
(1981) 07 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 1549 of 1969

Hoshiarpur Azad Transporters P. Ltd.

APPELLANT

Vs

Hoshiarpur Express Transport Co.

RESPONDENT

Date of Decision : 16-07-1981

Acts Referred:

Companies Act, 1956 — Section 108

Citation : (1983) 54 CompCas 254

Hon'ble Judges : G.C. Mittal, J

Bench : Single Bench

Advocate : J.N. Kaushal and Maluk Singh, for the Appellant; D.N. Awasthy, for the Respondent

Final Decision : Dismissed

Judgement

Gokal Chand Mittal, J.—The Hoshiarpur Azad Transporters (P.) Ltd., Hoshiarpur, and several other persons filed a suit for a declaration, claiming that plaintiffs Nos. 2 to 8 and defendant No. 9 are the directors of the aforesaid company and that plaintiffs Nos. 2 to 36 and defendants Nos. 9 to 31 are the shareholders of the said company, with a consequential relief of permanent injunction restraining defendants Nos. 1 to 8 from interfering with the management of the said company. The suit was contested by defendants Nos. 1 to 8 and it was pleaded that all the plaintiffs and the defendants, who were supporting the plaintiffs, had sold their shares in the said company to them and as such they had nothing to do with the said company and it was defendants Nos. 1 to 8 alone, who were the shareholders, some of whom were the directors of the company and were managing the same. On the contest of the parties, a large number of issues were framed by the trial court and after evidence was led, the trial court came to the conclusion that all the plaintiffs and defendants supporting the plaintiffs had sold their shares in the company to defendants Nos. 1 to 8 and as such ceased to be shareholders and directors of the company and that the shares and the management rested with defendants Nos. 1 to 8. The plaintiffs went up in

appeal, which was dismissed by the learned Additional District Judge, Hoshiarpur, by a judgment and decree dated 24th May, 1969. Still feeling dissatisfied, the plaintiffs have come to this court in second appeal.

2. Mr. J. N. Kaushal, senior advocate, appearing for the plaintiffs, has confined his arguments, for claiming declaration that plaintiffs Nos. 2 to 36 were the shareholders of the company and the transfer made by them in favour of defendants Nos. 1 to 8 had to be ignored, because of the following facts ;

(i) That the original share certificates/scrips were still with the plaintiffs j

(ii) That the deed of transfer of shares was signed merely by the transferors and not by the transferees;

(iii) That the entire purchase price of the shares sold has not been paid to the plaintiffs; and

(iv) That the provisions of Section 108 of the Companies Act, 1956, were not duly complied with.

3. After hearing the learned counsel for the parties on the aforesaid matter, I find that there is no substance in the contentions raised by Mr. Kaushal. Exhibit P-1 is the deed dated 6th March, 1960, by which the plaintiffs sold their shares to defendants Nos. 1 to 8. After the aforesaid sale, a meeting of the company was called, in which a very detailed resolution was passed on 20th April, 1960, a copy of which has been placed on the record as Ex. P-15. It was clearly stated therein that all the shares of the company have been transferred to defendants Nos. 1 to 8 and that the earlier shareholders of the company have ceased to be shareholders and directors and now the management was transferred to defendants Nos. 1 to 8. The aforesaid resolution was followed by a letter dated 24th December, 1960 (Ex. DW-I/1) written by the transferors (the plaintiffs) to the Registrar of Companies, intimating that all the shares had been transferred in favour of defendants Nos. 1 to 8. The sequence of the aforesaid facts clearly goes to show that first there was a transfer of shares by the plaintiffs, which was followed by a resolution of the company and the intimation of the transfer was duly given by all the plaintiffs and other transferors to the Registrar of Companies. The company has accepted the transfer of shares in favour of defendants Nos. 1 to 8 and since March, 1960, till the filing of the suit in April, 1964, i.e., for about four years, it was defendants Nos. 1 to 8 who were managing the affairs of the company, some of whom were the directors thereof.

4. Keeping in view the aforesaid admitted facts on the record, the four points raised by Mr. Kaushal may now be examined. In order to examine the first three points raised by him, it will be useful to notice the fourth point first, which is with regard to the applicability of Section 108 of the Companies Act. A reading of Section 108 shows that a company may not register transfer of shares if it was not satisfied about the transfer and some of the possible grounds could be that the instrument of transfer was not stamped, that it was not executed by the

transferor and the transferee and that the instrument of transfer is not accompanied with the certificate relating to the shares. This section does not say that if the share certificates still continue with the transferor, the sale would be deemed to be void or if the transferee does not sign the instrument of transfer, the transfer would be deemed to be void. On the other hand, a right has been given to the company under this provision to refuse to record the transfer in their register. It is not disputed on facts that in the present case the company accepted the transfer and registered the names of the transferees in their books. Once it is held that the sale of shares would not become void for not attaching the share certificates along with the transfer deed or if it is not signed by the transferee, then the only inference is that so far as the contract between the transferor and the transferee is concerned, the same would be binding between the parties and none of the parties would be entitled to back out of the contract. As a matter of fact, it is admitted by Mr. Kaushal that all the transferors did sign the deed. Ex. P-1, also signed the proceedings of the meeting dated 20th April, 1960, a copy of which is Ex. P-15, and the letter was written to the Registrar of Companies intimating about the transfer of the shares, a copy of which has been placed on the record as Ex. DW-1/1. Therefore, so far as the plaintiffs, who are "the transferors, are concerned, they cannot back out of the transfer of shares by them. Admittedly, the transfer was made in favour of defendants Nos. 1 to 8. Defendants Nos. 1 to 8 also accept the transfer as good. On these facts, even if the original share certificates remained with the plaintiffs or the deed of transfer of shares was not signed by the transferees, it was of no significance because, in spite of that, the contract of transfer of shares would be valid in the eye of law. Accordingly, there is no merit in the first two contentions raised by Mr. Kaushal.

5. As regards the payment of price of the shares, a reading of Ex. P-1 itself shows that a sum of over Rs. 44,000 was paid down in cash and the balance was agreed to be paid in the manner stated in the agreement. It cannot be disputed that transfer of shares, and even immovable property, would be complete after the instrument of transfer is executed, whether the price is paid at that time or is paid in part and part agreed to be paid later or the whole consideration is agreed to be paid later. In the second and third contingencies, the only course open to the transferors would be to claim the balance sale price or the entire sale price, as the case may be, but it cannot be held that the transfer would be void or non-existent. Accordingly, I do not find any merit in the third contention either. The fourth point has already been discussed. Under the fourth point, the court below took the view that Section 108 of the Companies Act, 1956, was directory and that there was substantial compliance of the same. While agreeing with that view, I have given the additional reason in the foregoing paragraph,

6. The net result is that the plaintiffs and the defendants supporting the plaintiffs have ceased to be shareholders with effect from 6th March, 1960,, when the transfer deed was executed by them in favour of defendants Nos. 1 to 8 and, therefore, no relief can be granted to them in the suit.

7. For the reasons recorded above, I do not find any merit in this appeal and dismiss the same but without any order as to costs.