
(1955) 06 BOM CK 0003
In the Bombay High Court

Jayashree Shantaram Vankudre

APPELLANT

Vs

Rajkamal Kalamandir Private Ltd

RESPONDENT

Date of Decision : 28-06-1955

Acts Referred:

Companies Act, 1956 — Section 155, 38

Citation : AIR 1960 Bom 136 : (1960) 30 CompCas 141

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Judgement

K.K. Desai, J.—On December 31, 1947, the petitioner and one Shantaram then being wife and husband floated respondent No. I company as a private limited company. The petitioner was registered as a shareholder in respect of 25I ordinary shares (of respondent no. I company) being the subject- matter of this petition. The petitioner and the said Shantaram both continued to act as and were directors of respondent No. I company on July 1, 1955.

2. From the deed of transfer dated June 28, 1955, a copy whereof is annexed as exhibit 2 to the affidavit in reply made on behalf of respondent No. I company, it appears that the petitioner had signed the deed of transfer in respect of these 25I ordinary shares of the company. In the register of shares of respondent No. I company as on July 1, 1955, these shares were transferred and registered in the name of respondent No.2 From the minutes of the meeting of the directors held on July 1, 1955, it appears that the petitioner and the said Shantaram were both present at the said meeting and the application for transfer of the shares from the name of the petitioner to respondent No. 2 was resolved to be accepted and the shares were resolved to be transferred to the name of respondent No.2.

3. I understand from counsel that there have been disputes and differences between the petitioner and the said Shantaram since July 1, 1955. This petition appears to be one of the litigations arising in consequence of such disputes. In paragraph 7 of the petition the petitioner has referred to a suit which she has filed against respondent No. I company and the said Shantaram. In the written-

statement in that suit the minutes of the meeting of the directors held on July 1, 1955, were referred to and annexed. It is the petitioner's case that she was never present at such meeting and that no such meeting of directors was held on July 1, 1955. The petitioner's contention is that the minutes are fabricated for the purpose of depriving the petitioner of the shares in question and of her position as a director of respondent No. I company. The petitioner denies having at any time executed a deed of transfer of the kind which is annexed as exhibit 2 to the affidavit in reply made on behalf of respondent No. I company. The petitioner, however, does not deny the signature of the deed of transfer. The petitioner's case is that the contents of the deed of transfer which bears her signature are forged and fabricated. In the affidavit in reply made on behalf of respondent no. I company all these allegations are denied.

4. Mr. Khambatta on behalf of respondent No. I company has contended that the procedure prescribed u/s 155 of the Indian Companies Act is a summary remedy and should not be allowed to be resorted to in matters involving complicated questions such as have arisen in this petition. He contends that questions of forgery and fabrication of documents are not proper to be tried under the summary procedure of an application u/s 155 of the Companies Act. He has in that connection referred me to various textbooks. In Volume VI of Halsbury's Laws of England the summary of the purport of the English decisions in this connection appears in article 448. The relevant observations in that article are as follows (page 218) :

"The application may be made by the person aggrieved.....It may be by motion or summons or by action commenced by writ. If the court thinks that the case by reason of its complexity or on the ground that there are matters requiring investigation or otherwise, could more satisfactorily be dealt with by an action, the court will decline to make an order on a motion, without prejudice to the right of the applicant to institute an action for ratification. An action may, without any direction by the court, be instituted for rectification of the register, a course which should be followed where there is much complexity, or where other relief is required."

5. Mr. Khambatta and Mr. Mody both have referred me to the case of Matheran Steam tramwat Co. v. Lang . In that case the trial court in its discretion heard on merits and decide a petition made u/s 38 (which is the same as the present section 155) of the Companies Act. In the appeal court before the Division Bench one of the contentions raised was that complicated matter requiring trial by evidence should not have been allowed to be heard by petition and a suit should be directed to be filed. That contention was dealt with as follows:

"It was next said that this was not a matter which could be determined u/s 38 of the Indian Companies Act and that the petitioner should be left to a separate suit, more especially as Mr. Dinshaw had threatened a suit to enforce his lien. But, section 38 is widely worded. At the most it is a matter of desecration for the court whether in any particular case it will hear the petition or leave the parties

to a separate suit. An express issue was raised on this point, and the learned Judge exercised his discretion by deciding to hear this petition. Under those circumstances, we do not think we ought to overrule him and force the parties to begin de nouveau. Mr. Dinshaw's explanation as to why he did not bring a separate suit was because it would in effect be carried on at his own expense. There is the additional circumstance that a petition u/s 38 should be a speedier and cheaper process than an ordinary suit."

6. The effect of the above observations appears to me to be that the appeal court was not willing to interfere with the discretion that was used by the trial court in refusing to refer the petitioner in that matter to an action. The appeal court court also pointed out that the terms of section 38 of the Companies Act were wide and the remedy was speedier and cheaper. The matter is there fore entirely in the discretion of the trial court.

7. Mr. Khambatta has referred me to the case of Shrimati Savitadevi Jhunjhunwala v. Harinagar Sugar Mills Ltd. In that case after considering the position as arising under the decision in Matheran Steam Tramway Co. v. Lang on the facts of that case COYAJEE J. refused to allow the petitioner to proceed by the summary procedure prescribed u/s 38 of the Companies Act and referred him to an action.

8. In all matters arising under the Companies Act the rules of this court provide that the application must be by petition. It is not, however, that complicated questions of facts must be tried on a petition where remedy for action is available to a party. It appears to me that the observations made in English decisions in this connection are relevant and that where discovery and inspection are necessary and complicated questions such as forgery and fabricated documents arise for decision the summary procedure of trial by petition u/s 155 should not be allowed to be proceeded. This is not a matter where remedy of action is not available. On the contrary it is admitted by both sides that the procedure of filing a suit for rectification is not unknown and is generally resorted to where rights of third parties are concerned. In the matter of petition before me it appears to me that the real disputes are between the petitioner and her erstwhile husband Shantaram and complicated questions of fabrication and forgery must arise. In my view this is not a petition which I should allow to proceed to a hearing . The petitioner may if she so chooses file a suit for the relief which is claimed in the petition.

9. The order which I therefore, makes is : the petition must stand dismissed with liberty to the petitioner if so advised to file a regular suit. Costs of this petition if the suit is filed by the petitioner within four months from today will be costs in the suit. In default of any suit being filed the costs of this petition will be paid by the petitioner. Counsel certified.