

(2016) 08 KAR CK 0021
In the Karnataka High Court
Case No : Co. Appeal No. 8 of 2016

K. Ravinder Reddy

APPELLANT

Vs

Alliance Business School

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Companies Act, 1956 — Section 111
Companies Act, 2013 — Section 58

Citation : (2016) 198 CompCas 481 : (2016) 4 KCCR 382 : (2016) 137 SCL 314

Hon'ble Judges : Jayant Patel and B. Sreenivase Gowda, JJ.

Bench : Division Bench

Advocate : S. Vijayshankar, Sr. Counsel and Bhadrinath R, Advocate, for the Appellant; Anand Grover, Sr. Counsel, Nityanand V. Naik, Advocate, for the Respondent No. 2; K.G. Raghavan, Sr. Counsel, Nityanand V. Naik, Advocate, for the Respondent No. 3; Nagendra Naik.

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The present appeal is directed against the order dated 13-01-2016 passed by the Company Law Board (hereinafter referred to as ?CLB? for short) whereby, CLB has observed that the petition is maintainable and thereafter has directed the petitioner to approach the competent Civil Court as regards the controversial issue, then the petitioner may approach the CLB to decide the main Company Petition. CLB has further disposed of Company Application No. 1/2015, whereby the prayer of the appellant to forward the papers to the forensic expert and other relief are not granted.

2. In order to appreciate the controversy, we may refer to the facts in a nutshell.

3. As per the appellant, on 29-01-2015, share purchase agreement under the Memorandum of Understanding was entered into between the appellant and the respondents No. 2 and 3 for purchase of 2,25,000 shares, on 29-01 -2015. As per the appellant, total consideration was Rs. 67,50,000/-, out of which Rs. 47,50,000/- was paid by cash and the balance of Rs. 20,00,000/- was to be paid

through post dated cheques dated 25-03-2015, for which receipts are issued by respondents No. 2 and 3. As per the appellant, the application was made to the respondent No. 1 - Company for transfer of the aforesaid shares in favour of the appellant.

4. The Respondent-Company called for additional details. In the meantime, the K appellant came to know that a suit has been filed on 17.04.2015 before the City Civil Court, Bengaluru in O.S. No. 25382/2015 by one Mr. Abhay Govind Chebbi, claiming him self to be a Director of the first Respondent/Company with certain other persons claiming rights over the first Respondent/Company. The appellant also came to know that there was interim injunction granted in the above filed suit against the Registrar of Companies restraining him inter alia from registering any shares in relation to the Company. As per the appellant since the shares were not transferred in favour of the appellant as per the agreement entered into by Respondent Nos. 2 and 3, the appellant approached the CLB by preferring Company Petition No. 3/2015 seeking direction to the Respondent Company to register the transfer of 2,25,000 shares in favour of the petitioner and also prayed to direct Respondent Nos. 2 and 3 to pay compensation of Rs. 10 Lakhs as damages.

5. It appears that a criminal complaint was also filed by the Respondent Nos. 2 and 3 before the Police Authority contending inter alia that they have not signed the deed of agreement with the appellant to transfer the shares and their signatures are forged. When the matter was pending for police investigation. Application No. 1/2015 was preferred by" the appellant before CLB seeking prayer that summons be issued to the Branch Manager of Kotak Mahindra Bank and Axis Bank to produce the documents of the loan application, form, etc., containing signature and summons be also issued to direct Respondent Nos. 2 and 3 to produce the documents containing signatures and the various letters in the custody of Registrar of Companies who also be directed to produce concern letters signed by the third respondent and other documents. The second prayer was made in the said application to direct forensic examination of signatures of Respondent Nos. 2 and 3 in the original documents submitted by the appellant and be compared with the signatures of Respondent Nos. 2 and 3 with Memorandum of Understanding, Share Purchase Agreement, General Power of Attorney and Security Form. It appears that CLB thereafter heard the main Company Petition as well as C.A. No. 1/2015 but it appears that the appellant herein did not make any submission in Company Petition No. 10/2015 but made only submissions in C.A. No. 1/2015.

6. The CLB thereafter found that as the complaint is registered with the police and as per the report of the handwriting expert before the Police Authority, the signatures are found to be forged signatures and the documents are fabricated and the charge-sheet is filed, the CLB after finding that the Co.P. No. 10/2015 is maintainable, relegated the appellant to approach before the Civil Court for establishing the genuineness of the said documents and after the genuineness of

such document is determined, the appellant may further approach this Court for pursuing the matter for transfer of the shares purchased by the appellant and C.A. No. 1/2015 was disposed of but the main Company Petition was kept pending for enabling the appellant to approach before the Board. It is under these circumstances, the present appeal before this Court.

7. It appears that pending the present Company Appeal, two IAs, I.A. No. 2/2016 has been preferred by Smt. Shaila Chebbi, Smt. Mala Madikeri, Sri. Abhay Govind Chebbi, Sri. Prakash Siddappa and Sri. Sudhir Angur for being impleaded as party-respondents by contending that they are the persons in whose favour, prior to the subject transfer, the shares were already transferred in their favour and they would be effected by any order passed, which may be passed in the present proceedings and it is contended that in any case they would be effected if any order is passed for transferring of shares or otherwise in favour of the appellant.

8. I.A. No. 3/2016 has also been filed by M/s. Alliance University for being impleaded as party-respondent contending inter alia that though promoted by Respondent No. 1, it is an independent University established and governed by statute, looking after the education of large number of students and therefore the University be permitted to be impleaded as party.

9. We may also record that when the appeal together with IAs were considered for admission on 26.04.2016, following order was passed:

We have heard Sri S. Vijaya Shankar, learned Senior Counsel for Sri R. Bhadrinath, learned Counsel for the appellant, Sri Dhyan Chinnappa, learned Senior Counsel along with Sri D.R. Ravi Shankar, learned Counsel for Sri R. Nagendra Naik, learned Counsel for caveator's/respondent Nos. 1,2 and 3 and we have also heard Sri D.N. Nanjunda Reddy, learned Senior Counsel for Sri M.S. Shyamsundar, learned Counsel for impleading applicants in I.A. No. 2/2016 and Sri Jayakumar S. Patil, learned Senior Counsel for Sri S. Prasanna Kumar, learned Counsel for impleading applicants in I.A. No. 3/2016.

2. The question for consideration in this appeal is, whether before recording a prima facie finding as to the issues which cannot be adjudicated in a summary procedure and a full fledged trial was required, the Company Law Board could relegate the matter to the civil Court. The same and other aspects may deserve consideration in this appeal.

3. However, on the aspects of interim relief, upon hearing learned Counsel on both sides, it prima facie appears that as per the appellant, the amount of Rs. 47,50,000/- has been paid which fact is disputed by respondent Nos. 2 and 3. Be that as it may, if the transfer of the share is not to be effected upon at this stage, the interim order should balance the rights on both sides. Under the circumstance, the amount of Rs. 47,50,000/- should be deposited by respondent Nos. 1 to 3.

4. The additional aspect in the present case is that, respondent No. 1 is the sponsoring body of the University namely Alliance University, which has been constituted by Karnataka Act No. 34 of 2010. It has been stated at the Bar that about 6,500 students are studying in different branches or disciplines and the University is being run as per the said statute. There appears to be a dispute about the Chancellorship but so far as other officers of the University from Vice Chancellor, Registrar to the lowest employee, they are employees of the University. It has been stated that the functioning of the University from the level of Vice Chancellor till the lowest level would not in any manner be adversely affected by the inter se dispute either between the appellant and respondent Nos. 2 and 3, and even if the dispute exists between respondent Nos. 2 and 3 and the applicant of I.A. No. 2/2016. It has been further stated that the inter se dispute between respondent Nos. 2 and 3 and applicant of I. A. No. 2/2016, civil suit being O.S. No. 2911/2016 has been filed in the Court of City Civil and Sessions Judge, Bengaluru, and the ad interim injunction has been granted which is yet to be finalised by the civil Court. It has been further stated that there are also other civil suits filed and pending in the City Civil Court, Bengaluru.

5. Taking into consideration the aforesaid aspects, in order to ensure that the functioning of the University and more particularly, the education of the students and the staff may not suffer, appropriate care needs to be taken even while considering the matter for interim order. At the same time, liberty should also be reserved to the parties in the civil suits in O.S. No. 2911/2016 and others to pursue their rights if any, in the said proceedings, as the limited grievance in the present proceeding is pertaining only to the transfer of the shares in favour of the appellant by respondent Nos. 2 and 3.

6. We would have considered the matter, further however, learned Counsel appearing for respondent No. 1/Company stated that Company is ready to deposit the amount of Rs. 47,50,000/- within time as may be directed by this Court. Further on behalf of the applicants in I.A. No. 2/2016, it has been submitted that if there is failure on part of respondent Nos. 2 and 3 through respondent No. 1 to deposit the amount, applicants of LA. No. 2/2016 are also ready to deposit the amount. Of course, both the declarations are without prejudice to the rights and contentions in the present appeal and the civil suits which are pending before the civil Court.

7. In view of the above, we find that the following interim order deserves to be made:

By interim order, the operation and implementation of the order passed by the Company Law Board shall remain stayed.

Further, the amount, of Rs. 47,50,000/- is directed to be deposited with this Court by respondent Nos. 1,2 and 3 jointly and severally within two weeks from today. The stay will however not remain in operation in case the appellant decides to approach the civil Court, without prejudice to the rights and

contentions in the present appeal.

8. It is further observed and clarified that if there is failure on the part of the respondent Nos. 1 to 3 to deposit the amount of Rs. 47,50,000/-, applicants of LA. No. 2/2016 should deposit the amount of Rs. 47,50,000/- within two weeks there from.

9. The amount shall be invested by the Registry of this Court in any nationalised Bank for a period of six months or until further orders, whichever is earlier.

10. It is also made clear that pending the present proceedings, neither respondent Nos. 1 to 3 nor applicants in I.A. No. 2/2016 shall create any hindrance or interference in the administration of Alliance University and the regular affairs of the University on account of inter se dispute, save and except that the parties namely respondent Nos. 2 and 3 as well as applicants of I.A. No. 2/2016 shall be at the liberty to pursue their rights which may be available in law in the proceedings in O.S. No. 2911/2016 or any other civil suits.

11. It is made clear that in all aforesaid civil suit/s between respondent Nos. 2 and 3 or the applicants of I.A. No. 2/2016, the rights and contentions of the parties shall remain open in those respective proceedings.

Let the matter be listed for final disposal at the admission stage on 22.06.2016.

10. It has been reported that thereafter the amount of Rs. 47,50,000/- has been deposited with this Court and the condition has been complied with.

11. The learned counsel for the appellant contended that the CLB by passing the impugned order has abdicated from its duty in two fold manner; one is that when the petition was made before CLB under Section 58 read with Section 59 of the Companies Act, 2013 (hereinafter referred to as the Act of 2013), it has power to decide the principal question of transfer of the shares in their favour and while deciding the said question, all incidental aspects including as to whether the signatures are genuine or not or whether there was any valid transfer in favour of the appellant or not, etc., were required to be examined But in the impugned order, after the finding is recorded by the CLB that the petition is maintainable, it has relegated the appellant to the Civil Court that too by giving directions to the Civil Court as if the Board is having superior power over the competent Civil Court. It was submitted when the application being C.A. No. 1/2015 was for a particular relief to direct production of certain documents and that too before the matter was referred to forensic expert for comparison of signature in the transfer document with the other documents as mentioned in the application, the CLB ought to have addressed itself only on the said aspects. But the CLB as having found that some police case is filed and in the same police case, the signatures are found as forged as per the investigation and the charge-sheet is filed, it has wrongly found that it will not be in a position to adjudicate certain aspects and therefore, the appellant has been relegated to approach before the competent Civil Court. In the submission of the learned counsel for the appellant, such an

approach on the part of the CLB is nothing but an abdication of statutory power. He also submitted that CLB has power to go into title as was prevailing earlier with CLB under Section 111 of the Companies Act, 1956 (hereinafter referred to as the "Act of 1956"). Merely because there was omission in the language of Section 58 read with Section 59, it cannot be said that the power with CLB to examine the title is done away or has ceased to exist. In his submission, the regulation provides for all powers in the interest of justice and such regulations are being framed by CLB itself for its procedure. When the principal power exists to direct the Company to transfer the shares, the power to examine all incidental questions would follow by necessary corollary. Hence, it cannot be said that the CLB has no power to decide the said disputes. The learned counsel submitted, under these circumstances, the impugned order passed by the CLB for relegating the appellant to the remedy of the competent Civil Court and disposal of C.A. No. 1/2015 be set aside and prayed to pass appropriate orders directing the CLB to examine the matter and to pass further consequential order.

12. Whereas, the learned counsel Mr. Anand Grover submitted that so far as the functioning of Respondent No. 2 in the University is concerned, he is by statute appointed as a Chancellor of the University as per the Alliance University Act, 2010 (hereinafter referred to as the "University Act") and further he is a lifetime Chancellor of the University. He submitted that taking into consideration the aforesaid statutory provision, giving express power as per Section 50(2) of the University Act to continue as Chairperson of the sponsoring body as the first Chancellor and further entitled to hold the office for life, no prohibitory order may be passed even if this Court is inclined to intervene in the dispute inter se in capacity as the shareholder and transfer of such shares between the appellant and Respondent Nos. 2 and 3.

13. Whereas, Mr. K.G. Raghavan, learned Senior Counsel appearing for Respondent No. 3 while supporting the order passed by CLB contended that when this Court has to exercise the appellate power against the order passed by CLB under Section 10F of the Act of 1956, the judicial scrutiny could be limited to the extent that whether the discretion has been perversely exercised by CLB or not. In his submission, taking into consideration that a police complaint was filed and the investigation is made by the police and the charge-sheet is filed wherein it has come on record through the opinion of handwriting expert that the signatures were forged and the documents were fabricated, and under these circumstances, the CLB has found that it may not be possible to finally adjudicate on the aspects of the genuineness of the documents and therefore, when it has relegated the appellant/petitioner to the remedy of the Civil Court for establishing the genuineness of the documents, it cannot be said that discretion has been perversely exercised. He submitted that the proceedings before the CLB are summary proceedings and it is by now well settled that if any circumstances arise, which require full-fledged trial including that of examination and cross-examination of witnesses, etc., CLB will not be in a position to undertake such an exercise and hence, it is more appropriate that it leaves the

party to approach before the Civil Court for getting appropriate declaration or for getting the genuineness of the documents proved. In his submission, the interpretation made by the learned counsel for the appellant to the provisions of Sections 58 and 59 of the Act of 2013 is not correct. As per him, in the proceedings under Sections 58 and 59 of the Act, the CLB has no power to examine the title or the genuineness of the documents, more particularly, when a police complaint is filed, and the charge-sheet is also filed and when in the charge-sheet, the documents are found to be forged and fabricated. The submission was that the power as were available to the CLB under Section 111 of 1956 Act are unavailable under Section 58 to CLB since there is conscious omission on the part of the Parliament to delete the earlier provision made under Section 111 for examination of the title. As per him, when there is no power for examination of the title with the CLB, the only course available with the CLB is to refer the matter to the Civil Court or to relegate the party to approach before the Civil Court, which has been so done in the impugned order. As per the learned counsel, it cannot be said that the question of jurisdiction for examination of the title can be said as incidental power of the CLB at the time when a dispute was brought before it, more particularly, for transfer of shares by the Company on the basis of the agreement of sale of said shares. He submitted that when CLB was unable to decide the disputed question of facts, for which the Civil Court was appropriate remedy, and if the application for directing the production of documents and directing the reference to the forensic expert, if disposed of, such an approach on the part of the CLB cannot be said to be unreasonable or perverse exercise of the discretion, which may call for interference by this Court. He also submitted that the scope and ambit of power of this Court under Section 1 OF of the Act of 1956 is limited to substantial questions of law. After considering the facts and circumstances, the discretion has been exercised by the CLB, hence it cannot be said that any substantial question of law would arise for consideration, as be canvassed on behalf of the appellants. He therefore prayed that this Court may dismiss the appeal.

14. Learned counsel appearing for the applicants who are desirous to be impleaded as parties in the present appeal made two fold submissions; one is that they have preferred application before CLB to be impleaded as parties so far as the applicants in I.A. No. 2/2016 are concerned but up-till now, CLB has not passed any order permitting them to be impleaded as parties, in his submission, up-till now, CLB has also not passed any order, which can be said to be adverse to them. But since the appeal was preferred against the order of CLB and this Court in exercise of the appellate power may not pass any order for transfer of shares or otherwise, which may adversely affect their rights, the present applications for impleading as party respondents has been filed. Learned counsel for the applicants submitted that if this Court is inclined to set aside the order of CLB and the matter is remanded to Civil Court for reconsideration or in alternative, the appeal is dismissed, the applicant-his clients would not be adversely affected in any manner unless and until, this Court passes the order

for transfer of the shares, which as per them has already been transferred earlier in their favour, his clients would not be affected adversely. It was therefore submitted that this Court, taking into consideration the aforesaid aspects may examine the matter accordingly.

15. So far as the application in I.A. No. 3/2016 is concerned, the essential purposes on the part of the applicant to see that the educational activities of the University may not suffer on account of inter se dispute for transfer of the shares or otherwise and therefore, it was submitted that so long as any order does not affect the functioning of the University as per the statute, the applicant or his client may not be adversely affected. It was submitted that so far as the inter se dispute between the appellant and the respondents, the Court may decide as to whether the matter should be remanded to the CLB or the appeal should be dismissed. It is fairly submitted that the University did not move any application before the CLB to be impleaded as party but at the interim stage, when the present matter was being considered by this Court, the application was made by the University for protecting the educational activity of the University as per the University Act, 2010. Hence, this Court may consider the matter accordingly.

16. In order to appreciate the contention, we may at the instance, examine the power of CLB under Sections 58 and 59 of the Act of 2013 in contradiction to power of CLB under Section 111 of the Act of 1956. Sections 58 and 59 of the Act of 2013 reads as under:

"58. Refusal of registration and appeal against refusal

(1) If a private company limited by shares 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 securities or interest of a member in the company, it shall within a period of thirty days 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 transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days 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 public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of

transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order?

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of 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.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

59. Rectification of register of members.

(1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a 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, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court, outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any" of the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992) or this Act or any other law for the time being in force, the Tribunal may, on an application made by the

depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both."

17. The aforesaid provisions of Section 58 of the Act show that if the Company refuses to register the transfer of any securities or interest of the member in a Company, it shall intimate the reasons to the transferee for such refusal. But as per the scheme of sub-section (1), the appropriate action is required on the part of the Company within thirty days from the date on which the instrument of transfer is delivered to the Company. As per sub-section (2) of Section 58, any security or other interest of any member in a public Company is freely transferable but with the proviso that such contract or arrangement between two or more persons in respect of transfer of securities is enforceable as a contract. To say, in other words, such contract for transfer should be enforceable in law. As per sub-section (3) of Section 58, the transferee may appeal to the Tribunal (CLB at the relevant point of time) against the refusal by the Company. As we are concerned with private limited company, sub-section (4) may not be required to be examined in the present case. But as per sub-section (5), which is applicable to transfer of the securities in a public limited company or a private limited company, the procedure is that the Tribunal/CLB after hearing parties may either dismiss the appeal or may direct the transfer to be registered by the Company and the Company is bound to comply with such direction within ten days from the receipt of the order. The Tribunal/CLB may also direct rectification of the register and may further direct the Company to pay damages to the aggrieved party. As per sub-section(6), the contravention of the order of the Tribunal/CLB is made punishable with the imprisonment of not less than one year or may extend to three years with fine, which shall not be less than Rs. 1,00,000/- (Rupees One Lakh only) and such fine may extend to Rs. 5,00,000/- (Rupees Five Lakh only).

18. In the present case, the matter was not pertaining to error in rectification or omission in the rectification. The discussion of Section 59 may not be required at this stage.

Section 111 of the Act of 1956 reads as under:

"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.

(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 [Tribunal] 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 [Tribunal] for rectification of the register.

(5) The [Tribunal], 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 that the transfer or transmission shall be registered by the company and 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.

(6) The [Tribunal], while acting under sub-section (5), may, at its discretion, make -

(a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(7) On any application under this section, the [Tribunal] -

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register;

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(8) The provisions of sub-sections (4) to (7) shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members.

(9) If default is made in giving effect to the orders of the [Tribunal] under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to [ten thousand rupees], and with a further fine which may extend to [one thousand rupees] for every day after the first day after which the default continues.

(10) Every appeal or application to the [Tribunal] under sub-section (2) or subsection (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.

(11) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company is transmitted by a sale thereof held by a Court or other public authority, the provisions of sub-sections (4) to (7) shall apply as if the company were a public company :

Provided that the [Tribunal] may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid, within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefor or such other sum as the [Tribunal] may determine to be a reasonable compensation for the right in all the circumstances of the case.

(12) If default is made in complying with any of the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred rupees] for every day during which the default continues.

(13) Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company],

[(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.]]?

19. As per sub-section (1) of Section 111 of the Act of 1956, if the Company refuses to transfer the shares, the intimation will be required to be given for the reasons for refusal but the action is to be taken within two months from the date on which the instrument of transfer is delivered to the Company. Sub-section (2) of Section 111 provides for appeal to the Tribunal/CLB against refusal of the Company to register the transfer or against failure on the part of the Company to take any action for registration within the period of two months. Sub-section (3) of Section 111 provides for filing of the appeal within a period of two months from the date of refusal or within period of four months from the date on which the instrument of transfer was delivered to the Company. Sub-section (4) of section 111 provides for making application to the Tribunal for rectification of the register of the Company. Sub-section (5) of Section 111 provides that the Tribunal, after hearing the parties may dismiss the appeal or reject the application or by order transfer or transmission be registered by the Company or may order rectification of the register and may further direct the Company to pay damages, if any, sustained by the aggrieved parties. Sub-section (6) of Section 111 provides that the Tribunal while acting under sub-section (5) may at its discretion pass such interim order as it deems fit or make such order as to costs as it thinks fit or may make incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares. Sub-section (7) of Section 111 provides that on any application under this Section, the Tribunal may decide any question relating to the title of any person who is a party to the application made by him for his name entered or omitted from the register and it further provides that the Tribunal may decide any questions, which it is necessary or expedient to decide in connection with the application for rectification. Sub-section (8) to sub-section (14) are not required to be considered in the present proceedings and hence, we find that the discussion in this regard may not be required in the present order.

20. On conjoint reading of Section 58 of 2013 Act with Section 111 of the Act of 1956, it appears that sub-section (7) of Section 111, which was earlier in the statute book by express provision for deciding the question relating to any person for title is not found on the statute book in Section 58 of the Act of 2013. Two views are possible, one, if considered on the basis of applying the principle of conscious omission on the part of the Parliament, one may say that the power to decide the question relating to the title is not provided or rather expressly omitted as were available to the Tribunal/CLB under the Act of 1956 by virtue of Section 111(7). The another view is that in the interpreter process, Court may read such power with the Tribunal/CLB under Section 58. It is by now well settled as to the principles of interpretation of statute that the Court may read any incidental power in aid of the main power. But such aid of incidental power should not fall in the arena of substantive power of any Forum and the reason being that the substantive power is to be expressly conferred by statute and in

the absence of statute, the jurisdiction with the Forum for exercise of substantive power would be lacking and unavailable.

21. The learned counsel for the appellant did make an attempt to contend that it is not that every word of the statute or every provision is to be given a specific meaning and in his submission, sub-section (7) of Section 111 on the statute book may be interpreted as not altering the character of main power, if the Tribunal/CLB has to direct for transfer of shares.

22. In his submission, it does not matter whether the Parliament under Section 58 of the Act of 2013 has expressly provided or spoken for such power or not. As per him, the scope of the power under Section 111 of 1956 Act and under Section 58 of 2013 Act remains the same and therefore, the CLB had power to examine the questions relating to title even under Section 58 of the Act, 2013.

23. In our view, had it been a question of interpreting a minor or innocuous word in a statute, it may stand on a different footing and different consideration. When sub-section (7) expressly provided for such conferment of jurisdiction of the Tribunal/CLB to decide the question relating to title, it is not possible for us to read sub-section (7) and Section 111 as ineffective power. Even if we give liberal meaning that each word of the statute is not required in the interpretative process, then also, such liberty cannot be stretched to ignore or to nullify express substantive power so conferred by the statute, i.e., Act of 1956.

24. We say so because the examination of questions of title fall in the arena of substantive power of any Forum, may be, Tribunal or Court or any quasi judicial Authority. Such examination has to be in a full-fledged manner, because any view on the title for holding of the shares, or title of the security would have serious repercussion on the lights of the person holding the security or the person in whose favour the security is transferred. Further, sub-section (2) of Section 58 shows additional intention on the part of the Parliament though is relatable to a public Company. The proviso to Section 58(2) puts the condition that the securities are freely transferable but on the condition that the contract for transfer of the security is enforceable as the contract. To put in other words, such contract of security should be enforceable in law, then only, such securities are to be treated as freely transferable. Had the Parliament intended to leave the power upon the Tribunal/CLB to examine the contracts in law, the proviso ought not to have inserted. The mechanism for transfer of the shares for securities as provided under Section 58 is principally the same, may be the private company or the public limited company but the important aspect is that power as were available to the Tribunal under sub-section (7) of Section 111 as per 1956 Act are not available to the Tribunal/CLB under Section 58 of the Act of 2013. Hence, it is not possible for us to accept the contention of the learned counsel for the appellant that sub-section (7) of Section 111 in the interpretative process should not be given any meaning or should not be given any weight-age while addressing the jurisdiction or the scope of jurisdiction of the Tribunal/CLB.

25. In the decision of the Apex Court in the case of Tirupathi Balaji Developers (P.) Ltd. v. State of Bihar [2004] 5 SCC 1, the matter was pertaining to the appellate and ancillary power of the Constitutional Court which is not the fact situation in the present case since the power of CLB is a statutory power and further as observed by us herein above, the scope of incidental and ancillary power cannot be stretched for exercise of substantive power for examination of title pertaining to the share or security of any person.

26. In the same manner, Regulation 44 framed by CLB providing for inherent power for CLB cannot be read to travel beyond the scope of statutory power so conferred upon CLB. As observed by us herein above, the examination of title of share or security of any person would not even fall in the arena of ancillary or incidental power to the principal power for direction to transfer the shares or the security. Hence, Regulation 44 would be of no help to the appellant for canvassing the contention that CLB has power for examination of the title.

27. In the decision of the Apex Court in case of Jai Mahal Hotels (P.) Ltd. v. Rajkumar Devraj Singh [2015] 132 SCL 627/62 taxmann.com 241 (SC), the Apex Court had made observation keeping in view the provisions of Section 111 (7) of the Act of 1956 and therefore held that such questions could be gone into by CLB even if it had summary jurisdiction. But, as observed by us herein above, such powers under Section 111(7) of the Act, 1956 are unavailable to the CLB while exercise of power under Section 58 of Act of 2013. Hence, the said decision is of no help to the appellant.

28. In the decision of Apex Court in case of Ammonia Supplies Corpn. (P.) Ltd. v. Modern Plastic Containers (P.) Ltd. [1998] 17 SCL 463 (SC) the matter was pertaining to the scope and ambit of the power under Section 155 of Companies Act, 1956 which is no more on the statute book after 31.12.1991 whereas, in the present case it is a matter pertaining to scope and ambit of power under Section 58 of the Act of 2013, therefore, we do not find that the said decision can be applied to the facts of the present case.

29. In the decision of the Apex Court in case of A.V.D. Costa, Divisional Engineer GIP Railway v. B.C. Patel AIR 1955 SC 412, the Apex Court found that even if the authority under the Payment of Wages Act has power to determine actual wages as per the contract, it has no jurisdiction to determine the question of potential wages for which separate remedy is to be resorted to.

30. In the decision of Apex Court in case of Union of India v. Paras Laminates (P.) Ltd. [1990] 4 SCC 453, the Apex Court held that the implied ground of impugned incidental and ancillary powers are very much by express grant and therefore, it can be said that such powers are incidental and ancillary to make the ground effective but as observed by us herein above, such incidental and ancillary powers cannot be stretched to confer the jurisdiction for examination of title it can be said as a substantive power required to be conferred by the express provision of the statute.

31. Under these circumstances, we find that as per Section 58 of the Act 2013, if the question arises for the title of the person in whose favour the shares are to be transferred, adjudication power may not be available to the Tribunal/CLB to exercise power under Section 58 of the Act, 2013.

32. We may now further examine as to whether the discretion has been perversely exercised by the CLB in the impugned order for relegating the appellant to the competent Civil Court or not. Before we address ourselves on the said aspects, we may add that the principal power under Section 58 with the Tribunal/CLB is to direct transfer of shares by the Company in favour of the transferee in the event if the appeal is preferred before the Tribunal/CLB. The scope and ambit of the incidental power, if interpreted would mean that if the document of transfer is genuinely signed or is genuine but is lacking on other aspects like improper stamp duty, the signature at every page or minor discrepancy, etc., such aspects may be examined by CLB. But the requirement for exercise of the power, for any direction to the Company to transfer the shares, is that the document or the signatures on the documents should be genuine of the transferor. We are not examining the other contingencies and we would limit our scrutiny to the subject matter of the appeal. Otherwise, there may be other cases also where Tribunal/CLB may be required to examine the scope and ambit of incidental power.

33. As observed by us herein above, since there is express omission of power with the CLB to examine the question of title, we find that under these circumstances, if the CLB has declined to examine the aspects of title, it cannot be said that there will be abdication of statutory duty on the part of CLB as sought to be canvassed on behalf of the learned counsel for the appellant.

34. We may record for titling any discretion as perversely exercised or there is unreasonableness in exercise of power, there are various case laws but there cannot be any straight-jacket formula to title the exercise of discretion as erroneous on the face of it or perverse exercise of the discretion since it would vary from facts to facts of each case. But the broad parameter would be that, is the discretion exercised in a manner which no reasonable man with ordinary prudence would exercise or is the discretion exercised which shocks conscious of the Court or whether the discretion exercised is in such a manner that the fact shows only one conclusion whereas the decision is otherwise.

35. If the facts of the present case are further examined, the CLB was confronted with the situation that as per the appellant, the documents for transfer of the shares were genuine and therefore the company ought to have transferred the shares of respondent Nos. 2 and 3 in favour of the appellant. Whereas, as per the respondent Nos. 2 and 3, documents were not genuine but, the forged. Had it been a case of mere averment and denial of fact between the parties namely, the transferor and the transferee possibly it might stand on different footing and different consideration. But in a case where apart from the denial by contending that the documents were forged, the additional situation that a criminal

complaint is filed which has been investigated by the Police and the" during the course of the investigation as per the handwriting expert's opinion, the signatures are not found to be genuine and consequently the documents are found as forged and charge sheet is filed, would stand on the peculiar facts and circumstances leading the CLB not to order directly transfer of the shares in favour of the appellant.

36. In our considered view, if in a criminal proceedings, the Police has investigated and charge sheet is filed on the premise that the documents were forged, then, the exercise of the discretion by the CLB for relegating the appellant to approach before the Civil Court for proving genuineness of the documents could not be said as perverse or erroneous on the face of it or which shocks the conscious of the Court. It is hardly required to be stated that if there are two possible views, it cannot be said to be a perverse exercise of the discretion or the exercise of the discretion which shocks the conscious of the Court or ex-facie apparent error in exercise of power. The aforesaid is coupled with the legal position as observed and referred by us herein above that the CLB has no power to examine the title of a person.

37. We may also record that, if it is a matter purely in the arena of exercise of discretion coupled with the aspects that the exercise of discretion cannot be said to be perverse or the exercise of discretion which cannot be said as shocking to the conscious of the Court or ex-facie error in exercise of power, then, as such no substantial questions of law would arise for consideration. Under these circumstances, we find that the contention of the learned counsel for respondent Nos. 2 and 3 that when discretion is exercised on the face of one of the possible views, such would be outside the scope of the present appeal under Section 10F of the Act.

38. We may record that, by now it is well settled that the jurisdiction of the CLB is summary in nature more particularly when by express omission of the power which it possessed as per earlier provision of Section 111(7) of the Act of 1956. Further, the CLB has no jurisdiction to examine the genuineness of the documents more particularly when in the criminal case, the charge sheet is filed on the premise that the documents are not genuine and are forged documents it cannot be said that the jurisdiction of the Civil Court is barred since the Civil Court would possess the jurisdiction for deciding the inter se dispute between the parties unless the jurisdiction is impliedly or expressly barred by any statute. Further, it is only in the Civil Court proceedings there will be sufficient opportunity to the appellant to prove that the documents of transfer are genuine by examination of his witnesses and the cross-examination of the witnesses of the respondents 2 and 3. As such, in a matter where, in the criminal complaint after investigation, it is found that the documents are forged and not genuine, it would be more appropriate to relegate the party to the Civil Court for proving the genuineness of the document including by proving the signature because the Civil Court will have the competence to make appropriate declaration in this

regard irrespective of the investigation made by the Police or the Criminal case. After the genuineness of the document is so proved and the appropriate declaration is made by the Civil Court, unless otherwise prohibited by any competent forum known to law, CLB will have power to direct the Company to transfer the share in favour of the appellant but until such declaration is granted by the Civil Court, CLB may not be in a position to issue direction to the Company to transfer the share for the simple reason that unless the documents are found to be genuine including the signature thereof, the question of effecting transfer of shares or issuance of directions for transfer of shares may not arise. Under these circumstances, we do not find that CLB has committed any error in exercise of discretion in relegating the appellant to approach before the Civil Court for getting appropriate declaration about the genuineness of the documents for transfer of the shares in their favour.

39. In the decision of the Apex Court in case of CCI Chambers Co-operative House Society Ltd. v. Development Credit Bank Ltd. [2003] 7 SCC 233, it was observed that if the Consumer Commission after considering the pleadings of both the sides forms an opinion as to the nature and scope of enquiry that a detailed and complicated investigation into facts were incapable of being undertaken in summary and speedy manner then, the Commission could relegate the complainant to Civil Court.

40. The contention was raised by the learned counsel for the appellant that CLB did not give any opportunity to the appellant to put forward the case in the main Company Petition 10/2015 and it only gave the opportunity to make submissions to the appellant for Company Application 1/2015 and therefore, it can be said that the principles of natural justice are not observed by the CLB and therefore, this Court may set aside the order of the CLB on the said ground. In furtherance to the said submission, the learned counsel for the appellant relied upon the observations made by CLB at para. 11 of the order which records that reply in oral and written submission are made by the petitioner-appellant on CA only whereas advocate for respondent Nos. 1 and 2 have made oral and written submissions on main Company Petition as well as on Company Application and therefore, it was submitted that the recital in the order is sufficient to conclude that there is non-observance of principles of natural justice on the part of CLB.

41. The contention may prima facie show some substance but, upon the close scrutiny if it is tested with the memorandum of appeal before this Court, it shows that not a single averment has been brought to our notice by the learned counsel for the appellant that CLB did not give any opportunity to make submissions to the appellant on the main company petition nor even ground is contended that the order is in breach of Principles of Natural Justice or that appellant were taken by surprise for the order passed in the main company petition. On the contrary, the statement made at para.22 in the memorandum of appeal reads as under:

"The Company Law Board after remand hearing the arguments on both sides as per the direction of the Hon'ble Court passed the impugned order dated

09.03.2016 in CA 1/15 in CP 10/2015 passed by Company Law Board, Chennai as found at Annexure-A."

42. Further, no ground is brought to our notice on the basis of which it can be said that any complaint is made for non-observance of Principles of Natural Justice. On the contrary, the tenor of the appeal and the questions raised go to show that the appellant, after accepting the finding of CLB in the main company petition No. 10/15 that the petition is maintainable, has made a limited challenge to the discretion exercised by the CLB to relegate the appellant to approach before the Civil Court.

43. In the decision of the Apex Court in case of *Y. Sreebachi v. State of Tamil Nadu* [2015] 5 SCC 747 through superintending engineering water resources organisation/public works department and another, it was found that the recital in the Judgment cannot be a ground to challenge but as observed by us herein above, when not a single statement is made for deprivation of the opportunity to the appellant for hearing of main Company Petition by CLB, we do not find that the said decision would be of any help to the appellant.

44. Under these circumstances, we find that not only the contention raised by the learned counsel for the appellant is without there being any factual foundation but the same is not genuine because if the appellant consciously did not make any submission in the main company petition when main company petition as well as company application were heard simultaneously, no complaint can be made at the later stage that there is breach of Principles of Natural Justice.

45. Apart from the above, in a matter of complaint of breach of principles of natural justice, it is by now well settled that unless the breach is satisfactorily demonstrated before the Court, the Court may decline to entertain such complaint. As per the observations made by us herein above, when we have found that considering the facts and circumstances, the exercise of the discretion by the CLB cannot be said to be unreasonable or perverse or by committing ex-facie error on the face of the record, no useful purpose would be served in entertaining the complaint for breach of principles of natural justice though otherwise such a complaint is not genuine and not supported by any statement of fact in the memorandum of appeal nor any ground raised for such purpose save and except the oral submissions made by the learned counsel for the appellant during the course of hearing. Hence, we find that contention raised by the learned counsel for the appellant cannot be accepted.

46. There is considerable force in the contention raised by the learned counsel for the appellant that respondent No. 2 by virtue of Section 15(2) of the University Act, is entitled to the office as Chancellor for his lifetime but, even by interim order dated 26.4.2016, this Court has not prohibited him from functioning as the Chancellor but what has been directed was that, any hindrance or interference in the administration of the University should not be created.

Therefore, lawful exercise of the power as per the University Act by the Chancellor was not prohibited but, any hindrance or interference in the administration of the University which otherwise not permissible in law was prohibited in order to see that the educational activity of the University may not suffer.

47. The question may remain as to whether CLB ought to have passed any interim order pending the conclusion of the proceedings before Civil Court or until the appellant approaches before the Civil Court. We would have addressed such question but it appears to us that since no motion was made in the proceedings in the Company Petition before the CLB, we need not express any view. In any case, proceedings of main Company Petition are still pending before CLB, if any contingency arises in law, CLB is not precluded from passing the interim order save and except on the point for which it has found that the appropriate adjudication should be made before Civil Court. As such, until the party approaches before the Civil Court, appropriate interim order could have been considered by CLB but, in our view, when no motion was made before CLB, all such aspects shall be a mere academic exercise but, suffice it to observe that as and when such contingency arises in law, the parties may move before CLB or may be before Civil Court as the case may be and at that stage, rights and contentions of both the sides would remain open.

48. In the decision of the Apex Court in case of U.S. Krishnan v. West Fort Hi-tech Hospital Ltd. [2008] 83 SCL 44 (SC), the Apex Court expressed for the scope and ambit of the appellate power of this Court under Section 10F of the Act but in our view, even if it is considered for the sake of examination that, the appeal is maintainable then also, even on merits, we do not find that the decision of CLB is against any law or is based on any irrelevant material or omission to consider the relevant material. The said decision would be of no help to the learned counsel for the appellant.

49. In view of the aforesaid observation and discussion, the appeal fails. The appeal deserves to be dismissed. But, for interim relief it shall stand vacated with the further observation that, the amount deposited pursuant to the interim order shall be returned on filing the undertaking that as and when it is so directed by CLB or any other competent forum, the amount shall be redeposited by respondent Nos. 2 and 3.

50. Appeal dismissed accordingly. No order as to costs.