation of transfer" does not carry any meaning. This is further justified on the ground that if one approaches the CLB with a complaint that the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

Company has refused to register the transfer on delivery of "intimation of transfer", the CLB cannot direct the Company to register the same as it would be contrary to the mandatory provisions of section 108. It is also held that the observations of the CLB in Shashi Prakash Khemka''s case (supra) were made when the issue relating to transmission was not in issue before the CLB. The CLB further holds that the proviso to section 111A(2) does not specify any time limit within which a petition against refusal to register the transfer should be made. The limit of two months as specified in that proviso is applicable only to the Company. It is also held that provisions of the Limitation Act are not applicable to the proceeding before the CLB. It is only if time limit is prescribed in the Companies Act itself that the petition has to be filed within the stated time limit.

7. Whilst interpreting the various provisions the CLB purports to be guided by the principles laid down by the Supreme Court in the case of Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. 61 Comp.Cas. 663. The Supreme Court has observed as follows.

"Interpretation must depend on the text and the context. They are the bases of interpretation. On may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word if a statute is looked at in the context of its enactment, with the glasses of the statute-maker provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With those glasses, we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "prize chit" in Srinivasa Enterprises, Represented by the Managing Partner, Peddi Venkateswarlu and Others Vs. Union of India (UOI), Represented by Ministry of Law, Justice and Company Affairs and Others, and we find no reason to depart from the Court''s construction."

8. I am of the opinion that CLB has completely ignored the above ratio of the Supreme Court. Having come to the conclusion that the term "intimation of transfer" in the proviso to section 111A(2) is a "Drafting Error", the CLB has provided a solution by substituting the term "intimation of transfer" with "intimation of transmission". The Courts or the CLB have no jurisdiction to "Draft" the provision. They have only to interpret the provision. It is not the function of the Courts to legislate. The "Drafting Error" conclusion, therefore, has to be over-

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

ruled at this stage only. By giving this interpretation, the CLB has ignored both the text as well as context of the proviso. The text has been ignored in that the term" intimation of transfer" has been substituted by "intimation of transmission". Context of the proviso has been ignored as the interpretation to the proviso has not been given in co-relation to the other provisions of the Companies Act read with the Depositories Act, 1996. By giving this interpretation, the CLB has merely justified its earlier finding that the proviso to section 111A(2) deals with appeals in the matter of "transmission of shares" also. Since the CLB had come to the conclusion that the provisions is vague, it ought not to have applied the rule of literal interpretation. The function of the Court whilst interpreting the statue is to avoid an interpretation which would produced an absurd result. The underlying purpose of all the Rules with regard to interpretation of statutes is to ascertain, discover or decipher the intention of the legislature. The literal construction has in general but prima facie preference. To arrive at the real meaning it is always necessary to get an exact conception of the aim. Scope and objection the whole Act. Thus it is necessary to keep in mind as to what was the law before the Act was passed? What was the mischief or defect for which the law had not provided? What remedy Parliament has appointed and the reason of the remedy? If a literal construction would not promote the object of an Act but would produce an absurd result, the Court would avoid such a result if another construction of the relevant provision was possible. This is precisely what has been laid down by the Supreme Court in the Peerless case (supra). The CLB, therefore, ought to have analysed the text as well as the context of the various provisions of the Companies Act, 1956 read with the Depositories Act. It should have found out the reasons for the enactment. For this purpose the whole statute had to be read clause by clause, phrase by phrase. Interpretation ought to have been such that every phrase has its place within the section and be in affinity with the objects which prompted the enactment. The CLB ought not to have ignored the argument based on section 111A(7). Then it would not have been necessary to describe the proviso as a "Drafting Error".

9. Now let us see as to what was the law before the enactment of the Depositories Act, 1996. Section 111 of the Companies Act before the enactment of the Depositories Act was as follows .

"111. Power to refuse registration and appeal against refusal:---(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.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

(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 therefrom; 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 sub-section (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 the transfer or transmission shall be registered by the Company an 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."

10. A perusal of these provisions shows that section 111 of the Act was a very comprehensive section, dealing with rights, remedies and jurisdiction. It was applicable to both Public and Private Limited Companies. Sub-section (1) casts a duty on the Company if it refuses to register the change of any rights in shares, within two months of receipt of "instrument of transfer" or "intimation of transmission", to send notice of refusal to the transferor, transferee or the persons sending the "intimation of transmission". The notice must give reasons for refusal. Section 111(2) enabled a transferor, transferee, or person who gives "intimation of transmission" by operation of law to file appeal before the CLB.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

This is in case of refusal or failure of the Company in registering the change in rights/owner ship of shares or the Company not sending the notice of refusal. The appeal had to be filed within two months of the receipt of notice of refusal, or where no notice has been sent by the Company, within four months from the date on which the "instrument of transfer" or "intimation of transmission" was delivered to the Company. The section applies to transactions inter-vivo and transmission by succession or by virtue of some other provision of law. Sub-section (4) provides for an application for rectification of the register at the instance of a person aggrieved, member of the Company or the Company. Rectification of the Register of Members can be sought if without sufficient cause the name of any person is wrongly entered in it or after having been duly entered, is wrongly omitted from it. Rectification application can also be made if the Company makes default, causes unnecessary delay, in entering in the register the fact of any person having become or ceased to be a member, including a refusal under sub-section (1). There is neither any time limit within which the Company has to rectify the register, nor any limitation within which an application for rectification is to be made to the CLB. This is in contrast to section 111(2) which provides a limitation of two months for the Company to register the transfer or transmission; and a limitation of two months to file an appeal. Sub-section (5) deals with the manner in which and what orders can be passed by the CLB when hearing an appeal under sub-section (2) or an application under sub-section (4).

11. Transfers under the Companies Act were governed only by section 108. The relevant portion of section 108 before the enactment of the Depositories Act is as under.

"108. Transfer not to be registered except on production of instrument of transfer :---

(1) A Company shall not register a transfer of shares in, or debentures of the company, unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the certificate relating to the shares or debentures, or if the such certificate is in existence along with the letter of allotment of the shares or debentures;

Provided that xxx xxx xxx

Provided further that nothing in this section shall prejudice any power of the company to register as shareholder or debenture-holder any person to whom the right to any shares in, or debentures of, the company has been transmitted by operation of law."

From a perusal of the above, it becomes apparent that there was a mandate given to the Company not to register transfer of shares unless a proper "instrument of transfer" was delivered: In case of transmission of shares by

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

operation of law it was necessary to deliver the "intimation of transmission". This then was how the law stood, before the passing of the Depositories Act, 1996.

12. In the 1980''s India as a nation had decided to modernise, liberalise and open its economy. Thus it was necessary that there should be free transferability of stocks and shares. Paper based ownership and transfer of shares was proving to be major drawback of the Indian Stock market, as it often resulted to delay in settlement and transfer of shares. It led to bad delivery, theft, loss and forgery of shares. As a result the investor was deprived of liquidity. Great deal of avoidable litigation due to forgery, theft and bad delivery was pending in courts. Thus to pave the way for smooth and free transfer of shares it was necessary to make a law for Depositories. The Depositories law was to provide for a legal basis for establishment of Depositories to conduct the task of maintenance of ownership records of securities and effect changes in ownership records through book entry. The securities held in Depositories were to be dematerialised and fungible. But an option was to be given to the investor to choose whether to hold the securities in the form of share certificates or in a dematerialised form in a depository. This option can be exercised at any time. The investor is free to go in and out of a Depositories as it choses and when it choses. The urgency with which these laws were enacted is evident from the fact that the Ordinance was promulgated whilst the Parliament was not in Session and had to be repromulgated twice before it was enacted into the Depositories Act of 1996. The Depositories Ordinance was promulgated on September 20, 1995 and repromulgated on January 7, 1996 and March 27, 1996. The Depositories Act was enacted on August 10, 1996 w.e.f. 20-9-1995.

13. From a close scrutiny of the provisions of the Depositories Act, 1996, it becomes clear that the legislature intended to rectify the defects in the old system of ownership and transfer of shares. It also becomes manifest that the Depositories Related Laws are to be in addition to the laws which are in existence. Thus the intention of the Legislature was to preserve all the remedies which existed for the shares held in Public Companies. This is evident from section 28 of the Depositories Act. This section is as follows.

"28. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force relating to the holding and transfer of securities."

A perusal of this section clearly shows that the provisions of the Depositories Act are in addition to and not in derogation of any other law for the time being in force relating to the holding and transfer of securities. It has been noticed above that sections 108 and 111 dealt with transfer of shares and the remedies of appeal and rectification in case of the refusal or delay in registration of the transfer. Section 111 applied to both Private as well as Public Companies. However, by the Depositories Act sub-section (14) was added to section 111 of the Companies Act, 1956 which is as under.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

"(14) In this section Company means a private company and includes a private company which had become a public company by virtue of section 43A of this Act."

This section limited the operation of section 111 to Private Companies including Private Companies which had become Public Companies by virtue of section 43A of the Act. Thus this section is not applicable to Public Companies. By enactment of this sub-section the remedy of appeal and rectification provided to the shares held in Public Companies u/s 111(2) and 111(4) has been omitted. Therefore, provision for the continuance of the remedies u/s 111(2) and (4) had to be made in the Depositories Act, 1996.

14. These remedies were sought to be provided by adding section 111(A) to the Companies Act, 1956. But mistakes seem to have crept in at every stage of drafting the necessary provisions. This can be seen by examining the original provisions of section 111A and the efforts made by the Legislature to correct the mistakes. The relevant provisions of section 111A as originally drafted are as under:

"111A. Rectification of register on transfer.---(1) In this section, unless the context Otherwise requires, company means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992(15 of 1992), or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section."

A perusal of section 111A(1) together with section 114 makes it clear that section 111 is now limited in its operation to Private Limited Companies. But at the same time a perusal of section 111A(2) shows that no remedy of appeal has been provided to any kind of shares held in Public Companies, A perusal of section 111A(3) would show that no remedy of rectification is available if the register remains inaccurate by contravening the provisions of the Companies Act. The remedy is only provided for rectification if there is a contravention of any of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

the provisions of the Securities and Exchange Board of India Act, 1992 or Regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985. Section 111A(2) completely fails to provide a remedy of Appeal Section 111A(3) provides only a partial remedy of rectification. Thus these provisions instead of providing additional benefits, have actually taken away, either completely or partly, the rights and remedies already available. Clearly, therefore, section 111A(2) and (3) are not in addition to the laws for the time being in force but are in derogation thereof. This is not the intention of the Parliament as expressed in section 28 of the Depositories Act. In order to rectify the two provisions mentioned above, the Depositories Act was amended by the Depositories (Related) Laws Amendment Act, 1997. By this amendment a proviso was added to section 111A(2) and section 111A(3) was substituted. The proviso and the substituted section 111A(8) are as follows.

"Provided that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Company Law Board and it shall direct such company to register the transfer of shares.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records."

15. Unfortunately even this effort of the Legislature leaves much to be desired. Even the new provisions do not expressly provide that remedies u/s 111(2) and (4) of the Companies Act are continued. From a perusal of the proviso it becomes apparent that a provision of appeal is provided in case a Company refuses to transfer the shares within two months of the receipt of the "instrument of transfer" or the "intimation of transfer". On a literal interpretation this would mean that no remedy of appeal is available in case of non-transmission of shares on the delivery of intimation of transmission. It is this interpretation which led the CLB to substitute the term "instrument of transfer" with "instrument of transmission". In my view, the approach adopted by the CLB is not correct. A careful and meaningful analysis of these provisions would clearly demonstrate the intention of the legislature to give equal treatment to shares held in Public Companies. This intention can be discerned from the amendment noticed above. There can be no disparity in the treatment of shares based on the mode of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

transfer or transmission. Therefore, the necessary provision was sought to be made in the proviso to section 111A(2) and section 111A(3). Unfortunately it seems due to the haste in which the Depositories Act, 1996 and the Amendment in 1997 were enacted the intention of the legislature was not reflected in the provisions. In the absence of the provision for "intimation of transmission" in the proviso it would appear that there is no appeal provided. But this would be in conflict with section 28 of the Depositories Act which makes it clear that the provisions of the Act shall be in addition to and not in derogation of any other law for the time being in force relating to holding and transfer of securities. Thus the proviso has to be construed in such a manner that would preserve the rights and remedies already available to the shareholdings in Public Companies. The interpretation would have to be such that section 111A provides additional benefit to the shareholders in Public Companies which they already enjoyed and continue to enjoy u/s 111 of the Act. Only then would be proviso give effect to the intention of the Legislature. The interpretation cannot be such as to deny the right of appeal to shareholders of a Public Company on the basis of the mode of transfer or transmission. At the same time it should not leave the shares held in depositories without a remedy of appeal. Substitution of the term "intimation of transfer" with "intimation of transmission" would remove the right of appeal given to shares held by Depositories. This is not the intention of the Parliament.

16. The CLB in my view, has unnecessarily fallen into confusion over the term "intimation of transfer". As noticed earlier all shares held in Depositories are to be dematerialised and fungible. Transfers are to be effected electronically. Remedy of appeal is provided if the transfer is not registered by the Company (issuer) or Depository within two months of the receipt of "intimation of transfer". It is in this sense that the term "intimation of transfer" has been used in the proviso.

17. Another justification given by the CLB for the "Drafting Error" conclusion is that" without such a construction, the term, "intimation or transfer" does not carry any meaning as, if one approaches the CLB with a complaint that the Company has refused to register the transfer on delivery of intimation of transfer, CLB cannot direct the Company to register the same as it would be contradictory to the mandatory provisions of section 108." This conclusion is not warranted from section 108 of the Companies Act read with the Depositories Act, 1996. Under the Depositories Act the transfers of shares are to be effected under the provisions of the Depositories Act. Detailed provisions are made about the ownership and transfer of shares by electronic means. Further elaborate provisions are made under the SEBI (Depositories & Participants) Regulations, 1996. To make this absolutely clear the legislature has amended section 108 of the Companies Act and inserted sub-section (3) to section 108. This sub-section is as follows :

"108(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

beneficial owners in the records of a depository."

A perusal of this sub-section makes it abundantly clear that section 108 is not applicable to transfers where the transferee and the transferor are entered as beneficial owners in the records of a Depository. Thus for this reason it could not have been held that the "intimation of transfer" carries no meaning. It may be made clear here that the shares which are not held by depository can only be transferred u/s 108 of the Act. For these transfers an instrument of transfer is required by the Company. Ideally since the proviso mentions both "instrument of transfer" and "intimation of transfer", the term "intimation of transmission" ought also to have been mentioned. This would have made the meaning explicit. Absence of the term from the proviso, however, cannot be construed to mean that no remedy of appeal is provided in case of non-registration of transmission of shares. This construction of the proviso is to be avoided, as it would rob section 111A(7) and section 28 of the Depositories Act, 1996 of any meaning and content. It would not give effect to the intention of the legislature to make law in addition to and not in derogation of any law for the time being in force. Better course would be to interpret the provisions in such a way that the term "intimation of transmission" is included in the Proviso by virtue of section 28 read with section 111A(7). This would harmonise the text of the proviso with the context of the whole statute i.e. Depositories Act, 1996. Viewed in this manner, it is to be seen that both the terms "instrument of transfer" and "intimation of transmission" are mentioned in section 111(1) and section 111(2). By virtue of section 111A(7), whilst exercising the powers under sections 111A the CLB is to decide the appeal by applying the provisions of section 111(5), (7), (9), (10) and (12). Thus the term "intimation of transmission" is deemed to be included in the proviso to section 111A(2) by necessary implication. This in my view is the only harmonious construction which can be put on proviso to section 111A(2) of the Act to give effect to the intention of the legislature. The proviso cannot be read in isolation. It has to be read in the manner indicated above. No dichotomy or disharmony can be created in the rights and remedies of the shares held in Public Companies, object of the Depositories Act (section 28) is to make law in addition and not in derogation to the "law for the time being in force". Therefore, I am of the considered opinion that absence of the term "intimation of transmission" in proviso to section 111A(2) cannot be construed to mean that no remedy of appeal is available to shares which are transmitted by operation of law. Therefore, it is not necessary to substitute the term "intimation of transfer" with the term "intimation of transmission".

18. There is also no merit in the submission of Mr. Dhond that the remedy of rectification is limited only to shares held Depositories or that it applies only in matters of transfer. As noticed above, the original section 111A(3) was substituted by the present provision. The term "any law for the time being in force" was inserted. This has now made clear that the remedy of rectification is available to all shares whether held in Depositories or in the form of share certificates. The fact that this was always the intention of the Parliament is

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

apparent from the fact that even the provision, as it was originally drafted, has made a provision for rectification of register in relation to "instrument of transfer" and "intimation of transmission". It was necessary to mention "instrument of transfer" and "intimation of transmission as the shareholder has an option either to remain within the depository or to change the mode of securities to share certificates. At that stage it would be necessary to deliver either the instrument of transfer or the intimation of transmission. By virtue of provisions of section 28 of the Act it cannot be held that section 111A(3) is restricted to rectification of the register only in transfer matters. This would mean that no remedy of rectification is available in case of loss of shares, bad deliveries, theft and forgery. This would be in derogation of the law for the time being in force. Remedy provided in section 111A(3) is in addition to the remedy provided in section 111(4). It is, therefore, held that the remedies of appeal and rectification are available to all kinds of shares held in a Public Company under the proviso to section 111A(2) and 111A(3) read with sub-section (7) of section 111A of the Act which would make applicable the provisions of section 111(1), (2) and (4) by virtue of section 111(5) of the Act.

19. Is section 111 only applicable to Private Limited Companies in view of sub-section (14) ? As noticed earlier, the provisions of the Depositories Act are in addition to and not in derogation of the existing-provisions of the law. Therefore, it cannot beheld that by virtue of section 111(14) the provisions of sub-sections (1), (2) and (4) of section 111 are not applicable to Public Companies. Sub-section (1) of section 111 make it incumbent on the Company to serve a notice of refusal of transfer within two months of the delivery of instrument of transfer or intimation of transmission. This provision is now incorporated in proviso to section 111A(2) of the Act. But an additional benefit has been given to the shareholders in that no limit is provided for filing the appeal against the refusal or neglect of the company or the depository to transfer the shares. For this reason section 111(3) has not been incorporated in section 111A(7) which provides the manner in which the applications are to be decided by the CLB u/s 111A. Sub-section (14) of section 111 cannot exclude the application of sub-sections (1), (2) and (4) of section 111 to shares held in a Public Company as it would then be in conflict with section 28 of the Depositories Act. Under this section, the law made under the Depositories Act is in addition to and not in derogation of any law which is/was in force at the time when the Depositories Act was enacted. Therefore, restriction contained in sub-section (14) of section 111 would not apply to transfer and ownership of the shares of the Public Company held in the form of share certificates. Construed in this manner, the provisions of sub-section (1) of section 111A would clearly mean that the remedy of rectification of register on transfer provided in section 111A would not be applicable to Private Companies. For the Private Limited Companies, the remedies of appeal and rectification would remain under sections 111(2), (3) and (4) of the Act. When an application is made u/s 111 with regard to a Private Company, the CLB will deal with the same under the provisions of section 111.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…

The limit of two months appeal as provided under sub-section (3) of section 111 would still be applicable to the Private Companies.

20. In view of the above it is held that the CLB has wrongly come to the conclusion that there is a drafting error in proviso to section 111A(2). It is also held that there is no conflict between the powers of the CLB u/s 111A and section 108 of the Companies Act. The share transfers effected under the Depositories Act are not to be registered u/s 108 of the Act. They are to be registered by virtue of the provisions of the Depositories Act read with the Regulations made thereunder of SEBI.

21. For the reasons recorded above, it has to be held that the conclusions arrived at by the CLB in the case of Shashi Prakash Khemka (supra) which has been reproduced in para 3 hereinabove is also erroneous. The conclusion is, therefore, over ruled and it is held that the remedies under the proviso to section 111A(2) and 111A(3) are available to transfer as well as transmission matters.

22. Since the CLB has held that the Appeals are maintainable and the relief has been granted to the respondent, there is no need to interfere with the direction given. The reasons for the "Drafting Error" conclusion are, however, overruled as indicated above. Both the Appeals are dismissed. No order as to costs.

23. Appeal dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/finolex-industries-ltd-appellant-hash…