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**(1952) 02 CAL CK 0023**

**In the Calcutta High Court**

**In Re: Mahaluxmi Cotton Mills Ltd.**

**Date of Decision :** 06-02-1952

**Acts Referred:**

**Citation :** 57 CWN 102

**Hon'ble Judges :** Banerjee, J

**Bench :** Single Bench

**Advocate :** R. Chaudhuri, for the Appellant; K.K. Basu, for the Respondent

## Judgement

Banerjee, J.—This is an application on behalf of Nathuram Poddar for rectification of the share register by substituting the name in place of the registered shareholders M|s. H. Dutt & Sons., Ltd., of 15, Clive Street, who at one time were the managing agents of the company. The shares were purchased in January, 1950, for the sum of Rs. 4,453-2 by the petitioner, from Messrs. Ramnarain Kayan & Co., who carry on business as share dealers and brokers at 7, Lyons Range, Calcutta. The sellers'' receipt and the share certificates have been produced before me and are in order. There have been a number of proceedings against Messrs. H. Dutt & Sons, relating to their management of the company''s affairs. But with these proceedings we are not concerned in the present application.

2. The shares were bought in the Open market by the petitioner with blank transfer forms duly executed by the registered holders. Transfers are very often left blank, that is, the name of the transferee is not put in. The shares pass on with the blank transfer forms from one person to another until they come to the hand of some person who wants to get them registered in his own name. He generally fills up his name in the "transfer form in the place reserved for the transferee and forwards it to the company. Lord Watson, describing the rights of such transferees in Colonial Bank v. John Cody (1) [(1890) 15 A. C. 267 at 277], said, "It would, therefore, be more accurate to say that such delivery (meaning delivery with blank transfer) passes, not the property of the shares, but a title, legal and equitable; which will enable the holder to vest himself with the shares without risk of his right being defeated by any other person deriving title from

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the registered owner."

3. After purchase, the purchaser sends the share for registration to the Company and he has got the right to have his name put on the share register. This is exactly what has happened in this case.

4. In a similar case, Chandratan Biyani v. Mahaluxmi Carton Mills, Ltd., the late Sinha, J., for reasons given in his judgment, directed registration of certain shares in the name of Chandratan Biyani, the petitioner in that ease. There was an appeal from his Lordship''s order, but it was dismissed. In view of this decision, Mr. K K. Basu, Counsel on behalf of the company, said that he was not in a position to oppose the application.

5. Mr. R. Chaudhuri, counsel on behalf of the petitioner, asked that the Order be given retrospective effect. In Sussex Brick Co., Re (2) [(1904) 1 Ch. 598], it was held that the Court has power, in a proper case, to fix a particular data at which the registration shall become operative, even to the extent of making it retrospective, but subject, if necessary, to conditions protecting the rights of third persons.

6. In the petition the petitioner has asked for the order being given retrospective operation. He sent the shares for registration to the company on February 6, 1950, and made this application on July 3, 1950. Nothing has been said on behalf of the Company as to why the registration was not done all this time. The directors of the company no doubt have in a proper case the right to refuse registration, but they cannot sit over the matter indefinitely. The directors are bound to say ''yes'' or ''no'' to the petitioner within a reasonable time. No reason has been given in this case as to why the company did not register the petitioner''s name.

7. The petitioner bought the shares in the open market, and has paid the price for it. No ground has been shown as to why his name should not be registered in the share register. He is the owner of the shares and has the right to have his name on the share register.

8. On August 21, a number of persons claiming to be creditors of the company made an application to wind it up, one of the grounds for winding up being that the company has acted in contravention of the scheme, e.g., that in contravention of the scheme Nathuram Poddar has been appointed a managing director of the company. I do not say anything in this judgment to prejudice that contention.

9. I make the order asked for by the petitioner giving the registration effect from February 6, 1950, without prejudicing the rights of any party who is not before me in this application. The petitioner is entitled to costs of this application against the company. Certified for counsel.

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