(1981) 09 BOM CK 0021

In the Bombay High Court

Case No : Appeal No''s. 344 and 345 of 1981 in Company Application No. 169 of 1981 in Company Petition No. 196 of 1981

Killick Nixon Ltd. and others — APPELLANT

Vs

Dhanraj Mills Pvt. Ltd. and others — RESPONDENT

Date of Decision : 09-09-1981

Acts Referred:
Companies Act, 1956 — Section 108, 108(1), 108A, 108H, 109

Citation : (1983) 54 CompCas 432

Hon'ble Judges : Sujata V. Manohar, J;P.B. Sawant, J

Bench : Division Bench

Judgement

Sawant, J.—These are two appeals against the interim order in Company Petition No. 196 of 1981, under s. 155 of the Companies Act, 1956 (hereinafter referred to as "the Act"), filed for rectifying the register of members. Appeal No. 344 of 1981 is filed by original respondent No. 1 - company and Appeal No. 345 of 1981, is filed by original respondent No. 2 - shareholder. Since both the appeals seek to challenge the same order and on the same grounds we are disposing of them by this common judgment. For the sake of convenience we will take facts from Appeal No. 344 of 1981.

2. The appellant is a public limited company and is hereinafter referred to as "the company." Respondent No. 1 is a private limited company and is a shareholder of the Company; respondent No. 2, is both a shareholder as well as a director of the Company. Respondents Nos. 3 and 4 are the Controller of Estate of Duty and the Regional Director of the Company Law Board respectively, whereas respondent No. 5 is the Union Bank of India from whom some of the shares in dispute were purchased by respondent No. 2 and here deceased mother, Shantaben Kapadia.

3. Respondent No. 1 has filed the present petition, as stated earlier, under s. 155 of the Act for rectifying certain entries in the appellant company''s register of members. The said entries relate to five different lots of shares, made in the

name of respondent No. 2. In the petition, respondent No. 1 has also prayed for the appointment of a receiver in respect of the said shares and for an injunction restraining the appellant-company from recognising respondent No. 2 as the registered shareholder in respect of the said shares pending the disposal of the petition. In the petition, respondent No. 1 took out a judge''s summons for interim reliefs in terms of the above prayers. However, the only interim relief which need be considered in this petition and which was pressed before the learned single judge was as follows :

"That pending the hearing and final disposal of the petition respondent No. 1, i.e., the Company be restrained by an interim order and injunction of this Hon''ble Court from recognising respondent No. 2 as the owner of and from allowing respondent No. 2 to exercise voting or any other right in respect of the said five lots of shares which are Exs. A, B, C, D and F, respectively, to the petition."

4. The summons was resisted by the appellant-company and respondent No. 2 Affidavits and counter-affidavits were filed by the parties in support of their respective contentions. The grounds urged for the rectification of the register of members in the petition as well as in the affidavit in support of the Judge''s summons were different in respect of the different lots of shares. We are concerned in this appeal only with lots of shares which are Exs. A, B, and F to the petition since the learned judge has granted the interim relief prayed for only in respect of the said shares and the present appeal has been preferred against the said order there being no appeal preferred by respondent No. 1 against the refusal of relief with regard to the other lots of shares.

5. We may briefly indicate at this stage the grounds on which the rectification is prayed for in the petition and on the basis of which the interim relief was sought by the judge''s summons. The entries in respect of shares at Exs. A and B are sought to be rectified on the ground, firstly, that the said entries were made during the period the register of members was closed under s. 154 of the Act and, secondly, on the ground that no transfer in respect of the said shares could have been effected without obtaining the certificate from respondent No. 3, the Controller of Estate Duty, under s. 84 of the E.D. Act, 1953. The rectification of the entry in respect of shares at Ex.F. is sought on the ground that the intermediate entry, prior to the present entry, was made firstly in the name of Shantaben Kapadia, who was dead on the date the entry was so made and, therefore, the subsequent entry in the name of respondent No. 2 and the said Shantaben had also become illegal and, secondly, on the ground that the Company being registered under the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as "the "MRTP ACT"), was barred by the provisions of ss. 108A to 108H of the Act, without the consent of the Central Govt. Although both in the petition as well as in the affidavits in support of the judge''s summons, several other grounds were urged. It appears that at the time of the hearing of the judge''s summons, the attack was confined only to be

aforesaid grounds and the learned single judge has also granted interim relief to the petitioner only on the said grounds, and, therefore, we need consider the validity of the said grounds only, in this appeal. The learned judge, as stated earlier, by his impugned order dated July 31, 1981, has restrained respondent No. 1 to the petition, i.e., the appellant-company from recognising respondent No. 2 as the owner of and/or from allowing respondent No. 2 to exercise voting or any other right in respect of the said shares at Ex. A, B, and F and has also restrained the appellant-company from acting on the proxies that may have been filed by respondent No. 2 in respect of the said shares. It is this order which is challenged in both the appeals.

6. Shri Chagla, the learned counsel for the appellant-company raised four preliminary objections to the maintainability of the petition itself and submitted that in view of the fact that the petition itself is not maintainable, no interim relief could have been granted to the petitioner, in the petition. His first contention is that the petition is not maintainable for the relief claimed in prayers (a) and (c) in the petition in respect of the said shares at Exs. A, B, and F. By prayer (a), the petitioner desires that the shares at Exs. A and B be registered in the name of Navin P. Kapadia or in the name of Shantaben Kapadia both of who are admittedly dead. By prayer (c) the petitioner wants the name of the Union Bank of India to be entered in respect of shares at Ex. F, although the Union Bank of India is uninterested in such entry. The Bank, though a party to the petition and to summons, had never appeared nor has it ever made any grievance about the entry in respect of the shares in the name of respondent No. 2. Inasmuch as, therefore, the petitioner has prayed for the said reliefs which are either incapable of being granted or unnecessary to be given, the petition is not maintainable to that extent. In this connection, he submitted that it was obligatory on the company to maintain is books and registers in such a manner as to reflect the reality and no Company could be asked to correct its registers to show incorrect situations. In this connection, he pointed out that the present appeal is concerned only with regard to the said three lots of shares, viz., Exs. A, B, and F and if no relief can be given in the petition in respect of the said three lots of shares, there is all the more reason why the application such as the judge''s summons for an interim relief in respect of the said shares should be rejected. However, prayers (a) and (c), on which Shri Chagla relies to make good his point, do not read as suggested by him. The relief claimed by prayer (a) in that the shares at Exs. A and B should be shown as they were in the name of the said Navin P. Kapadia before they were transferred in favour of the said Shantaben or in any event in the name of the said Shantaben before they were transferred in favour of respondent No. 2. In other words, the substance of this prayer is to restore the status quo ante of the entries in the register. It is one thing to argue that today in effect the grant of prayer (a) would be to show the said shares in the names of dead persons, i.e., either Navin Kapadia or Shantaben and quite a different thing to submit that the relief claimed in the petition being to show the shares in the name of dead persons, the petition itself

is not maintainable. The sum and substance of the contents of the petition read with the said reliefs claimed by the petitioner is that the basis on which the transfers were effected first in the name of Shantaben and, thereafter, in the name of respondent No. 2 being itself incorrect, the entires should be restored to the status quo ante. That being the gist of the petition as well as the relief claimed in prayer (a), it can hardly be contended that the petition is not maintainable on the ground suggested by Shri Chagla. The same is the case with regard to the relief claimed in prayer (c). Here again what is challenged is the basis on which the change has been effected in the register of members from the Union Bank of India to respondent No. 2. The relief claimed by prayer (c) again is to restore the status quo ante before the name of the Union Bank of India came to deleted from the register of members. As stated earlier, it is possible to argue that the relief if granted would result in making an entry in the name of an uninterested or an unwilling member and the court should not grant such relief. But that fact does not go to the root of the maintainability of the petition as such.

7. The second preliminary objection raised by Shri Chagla was that the petitioner, i.e., respondent No. 1 to this appeal being only a shareholder or a member of the Company, has no locus standi to file the present petition. According to him, the petition can be filed only by persons having some interest or equity which requires intervention of the court. In this connection, he submitted that only a person who is aggrieved by an incorrect or a wrong entry in the register such as either the transferor or transferee will be entitled to file the petition. According to him unless a person shows that he is in some way or the other aggrieved by the incorrect entry he will have not right to file a petition under s. 155. Developing his argument further, he contended that expression "any member" in s. 155 must mean a person who is in a position to show that some prejudice is caused to him by such wrong or mistaken entry and the said expression should be read as such, taking into consideration the purpose and the scope of the section. It is not possible to accept the said contention. The language of s. 155 is crystal clear. Section 155 reads as follows :

"155. Power of court to rectify register of members. - (1) 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 on 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 apply to the Court for rectification of the register."

8. Thus, the section makes it clear that not only the person aggrieved but also

any member of the Company may apply to the court for a rectification of the register of members. If the intention of the Legislature was to confine the remedy only to the aggrieved persons as contended by Shri Chagla, then there was no need to add a further category or "any member of the Company" after giving such right to "the person aggrieved." The clear provisions of the section, therefore, militate against accepting the limited construction sought to be placed by Shri Chagla on the provisions of the said section. Secondly, the object of the said provisions does not support his contention. Read as a whole, it appears that one of the intentions of the Legislature is to ensure a register of members, which reflects reality at any particular point to time. That is why the Legislature has extended this right to any member of the Company without compelling him to show a particular or a special prejudice caused to him by an incorrect or a wrong register of members. Hence, to confine the right to file the application only to an aggrieved member or a member who is in a position to show some special prejudice, will go counter to the object of the section. For both these reasons, we are unable to accept the said contention.

9. The next preliminary objection was that the petition was barred by principles analogous to the principles or res judicata or by the principle of issue estoppel. In this connection, Shri Chagla pointed out that in respect of the shares at Exs. A and B, the very petitioner, i.e., respondent No. 1, herein has filed a civil suit being Suit No. 2145 of 1980 in the Bombay City Civil Court, Bombay, which is pending. The relief claimed in the said suit to restrain respondent No. 2 herein from getting the said shares at Exs. A and B transferred in her name and restraining the appellant-company from transferring the same in her name. The grounds urged against such transfer are the same which are urged in the present petition for rectifying the register of members in respect of the said shares. In the said suit the petitioner, respondent No. 1, had applied for an interim relief by taking out a Notice of Motion for restraining respondent No. 2 from getting the said shares transferred in her name and restraining the appellant-company from transferring the said shares. The motion was dismissed by the City Civil Court on April 21, 1980, and the appeal preferred by respondent No. 1 against the said dismissal was summarily rejected by this court on May 28, 1980. After waiting for a period of more than one year, the present petition was filed on June 10, 1981, for rectifying the entries which were since made. He, therefore, submitted that at least so far as the shares at Exs. A and B are concerned, the present petition is barred by the said principles. There is no doubt that the substance of the relief claimed in the present petition so far as the shares at Exs. A and B are concerned, is the same as that the claimed in the suit. viz., to prevent respondent No. 2 from exercising here rights as a shareholder in respect of the said shares. However, the present petition seeks to rectify the entries not only in respect of shares at Exs. A and B but also shares at Exs. C, D, and F. Further, it is debatable whether the relief claimed under s. 155 of the Act for rectifying the register of members can be granted by a civil court and whether the jurisdiction given to the company court in that behalf is an exclusive one. Secondly,

technically the relief claimed for rectification under s. 155 will be different from the relief of injunction claimed in the suit. In any case, at this interlocutory stage, it is not necessary to decide the said issue. The facts pointed out by Shri Chagla are certainly relevant for considering whether the interim reliefs as prayed for by respondent No. 1 ought to be granted. This will be done at the proper stage.

10. The last of the preliminary objections was directed not so much against the maintainability of the petition but against the maintainable of the judge''s summons for interim relief and this objection was raised also by Shri Mehta on behalf of respondent No. 2. The argument was that the proceedings under s. 155 being themselves summary in nature, an application for interim relief in such a proceeding was not maintainable. In this connection, Shri Chagla submitted that the provisions of s. 155 of the Act do not provide for making any such application unlike the provisions of some other sections in the Act such as ss. 338C, 391(6), 403 and 443. He also further referred us to [1918] 2 Ch.D. 324 Siemens Bros & Co. Ltd. v. Burns, where it is observed that as to the question of registering a portion of the shares in the names of person who are already on the register by transposing the order of their names, it is not a matter which ought to be dealt with on an interlocutory application and the proper course would be to discharge the order on that motion. Relying on these observations, Shri Chagla submitted that in the present case also it was not more than substituting one name for the other and, therefore, the same principles should apply. We are not impressed by this contention. In the first instance, although it is true that s. 155 like the other sections doest not in so many words make a provisions for interlocutory reliefs, it does not and cannot mean that the inherent power to grant interim reliefs is unavailable to the court while exercising the powers to grant under this section. As in any other proceeding, so grant interim relief if they are warranted by the facts and circumstances of the case. All powers which are necessary to effect fully exercise the duty conferred on it will be deemed to be available to the courts, unless expressly barred. The absence of an express provision has never been interpreted to take away such powers of the court which are necessary to do justice between the parties. A look at the express provisions made under ss. 388C, 391(d), 403 and 443 will show that they covers situations where the Legislature itself envisaged that there may arise a need to make interim orders to protect the affairs of the company and interests of the parties and, therefore, it was necessary to clothe the court with express powers and not leave it to their inherent powers. That, however, does not mean that where no such express provision is made by the Legislature, either the Legislature intended to forebear the courts from exercising their otherwise inherent and necessary powers or that the courts were powerless to exercise the same. As regards the decision relied on Shri Chagla and the observations made therein, we fail to understand how the same can hep his connection. The said observations have been made on the peculiar facts of that case. It appears that the question which fell for consideration there was whether the order of the names of the two trustees

which stood on the register of membership of company required to be transposed as regards one moiety of their shares at the interlocutory stage of the proceedings and it is while dealing with this question that the court took the view that it was not a matter which ought to be dealt with on an interlocutory application. On the other hand, these observations go to show that some interlocutory reliefs may be granted though not all reliefs. We are, therefore, of the view that it cannot be laid down as rule of law that no application for interlocutory relief in proceedings under s. 155 is maintainable. On the contrary, we take the view that as in all other proceedings, in proper cases, an application for interlocutory relief even under s. 155 is maintainable, notwithstanding its summary nature. The fact that the proceeding is summary may be relevant while considering whether a particular relief claimed in such proceeding should or should not be granted. That, however, is a different proposition.

11. Coming now to the merits of the case, it is necessary first to state a few facts relating to the shares in question. Respondent No. 2 is the sister of one Navin Kapadia, who died on April 19, 1979, and Shantaben Kapadia died on April 2, 1980. On the death of Navin Kapadia, Shantaben Kapadia was the heir entitled to the shares, which stood in the name of Navin Kapadia, and on the death of Shantaben Kapadia, respondent No. 2, being the sole heir, was entitled to the shares which stood in the name of Shantaben Kapadia.

12. Out of the shares in dispute in this appeal, shares at Ex. A, which numbered 11,350 originally stood in the name of Navin Kapadia. They were transferred on May 2, 1979, in favour of Shantaben, who was admittedly entitled to the same, after the death of Navin Kapadia on April 19, 1979. On the death of Shantaben on April 2, 1980, they were transferred from the name of Shantaben to the name of respondent No. 2 on May, 8, 1980, respondent No. 2 being the sole heir of Shantaben.

13. The shares at Ex. B, which numbered 3,298, originally stood in the joint names of both Navin Kapadia and his mother, Shantaben Kapadia, who is also the mother of respondent No. 2, as stated earlier. The entry in the name of Navin Kapadia was deleted in the register of members on May 2, 1979, and, therefore, from the date the same shares stood in the name of Shantaben alone. On the death of Shantaben on April 2, 1980, the said shares also came to transferred in the name of respondent No. 2, her sole heir on May 8, 1980.

14. Shares at Ex. F, which numbered 4,978, originally belonged to the Union Bank of India. On December 21, 1979, by a transfer deed executed between the Union Bank of India on the one hand, and Shantaben and respondent No. 2 on the other, they were sold by the Bank of Shantaben and respondent No. 2 jointly. On April 22, 1980, an entry was made in the company''s register of members in the name of Shantaben and respondent No. 2 as the joint shareholders in respect of the said shares. On June 13, 1980, Shantaben''s name was deleted from the said entry and on and from that date, the shares have been standing in the sole name of respondent No. 2. Having narrated the admitted facts in respect

of the said three lots of shares, it will now be convenient to deal with said shares separately on the basis of the grounds on which a rectification of the entries in respect thereof is sought in the present petition.

15. The grounds on which rectification of the entries in respect of the shares at Exs. A and B is sought are common and, therefore, they will be dealt with together and separately from shares at Ex. F. Taking first the shares at Exs. A and B, it is the grievance of respondent No. 1 petitioner that the entries in respect of the said shares in the membership register are illegal, firstly, because the said entries were made during the period the Company''s Register of Members was closed from April 24, 1980, to May 23, 1980, under s. 154 of the Act and, secondly, because no such entry could have been made in the said register unless there was a certificate from respondent No. 2 - the Controller of Estate Duty - read with art 56 of the company''s articles of association.

16. As regards the objection to the entry on the ground that it was made during the period of closure, the specific allegation in that respect is that when shares at Exs. A and B were transferred from the name of Shantaben to the name of respondent No. 2 on May 8, 1980, the register of members of the Company admittedly closed under s. 154 of the Act. Under the provisions of sub-s. (2) of s, 163 of the Act, the said register, among others, is not available for inspection to the members and, therefore, it is not permissible for the Company to make any entry in the register of members during the said period and any entry so made become ipso facto illegal. We are unable to accept the submission for reasons more than one. The normal rule is that the register of members and other books and documents should be available to the members, debenture holders or any other persons throughout the year. The provisions of s. 154, however, empower the Company to close its register of members, for a certain period and, therefore, are enable one. There is nothing in the said Act or any other law to compel the Company to close its register of members or any other books for any period whatsoever. On the other hand, the provisions of the said section make it clear that if the company does want to close its register of members, it must comply with requirements of the said section. The requirements are, firstly, that not less than seven days'' previous notice has to be given by advertisement in some newspaper, and, secondly, the register should not be close in the aggregate for more than 45 days in each year and not for more than 30 days at any one time. If the Company closes its register of members without complying with the aforesaid conditions, then a penalty is provided in the section itself. Thus, the provisions make it abundantly clear that they are not only enabling but that there is nothing in law to compel the Company to close its register of members if it does not desire to do so. Secondly, although the provisions of s. 163(2) of the Act state that during the period that the Company closes its books under s. 154, the members, i.e., the shareholders or the debenture-holders or other persons are not entitled to an inspection of the same, there is nothing either in s. 163(2) or s. 154 or for that matter any other provision of that Act, which prevents the Company from keeping the said register and books open for inspection even

during the said period of closure, if it desires to do so. Neither in s. 154 nor in any other provisions of the Act is there any such bar against the Company. It appears that the powers which have been given to the Company under the said ss. 154 and 163(2) to close the register of members and to disentitle the members and others to an inspection of the Company''s books during the particular period have been given for the benefit and convenience of the Company such as of bringing its register of members up to date of the purpose of calculating dividend and bonus, etc. These powers further can be exercised at any time during the year. For example - and this is relevant against the background of the allegations in the present petition - the register of members and other books may be closed either prior to, during or subsequent to the annual general meeting. These powers further have nothing to do with entries regarding the transfer or transmission of shares as such, although if the Company so chooses, it may refuse to register such transfers or transmission during the said period. In this connection, it would be interesting to not the provisions of the Model Regln. No. 23 given in Table A of Sch. I to the Act. That regulation states that "subject to the provisions of s. 154, the registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine :

17. Provided that such registration shall not be suspended for more than thirty days at any one time or for more than forty-five days in the aggregate in any year". The provisions of this regulation again emphasise the enabling powers of the Company and also further stress the fact that it is for the Company to suspend or not, the registration of transfers, during the said period of closure. There is no obligation on the Company to do so. If, however, the Company does so, it will be protected by the provisions of s. 154. Incidentally, it may also be pointed out that the Company has not adopted the said model regulations and there is no provision similar to the said Model Regln. No. 23, in the articles of the association of the Company. Nor has it been shows to us that the Company had otherwise declared that during the said period of closure from April 24, 1980, to May 23, 1980, the registration of transfers or transmissions would be suspended. We may in this connection also refer to a passage from Palmer''s Company Law, 22nd Edn., Vol I, P. 544, para. 49-12, which has been referred to by the learned single judge in his judgment and on which reliance was place by both sides. The said passage is as follows :

"It should be noted, however, that even if the register of members is closed, action must be taken in regard to the registration of probates and letters of administration, notices of change of name or address and court orders, such as charging orders, etc."

18. While Shri Chagla for the appellant contended that this passage showed that during the period of closure of register of members, certain entries still had to be made, it was contended by Shri Parekh on behalf of respondent No. 1, that the said passage showed that during the period of closure, only the entries referred

to therein could be made. It also appears that the learned judge, has accepted Shri Parekh''s contention in that behalf. We are, however, unable to accept the said interpretation. According to us, the interpretation put on the said passage by Shri Chagla is more in consonance with the scheme of Act and the purpose and object of ss. 154 and 163 thereof. We are already stated that the provisions of the said section are enabling and there is nothing either in the said section or any other provision of the Act which prohibits the Company from making the entries in respect of transfers or transmission or shares such as the ones which have been made in respect of the shares at Exs. A and B in the present case. Therefore, we are more than satisfied that the entries in respect of shares at Exs. A and B in the register of members on May 8, 1980, are not illegal on that account. Apart from the above legal position, as has been stated by the appellant-Company, in para. 22 of the affidavit dated June 30, 1981, filed on its behalf by one P. J. Kapadia, the Company had also obtained legal advice in the matter and their legal advisors had advised that since the said shares were to be transmitted by operation of law to respondent No. 2 and were not to be transferred in her favour, it would be competent and legal for the Company to register her name as a shareholder in respect of the said shares even during the said period of closure. The Company, therefore, could not be said to have made the entries in question "without sufficient cause."

19. As regards the contention that the said entries could not have been made without obtaining a certificate from the Controller of Estate Duty, the argument was that s. 84 of the E.D. Act, 1953, prohibits any Company from registering the transfer of shares belonging to a deceased shareholder unless a certificate from the Controller is produced before the Company to the effect that the estate duty in respect of such shares has been paid or will be paid or that none is due, as the case may be. The relevant provisions of s. 84(1) are as follows :

"84 (1). Where a company within the meaning of the Companies Act, 1956, has knowledge through any of its principal officers of the death of any member of or debenture-holder in the company, it shall, within three months of receipt of intimation of the death, furnish to the Controller such particulars as may be prescribed in respect of the interest of the deceased unless the transferee has acquired such shares or debentures for valuable consideration or a certificate from the Controller is produced before the company to the effect that the estate duty in respect of such shares or debentures has been paid or will be paid or that none is due, as the case may be."

19. Article 56 of the articles of association of the Company incorporates the said provision and makes it unlawful for the Company to register transfers of such shares unless the relevant certificates are produced from the Controller of E.D. Admittedly, in the present case, no such certificate was produced and, hence, the argument is that the entire transfer made in respect of shares at Ex. A, first in the name of Shantaben on May 2, 1979, and, thereafter, in the name of respondent No. 2 on May 8, 1980, and in respect of shares at Ex.B in the name

of respondent No. 2 on May 8, 1980, is unlawful. In the first instance, a careful reading of the provisions of the said s. 84, show that the prohibition enacted therein relates to the transfer of shares and not to their transmission by the operation of law. We do not see anything in the said section which prohibits the Company from registering the transmission of shares by the operation of law. There is a clear distinction between a transfer by an act of the parties and transmission by the operation of law such as on succession, etc. The articles of association of the Company on which reliance is placed on behalf of respondent No. 1, also, according to us, do not prohibit the Company from registering such transmissions without the relevant certificate. In fact, we notice a clear distinction made both in the Act and in the articles of association between a transfer and transmission of shares. To illustrate, while the main provision of s. 108(1) and that of the first proviso thereto deal with transfer, the second proviso thereof deals with the transmission of shares. s. 111 of the Act also emphasises this distinction. As regards the articles of association, art. 55 states that the Company shall recognise only the executors or administrators of a deceased member as having any title to the share. However, the said article gives a discretion to the board of directors to dispense with the production of probate or letters of administration and register the name of any person who claims to be absolutely entitled to such shares. Article 57 then state that subject to the provisions of arts. 54 and 55, any person becoming entitled to any shares in consequence of the death, lunacy, bankruptcy or insolvency of any member, or by any lawful means other than by a transfer may with the consent of the board of directors, and upon producing such evidence, show that he has a title and get himself registered as a holder of shares. This article, therefore, clearly makes a distinction between a transmission by operation of law and transfer of shares by an act of parties. The same distinction is retained in art. 60, where both the words "transfer" and "transmission" have been used to change of hands of the shares by two different means. Therefore, when art. 56 talks of an embargo on the Company''s power to register a transfer of shares without obtaining the relevant certificate, the article has a reference not to the transmission of shares by operation of law but to the transfer of shares by an act of the parties. Thus, neither s. 84 of the E.D. Act nor art. 56 of the articles of association prohibit the Company from registering the names of the shareholders without obtaining the relevant certificate from the Controller of Estate Duty when the transmission is by the operation of law. This is on the interpretation of the said s. 84 and art. 56 of the articles of association. However, in the present case, the appellant-company as well as respondent No. 2 had, in addition, relied upon a circular issued by the Central Govt. as early as on June 20, 1968, which in terms has made it clear that "transfer of shares" referred to in s. 84(2) of the E.D. Act, 1953, does not include transmission of shares by operation of law, such as occurs when the shares devolve on the legal heirs of a deceased member or on the survivor or survivors of two or more joint shareholders. Therefore, the provisions of s. 84(2) are not considered to be applicable to cases where the heirs or the survivor or the survivors of two or more joint holders apply for registration, in their names, of the shares held by the deceased. The circular further hopes that in view of the said clarification, the Companies would not insist on the production of the estate duty clearance certificate in such cases. Shri Parekh, for respondent No. 1, no doubt, contended that, according to him, the provisions, both of s. 84 of the E.D. Act as well as of art. 56 of the articles of association were applicable also to cases of transmission of shares by the operation of law had the circular issued by the government being inconsistent with the said provisions of law, had no operative value. Assuming that we are wrong in out interpretation both of s. 84 of the E.D. Act as well as of art. 56 of the articles of association, we are not satisfied that in the present case the appellant as well as respondent No. 2 were not entitled to rely upon the said circular for the purpose of the interpretation of the said s. 84 of the E.D. Act. As stated earlier, art. 56 of the articles of association does no more than in corporate bodily the provisions of the said s. 84. If, therefore, they had relied on the said circular issued on June 20, 1968, i.e., long before the present controversy arose between the parties, it could hardly be said that the Company had not acted bona fide or without sufficient cause, while registering the transmission of the said shares either on May 2, 1979, or on May 8, 1980. We are, therefore, of the view that the grievance made by the petitioner in respect of the entires made either on May 2, 1979, in favour of Shri Shantaben or on May 8, 1980, in favour of respondent No. 2 in the register of members has no substance in it on either count. In any case, it can hardly be said that the said entries were made "without sufficient cause", the absence of which alone entitles the court to direct a rectification under s. 155 of the Act.

20. Coming now to the share at Ex. F, the undisputed facts in respect of the said shares as stated above are that the shares were purchased by the deceased Shantaben and respondent No. 2 jointly, as early as on December 21, 1979, from the Union Bank of India. In all, six different transfer forms were executed by the Union Bank of India as transferor and by respondent No. 2 on behalf of herself and her mother, Shangaben, as transferees on that day. As far as the present petition goes further, it cannot be disputed that respondent No. 2 was the only heir of Shantaben and after Shantaben died, respondent No. 2, both as her sole heir as well as the surviving joint holder, was entitled to be placed on the register of members as the sole shareholder in respect of the said shares. In fact, on and from June 13, 1980, it is the name of respondent No. 2 alone which has been standing in the register of members as such sole shareholder in respect of the said shares. It is against this background that we have to examine the grounds of attack against the transfer of shares in the name of respondent No. 2 and Shantaben on April 22, 1980. What is alleged is that the entry made in the register of members on April 22, 1980, in the joint names of respondent No. 2 and Shantaben was illegal for three reasons. Firstly, the Company had not received the said shares till April 22, 1980, and, yet a resolution was passed by the board of directors on April 21, 1980, allowing the transfer of the said shares from the Union Bank of India to respondent No. 2 and Shantaben. Secondly, it is

contended that on April 21, 1980, when the resolution was passed transferring the shares both in the name of respondent No. 2 and Shantaben, Shantaben was already dead, she having died on April 2, 1980. Hence, there could be no transfer in the name of a dead person and inasmuch as the resolution purported to transfer the said shares in the name of a person who was dead, the transfer itself was illegal. The last ground of attack is that by virtue of ss. 108A to 108H of the Act, the transfer of the said shares could not have been effected without obtaining the prior sanction of the Central Govt. In this connection, it is pointed out that the Company was registered under the provisions of the MRTP Act, and stood so registered on the date the transfer of the shares was made in the name of respondent No. 2 and Shantaben on April 21, 1980.

21. In support of the contention that the shares were not received by the Company till April 22, 1980, two things have been pointed out. Firstly, the receipt issued by the Company in respect of the said share is dated April 22, 1980, and the same in turn mentions that the shares were received subject to the approval of the board of directors. Secondly, it is pointed out that although it is the contention of the appellant-company as well as respondent No. 2 that the shares were lodged on March 27, 1980, the entry made in the relevant books show a clear interpolation and the same has not been made in the normal course of business. The contention, therefore, is that since the shares were in fact received for the first time on April 22, 1980, neither the resolution could have been passed on April 21, 1980, in anticipation of he receipt of the said shares nor a transfer in favour of a dead person could have been made on the footing that the transfer deed was lodged on March 27, 1980, i.e., prior to April 2, 1980, on which date Shantaben expired. As against this, both the appellant as well as respondent No. 2 rely upon the fact that in the relevant book showing lodgment of the shares, there is admittedly an entry dated March 27, 1980, which shows that the said shares were lodged with the company on the said date. Secondly, there is an affidavit of the secretary of the Company filed in the present proceedings, in which the secretary has affirmed on oath that the said shares were in fact lodged with the Company on March 27, 1980. In addition there is also the affidavit of respondent No. 2, who in addition to being the shareholder in respect of the said shares is also a director of the Company. In this affidavit also it is affirmed on oath that the shares were in fact lodged by her with the Company on March 27, 1980. Next, an opinion was obtained on March 31, 1980, in respect of the transfer of the said shares in favour of respondent No. 2 and Shantaben, in view of the provisions of the Act. That is evident from the affidavit filed by the secretary of the Company on July 20, 1981, as well as from the minutes of the meeting there is a reference to such opinion having been obtained on March 31, 1980. This would also show that the shares in question were in fact lodged prior to March 31, 1980, and, therefore, the date of lodgment, viz., March 27, 1980, should be accepted as the correct date. Under s. 195 of the Act, there is a presumption with regard to the correctness of the minutes and so long as the minutes re not challenged, it will have to be presumed that, what is stated in

the said minutes is correct. With regard to the receipt dated April 22, 1980, it is pointed out on behalf of the appellant-company, that the said receipt is admittedly a temporary one and not a final receipt. No doubt the said temporary receipt came to be issued on April 22, 1980; however, the mere fact that the said receipt is dated April 22, 1980, would not necessarily go to show that the shares in fact were received on April 22, 1980. This is particularly so because there are other circumstances on record, as pointed out above, to show that the shares in fact were lodged on March 27, 1980. It is also pointed out on behalf of the appellant-company that, in any case, whatever might have transpired in between, as surely as on June 13, 1980, the name of the deceased, Shantaben, was deleted and the shares have since come to stand in the name of respondent No. 2.

22. As regards this controversy between the parties with regard to the actual date of the lodgment of the shares, according to us, the controversy for all practical purposes of the present petition is a futile one since it will not affect the present entry made on June 13, 1980. The whole purpose of raising this controversy is to the death of Shantaben. The argument is that if they were not so lodged prior to the death in the manner done. According to respondent No. 1, the whole purpose of showing that they were so lodged on March 27, 1980, was to make out a case that the subsequent transfer of the said shares in favour of respondent No. 2 and Shantaben were both legal and proper. Apart from that, in the first instance, the question whether the shares were lodged on March 27, 1980, or not is not capable of resolution on the basis of the affidavits in view of the allegations and counter-allegation in that behalf. In order to resolve this point conclusively, oral evidence of the parties is absolutely necessary. Therefore, at this interlocutory stage, it will not be correct to proceed on the basis that the books of the appellant-company do not reflect the correct position. As pointed out earlier in support of the said entry of lodgement on March 27, 1980, there are the affidavits of the secretary of the Company and of respondent No. 2 and also the minutes of the meeting of the board of directors held on April 21, 1980, referring to the advice obtained on March 31, 1980, which, according to the appellant-company, was in respect of the said shares. It will be, therefore, improper to proceed on the presumption, in the face of these facts on record, that the said entry of lodgement is incorrect. Secondly, it must not be forgotten that the allegations, made by respondent No. 1 in this behalf amount to alleging a fraud on the part of the Company as well as respondent No. 2. It is, however, interesting to note that neither in the petition nor in the affidavit-in-rejoinder there is any averment of fraud against either the appellant-company or respondent No. 2 in this behalf. In fact, in the original petition, there is no allegation with regard to the fact that the shares were not lodged on March 27, 1980, or that there was any such interpolation of the entry in the register of lodgment or that the shares were not received prior to April 22, 1980. The entry in respect of the shares at Ex. I is attacked in the petition only on the ground that the Company could not have recognised Shantaben who was a dead person,

as its member, on the date the entry was made, viz., on April 22, 1980. There is no other ground alleged against the said entry. It is only when the Company filed its affidavit-in-reply to the judge''s summons and pointed out that the shares were in fact received on March 27, 1980, that in their affidavit-in-rejoinder respondent No. 1 came out with the allegation that the said shares were not in fact received by the Company on March 27, 1980, and that the entry made in the lodgement register in that behalf was an interpolation. However, even there, respondent No. 1 has stopped short of alleging fraud on the part of the appellant or respondent No. 2. The most that can be said with regard to the allegations made in the affidavit-in-rejoinder in that behalf is that they point out suspicious circumstances with regard to the said entry on March 27, 1980. There is, therefore, no reason why, in the absence of specific allegations of fraud, the court should act at this interim stage to restrain respondent No. 2 from acting as the shareholder in respect of the said shares, when she has exercised her said rights all along till this date including in an annual general meeting held in the last year.

23. Proceeding on the footing that the shares were not lodged on March 27, 1980, but on April 22, 1980, the next argument advanced on behalf of respondent No. 1 was that respondent No. 2 had not applied to the company to transfer the said shares in her capacity as a joint shareholder and also in her capacity as the legal representative of Shantaben. Further, the transfer effected by the resolution dated April 21, 1980, and shown by the entry in the register on April 22, 1980, was in favour of both respondent No. 2 and Shantaben, who was admittedly a dead person on that date. Shri Parekh relying on these facts, therefore, contended that there could not be a contract with a dead person. According to him, when a transferee makes an application to the company for transferring the shares in his name, he makes an offer to the company for entering into a contract with the company and the contract with the company is complete only when the company passes a resolution approving such a transfer. In the present case, in the first instance, an application was made by respondent No. 2, on behalf of a dead person. Secondly, when the company passed the resolution on April 21, 1980, accepting the offer and entering into a contract, it had accepted the offer on behalf of a dead person and had entered into a contract with a dead person and, therefore, the contract was void. In this connection, he referred us to the provisions of s. 45 of the Contract Act, when there are two or more joint promisees, the right to claim performance rests with all the promisees jointly during their joint lives, and, after the death of any one of them, with the representative of the deceased promisees jointly with the survivor or survivors and, after the death of the last survivor, with the representatives of all jointly. Relying on the analogy of these provisions, he argued that in the present case, respondent No. 2 and Shantaben were joint shareholders. After the death of Shantaben, respondent No. 2 could have applied for transferring the shares in her capacity as any of the joint holders as well as in her capacity as the legal representative of Shantaben. However, there is nothing

on record to show that respondent No. 2 had made an application for the transfer of the shares in her capacity as the legal representative of Shantaben. All that can be said is that she had applied in her capacity only as one of the joint holders of the said shares. Section 41 of the Act defines "member of a company" and states that persons other than the subscribers to the memorandum of a company have to agree in writing to become members of the company and a member is one who not only agrees in writing to become such a member but whose name is also entered in the register of members of the company. No person who does not fulfil the said condition can be called a member of the company. Section 111 of the Act to which he next referred in support of his said contention states that a company has power to refuse registration of any transfer of shares and, therefore, to refuse admission to any person as its member, if the company has reserved such power under its articles of association. This power given to the company by the said section read with the relevant articles of association is in addition to the power which the company has by virtue of the provisions of ss. 108, 109 and 110 of the Act, which contain statutory restrictions on transfer of shares. As far as the appellant-company is concerned, art. 53 of the articles of association of the company reserves such power to its board of directors and the provisions of the said article show that the board of directors, subject to the provisions of s. 111 of the Act, may, at its own absolute and uncontrolled discretion and without assigning any reason, decline to register or acknowledge any transfer of shares. Shri Parekh, therefore, submitted that unless the transfer of shares is accepted by the company, the transferee does not become a shareholder in respect of the said shares. It, therefore, necessarily implies that it is not enough that there is a contract between the transferor and the transferee for sale of the shares but there has to be a further contract between the transferee and the company in order to entitle the transferee to become a member or shareholder of the company. Unless such a contract is completed, no transfer can be recognised by the company. Inasmuch as, as contended by Shri parekh, in the present case, before the contract was completed with the company, one of the joint holders had already died, the contract with the company purported to have been completed on April 21, 1980, was ab initio void. He, therefore, submitted that on this ground, the entry made in the names of Shantaben and respondent No. 2 on April 22, 1980, was void ab initio. The illegality is patent on the face of it and hence the entry needed to be rectified. Developing the very argument, Shri Parekh contended that the board of directors had knowledge of the death of Shantaben when they passed the resolution on April 21, 1980. In spite of this knowledge, they had proceeded to execute the contract between the company and the dead person and made a dead person their member. The director are the trustees of the shareholders and they are expected to act in good faith and yet in spite of the knowledge that Shantaben was dead, they had entered into a contract with her. This act on their part itself would show that the parties were not acting in good faith. In support of this submission, he relied upon certain passages from the learned author, Karr, in his Treatise on the Law of Fraud and Mistake, 7th edition. In Chap. I, on p. 1, the learned author has observed as follows :

"Fraud, in the contemplation of Civil Court of Justice, may be said to include properly all acts, omissions, concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientiously advantage is taken of another."

24. The next passage is on p. 6 under the caption "jurisdiction over every species of fraud" and is as follows :

"Civil Courts have an original, independent, and inherent jurisdiction to relieve against every species of fraud not being relief of a penal nature. Every transfer or conveyance of property, by whatever means it be done, is vitiated by fraud. Deeds, obligations, contracts, awards, judgments, or decrees may be the instruments to which parties may resort to cover fraud, and through which they may obtain the most unrighteous advantages, but none of such devices or instruments will be permitted by a court of Equity to obstruct the requirements of justice. If a case of fraud be established, the court will set aside all transactions founded upon it by whatever machinery they may have been effected, and notwithstanding any contrivance by which it may have been attempted to protect them."

25. In order to appreciate these arguments, it is in the first instance important to note that there is no instrument other than the instrument of transfer prescribed either under the Act or under the articles of association which is required to be lodged with the company when either the transferor or the transferee desires that the name of the transferee be brought on the register of members of the company. In particular, there is no separate from of application prescribed anywhere which has to be made to the company for the said purpose. The instrument of transfer which has to be lodged with the company is incorporated in the articles of association under art. 50. There is no dispute that six such forms of transfers were executed between the Union Bank of India, on the one hand, and respondent No. 2 and Shantaben, on the other, in respect of the shares in dispute, as early as on 21st December, 1979. There is also further no dispute that these instruments of transfers were lodged with the company, although the date on which they were lodged is the subject-matter of controversy. It is acting on these instruments of transfer that the board of directors passed its resolution on April 21, 1980, accepting the transfer and directing that the transferees under the said deeds or instruments be registered in the register of members, as the joint shareholders in respect of the said shares. Both as a matter of requirement of law as well as of practice, therefore, it is not correct to say that after the instrument of transfer is executed between the transferor and the transferee, a separate application is required to be made either by the transferor or the transferee for registering the transferee as a member of the company. This is because the prescribed form for the transfer of shares itself shows on the face of it that the transferees have agreed to become the members of the company. Hence, all that is required is to lodge the transfer

deeds or the instruments. It is for this reason that it is not correct to say that the transferee has to make an offer which requires to be accepted by the company. Hence, the provisions of the Contract Act to which Shri Parekh referred have no relevance in the case of transfer of shares. There is yet another and more important reason why the said provisions of the Contract Act will not be applicable to the case of a transfer of shares. As soon as the transfer deed is executed between the parties the transferee gets rights not only against the transferor, such as to receive dividends from the transferor after the date of the transfer and to give him directions including the direction to vote as he desires, but he also gets a right against the company refuses to register him as a member, he can file an action at law requiring the company to do so. That the company may have, in a particular case, a valid reason to refuse such registration, is no argument against the legal position that a transferee does get such a right to require the company to accept him as a member. This position in law is not disputed. In fact, the provisions of s. 155(1)(b) of the Act themselves make it clear that a transferee has a right to get his name entered in the register of members, and, if a default is made or unnecessary delay takes place in registering him as a member, the transferee has a right to approach the court for a rectification of the register by calling upon the company to enter his name as a member. If that were not so, the provisions of the said s. 155(1)(b) would be rendered nugatory. Once, therefore, it is admitted that a transferee gets this valuable right to call upon the company to register him as a member, then, the theory of offer to and acceptance by the company and that of the non-accrual of any rights against the company, unless the contract is complete between the transferee and the company, propounded by Shri Parekh, stands exploded. On the contrary, there is much force in the contention advanced by Shri Chagla that the contract between the transferor and the transferee being complete when the transfer instrument is executed, all that is necessary is to intimate to the company the fact of the said transfer. By getting his name registered in the register of members, the transferee only perfects his title to the shares and becomes entitled in his own right to claim all the privileges which were hitherto claimed by the transferor in his name. It is, therefore, not correct to say that there is a contract between the transferee and the company when the board of directors accept the transfer of shares and decide to enter the name of the transferee in the register of members. It may be that as a result of the transferee becoming a member of the company, a contractual relationship may come into existence between the company and the member by virtue of s. 36 of the Companies Act, with the articles of association constituting the terms of the contract between the parties. But this "statutory" contract has nothing to do with the contract of transfer of shares, entered into between the transferor and the transferee. This being so, it is not possible to accept that on April 21, 1980, there was a contract between the company and the said Shantaben, and since Shantaben was dead, the said contract was void. The transfer in her favour along with respondent No. 2 was complete on December 21, 1979. All that happened on April 21, 1980, was that the company took cognisance of the transfer as was effected on that date and made entry in its register to reflect the said transfer.

26. It is true as pointed out by Shri Parekh that, normally, by virtue of the transfer deed in his favour, the transferee is not substantially entitled to become a member of the Company because the Company has an absolute discretion to refuse to accept any transferee as its member and unless the transferee is so accepted, he does not become a member of the company. However, it must not be forgotten, that, firstly, it is not in every case that there is such restriction on the rights of the transferee. As s. 111 of the Act itself makes it clear, apart from the statutory restrictions on the power of the company, if a company by its articles of association does not reserve the power of refusal to register a transferee as a member, the company will have no power to refuse membership to a transferee. It is common knowledge that all companies do not reserve to themselves such power. Some companies may reserve such powers. In that case, there is no doubt that the transferee is not entitled to become a member merely by virtue of the transfer deed. However, even where such power is reserved and, in exercise of such power, the company refuses such a transfer, the provisions of sub-s. (2) of s. 111 of the Act casts an obligation on the company to intimate within a period of two months from the date of the instrument of transfer or the intimation of transfer or transmission, the fact of such refusal, and if no such intimation is sent, the company and every officer of the company makes itself or himself liable to punishment. Further, on receipt of such intimation of refusal, the transferee, the transferor or the person giving the intimation of transmission, has a right to prefer an appeal to the Central Govt. and apply for a direction to the company to register the transferee as its member. In the present case, apart from the provisions of the said section, art. 53 of the articles of association, on which reliance was placed by Shri Parekh, itself makes a provision for the intimation of a refusal to be given to the transferee and the transferor within two months from the date of the instrument of transfer. In view said provision of intimation, penalty and the appeal, it cannot be said that the power of refusal given to the company is an absolute one. The company can refuse to recognise a particular transfer only for legal and valid reasons. Otherwise, it can be compelled to register the transfer. Ordinarily, the company will have to register the transfer. As regards the other restrictions on the transfer, admittedly, the same are statutory and are applicable to all transfers without discrimination. Further, s. 82 of the Act itself recognises the fact that the shares as well as the other interests of a member in a company are the movable property which are transferable in the manner provided by the articles of the company. Except for the said art. 53 of the articles of association of the present company, there is no other hindrance for the transferability of the shares of the appellant-company. As regards the statutory restriction, s. 108(1) of the Act merely provides that the instrument of transfer should be in a proper form and properly stamped before the transfer could be demanded on the basis of such instrument. Sub-section (1A) of the said section is a provision specifically incorporated to avoid malpractices of blank transfers and it requires that before a transfer is effected,

the transfer instrument has to be presented to the prescribed authority. The restrictions contained in ss. 108A and 108H are applicable to the shares of the companies covered by the MRTP Act, 1969. Section 109 provides for an application for transfer by the legal representative of the deceased member, although the legal representative himself may not be a member of the company. Section 110(2) relates to the party paid shares, and, it is only in the case of partly paid shares that the company is required to give notice to the transferee inviting his objection to the partly paid shares that the company is required to give notice to the transferee inviting his objection to the transfer of such shares in his name. We have already referred to the provisions of s. 111 of the Act which in terms state that apart from the statutory restrictions contained in ss. 108, 109 and 110 the company may reserve a power to refuse to register transfers under its articles of association and also to art. 53 of the articles of association of the company in that behalf. These are all the statutory restrictions on the transfer of shares, and, apart from this, there is no hindrance to the transferability of the shares of the company. We have further pointed out that even where the company reserves an absolute power to refuse to register a transfer, it can refuse to register a transfer only in a particular case and it has no powers of refusal of transfers in general. The said power is further circumscribed by the right of appeal given to the aggrieved person. This right is apart from the right of the transferee to get the shares registered in his or her name under sub-s. (1) (b) of the present s. 155 of the Act. This being the position in law, it is not possible to subscribe to the view that no rights accrue to the transferee against a company before it enters into a contract with him. If this is so, and if there is no fresh contract required to be entered into between the transferee and the company, then it will have to be held, as stated earlier, that when the transferee intimates a transfer to the company, the company merely either recognises such transfer or refuses to recognise it. When, however, it recognises the transfer, it recognises the transfer deed as was executed on the date it was so executed and after such recognition, the transferee perfects his title as the legal holder thereof notwithstanding the fact that he is in enjoyment of all the rights as against the transferor as the beneficial owner thereof. If this is so, then further, all that the company is required to do on the date it accepts the transfer is to recognise the transfer deed and accept the transferee under such deed as its member, without investigating further as to whether the transferee named in the deed is in fact capable of accepting the transfer or not or whether he is dead or alive on the date the transfer is accepted by the company. The company is not bound to go beyond the deed of transfer on the said count. The company would be perfectly justified in action on the transfer deed as it is presented to it and proceeding on the basis that what is represented by the transfer deed is true.

27. It is for this reason again that we find there is much force in the contention advanced by Shri Chagla that when the company accepts a transfer, the transfer relates back to the date of execution of the transfer instrument between the transferor and the transferee. We find that if this were (not ?) so, many insoluble

complications would arise which will throw in doldrums the share market. In the first instance, every time the company accepts a transfer, it will have to investigate as to whether the transferee or all the transferees, when there are more transferees than one, are living or dead or are capable of contracting. It may also happen that the persons concerned may be living or capable of contracting on the date of the execution of the transfer but might have died or incurred a disqualification between the date of the execution of the transfer deed and that of lodgement of the shares or between the date of the transfer deed and that of lodgment of the shares or between the date of the lodgement of the shares and the date of resolution of the board of directors accepting the transfer or even between the date of the resolution and the actual entry in the register of members. If we accept the theory as is propounded on behalf of respondent No. 1, it would mean, say in the case of the death of one of the transferees, where there are more transferees, the entry made in the register in respect of all the joint transferees will be invalid and illegal. That would also mean that if the original entry is illegal on this account, then all the subsequent transfers and entries made in respect of the said shares would also become invalid. In fact it would necessitate cancelling all the subsequent transfers and requiring the surviving transferees either to make a fresh application for transfer jointly with the legal representative of the deceased transferee or requiring them to approach the transferor for executing a fresh instrument of transfer in their favour, and if, after they accept a fresh transfer from the transferor (assuming that they succeed in tracing their transferor), at that stage and before a new entry is made on the basis of such transfer deed, again one of the transferees dies, they will have to resort to the same exercise over again. This may in a given case have to be repeated a number of times. It is for this reason that the theory of relation back in the case of transfer of shares will have to be accepted both as a matter of law as well as of practical commercial reality. The reliance placed by Shri Chagla on certain decisions to support his contention in that behalf appears to be justified.

28. In Howrah Trading Co. Ltd. Vs. Commissioner of Income Tax, Central, Calcutta., the court in part. 9 of its judgment, after approving a passage in Nanney v. Morgan [1888] 37 Ch.D. 346, stated that in India, the completion of the transaction by having the name entered in the register of members relates it back to the time when the transfer was first made.

29. In a decision of the Kerala High Court [1972] 42 Comp Cas 569, Travancore Electro Chemical Industries Ltd. v. Alagappa Textiles (Cochin) Ltd., in para. 10 of its judgment, the court has observed as follows (at p. 576) :

"It is, therefore, clear that no rights can arise in favour of a transferee as between him and the company until his name is registered as a shareholder in the books of the company. When once the transfer is completed and recognised by the company it relates back to the time when the transfer was first made."

31. In that decision a reference was made to the Supreme Court decision cited

above.

32. The decision of the Calcutta High Court [1942] 12 Comp Cas 206 (In the matter of Bengal Silk Co. Ltd.) also reinforces the theory of relation back. That was a case of transfer of shares in a blank form where the transferor had died before the company had accepted the transfer. The court dealing with the situation observed that in the case of a transfer of shares of a company is blank, the transferee is entitled to fill in the necessary particulars including his own name as transferee and the date of the transfer, after the death of the original transferor, and the transfer so made will be a valid one.

33. We, therefore, find that the legal position that emerges is that when the company accepts the transfer, such transfer relates back to the date of the execution of the instrument of transfer between the transferor and the transferee. If this is so, then in the present case when the company passed its resolution on April 21, 1980, accepting the transfer deed executed between the Union Bank and respondent No. 2 and Shantaben, the transfer related back to December 21, 1979. The company had to merely recognise the transfer deed as it was executed on December 21, 1979, and, therefore, the transferees as they appeared in the said deed.

34. As against this, Shri Parekh referred us to various provisions of the Act and tried to point out that if the theory of relation back is accepted, some anomalous consequences will follow. The said provisions are contained in ss. 12, 36, 41, 42, 68A, 86, 87, 108A to 108H, 109, 110, 115, 72, read with ss. 53(4) and 205(5)(b) read with s. 206. We have carefully gone through all the said provisions of the Act and we are unable to be persuaded that the theory of relation back would result in any such consequences as feared by Shri Parekh. We, therefore, do not think that it is necessary to enter into a detailed discussion of the said provisions. Suffice it to say that there is no inconsistency between the provisions of the said sections and theory of relation back.

35. As regards the attack on the resolution of the board of directors on April 21. 1980, on the ground that the said resolution was passed in spite of the fact that the board of directors had knowledge of the death of Shantaben, we fail to appreciated the argument advanced in that behalf. Either the entry made in the name of respondent No. 2 and Shantaben in the register on April 22, 1980, was bad in law, because on the date of the entry, one of the joint shareholders, vis., Shantaben, was dead or it was not. As pointed out earlier, whether the board of directors had knowledge of the death or not will be irrelevant if the proposition advanced by Shri Parekh is to be accepted, viz., that no transfer can be accepted by the company if the transferor or any of the transferees dies between the date of the execution of the transferor or any of the transferees dies between the date of the execution of the transfer and the date of acceptance by the company. The fact of the knowledge of such death is, therefore, immaterial. We will, therefore, proceed on the footing, as indeed it will have to be in the circumstances of the case, that the board of directors when they passed the resolution on April 21,

1980, knew of the death of Shantaben. However, if we are right in holding that on the acceptance of the transfer by the company, the transfer related back to the date of the instrument of transfer, then it is immaterial that Shantaben had died between the date of the instrument and the date of the resolution of the company. This is apart from the contention advanced by Shri Chagla that the company was not bound to act on the knowledge of its directors, and the company could not have acted to the contrary unless there was an application made for a transfer of the shares on the basis of the death. The contention advanced by Shri Chagla in this behalf is that the knowledge of the directors of the company is no knowledge of the company itself. Section 51 of the Act as well as art. 181 of the articles of association of the company lay down the manner in which a notice is to be given to the company. The only article which provides for knowledge of the company itself is art. 56. But the said article covers only the specific cases covered by the E.D. Act, where the transfer of shares belonging to a deceased member of the company is prohibited without producing the relevant certificate from the Controller of E.D. In no other case the knowledge of the principal officer or of the directors of the company is construed as knowledge of the company. Developing this argument, Shri Chagla further submitted that it will create chaos if the company was to initiate changes in its register of members acting on its own on the basis of its purported knowledge without a formal application in that behalf made by an interested person. We find much force in this argument. The company is not expected to act and make changes in tis books and registers acting on its own knowledge. It is, however, possible to argue in the present case that what was expected of the board of directors was to forbear from making the transfer in favour of Shantaben along with respondent No. 2 once they had knowledge of the death of Shantaben. But this would be so if the action of the company in making the entries on the basis of the transfer deed is held to be unwarranted, unjustified or improper. However, as we have held already, since the transfer accepted by the company relates back to the date of the deed of transfer, the fact that the board of directors had knowledge of the death of Shantaben is unimportant. We will proceed on the basis that they had the knowledge and that they had yet effected the said transfer. If we are right in holding that the transfer relates back to the date of the instrument, then, according to us, the company had no option but to effect in its books such entries as were consistent with the instrument of transfer and that is exactly what the company has done.

36. We may in this connection also point out that all that was sought to be canvassed on the basis of this limb of the argument was that on the date the company passed the resolution, viz., on April 21, 1980, the company ought to have insisted upon an application from respondent No. 2 in her capacity as the joint holder of the shares and also in her capacity as the legal representative of Shantaben. It is not disputed that if such an application was made by respondent No. 2, the transfer in the name of respondent No. 2 would have been valid. However, it appears that the company instead of following the said procedure

adopted the present mode. The company first acted on the basis of the instrument of transfer, as it was, and made entries consistent with the said instrument of transfer, as it was, and made entries consistent with the said instrument, i.e., in the name of both respondent No. 2 and Shantaben. Within about two months thereafter, on the basis of the application made by respondent No. 2, the company deleted the name of Shantaben on June 13, 1980, and on and from that date retained the name of respondent No. 2 alone. It will thus appear that eventually the entry came to show all the shares in the name of respondent No. 2. At the const of repetition, we may emphasise that it is not disputed in the petition that respondent No. 2 is the sole heir of Shantaben and as such sole heir, she was entitled to the share of Shantaben in the said shares. Hence, the entry in the name of respondent No. 2, which has been standing since June 13, 1980, reflect the true legal and factual position. In spite of this, however, the contention raised on behalf of respondent No. 1 is - and that is all that the said contention comes to - that the intermediate entry made on April 22, 1980, in favour of respondent No. 2 and Shantaben being illegal, the present entry in favour of respondent No. 2, although it reflects the true legal position today, is also illegal and, therefore, the register of members requires a rectification under s. 155 of the Act. In other words, the contention is that the company, instead of following the procedure which it did, should have adopted the method suggested on behalf of respondent No. 1, viz., that the company should have insisted on April 21, 1980, on an application from respondent No. 2, in her capacity both as the joint shareholder as well as the legal representative of Shantaben and on receipt of such an application, should have directly made and entry in favour of respondent No. 2 alone, instead of first making and entry in favour of respondent No. 2 and Shantaben and then changing it to the name of respondent No. 2 alone, which it did. That having not been done, the entry dated April 22, 1980, is illegal and, therefore, the subsequent entry dated June 13, 1980, in favour of respondent No. 2, is also irregular. We are unable to appreciate this argument. Even assuming that the procedure adopted by the company was illegal, that will not make the present entry illegal. This is apart from the fact that while adopting the course which it did, the company had acted on the legal opinion obtained by it from its legal advisers. In any case, it can hardly be contended that the other entry made on April 22, 1980, or the present entry is without a sufficient cause.

37. The last attack against the entry in respect of the said shares at Ex.F. was that the company had accepted the transfer in respect of the said shares from the Union Bank of India in favour of respondent No. 2 and Shantaben, contrary to the provisions of the MRTP Act. In support of this contention, it was pointed out on behalf of respondent No.1, that the company was registered under the MRTP Act on November 10, 1975, and it continued to be so registered till November 27, 1980, on which day the registration was cancelled. The transfers were admittedly accepted by the company on April 21, 1980, and inasmuch as there was no permission from the Central Govt. obtained for such transfers, the

said transfers were illegal and hit by the provisions of ss. 108A to 108H of the Act. As against this, Shri Chagla pointed out that the company had made an application for deregistration of the company under the MRTP Act as early as in February, 1978, because its capital fell below Rs. 20 crores. Thereafter, respondent No. 2 had made an application in August, 1979, for a sanction of the transfers of the said shares. However, neither her application was replied to nor the application for deregistration was disposed of till November 27, 1980, on which day eventually the company did stand deregistered. The company was, however, of the opinion that its capital having fallen below Rs. 20 crores, no permission for the sanction of the transfers of the shares was necessary on and from the date that its capital so came below the said limit. The company by way of abundant precaution also sought legal opinion on the subject. The legal opinion supported the stand which the company was taking. The said opinion dated March 31, 1980, was available to the company when it passed its resolution accepting the transfer of the present shares on April 21, 1980. The eventual transmission in the name of respondent No. 2, on June 13, 1980, was also effected acting on the very same opinion. In fact, ultimately the company was deregistered on November 27, 1980, vindicating the stand taken by the company. It was, therefore, contended by Shri Chagla that, in the circumstances, it could not be said that the transfer of the shares in favour of respondent No. 2 and Shantaben on April 22, 1980, and in favour of respondent No. 2 on June 30, 1980, was hit by the provisions of ss. 108A to 108H of the Act. In any case, contended Shri Chagla, there is no need now to indulge in the futile exercise of first deleting the entries and then making the very same entries, assuming that the contention of the other side is correct. We find much substance in the said argument. Assuming, without accepting the contention advanced on behalf of respondent No. 1 that on the date the transfers were effected, viz., April 21, 1980, and June 13, 1980, the same could not have been so effected unless the permission of the Central Govt. was obtained, all that was necessary after the company was deregistered in November 27, 1980, was to pass a fresh resolution transferring the shares in favour of respondent No. 2 Since the entry made on June 13, 1980, reflects the true legal and factual position, it was necessary to undergo the said exercise. Further, in the circumstances, it can hardly be said that the entries made on April 22, 1980, or on June 13, 1980, were without sufficient cause. We are, therefore, satisfied that even this attack against the said entry is not capable of being sustained.

38. We may further like to point out that even if a court were to accept all the contentions advanced on behalf of respondent No. 1 with regard to the entry in respect of the shares at Ex. F, all that would have become necessary was to require respondent No. 2 to make a fresh application in her capacity both as a joint shareholder and also as the legal representative of Shantaben and get the shares registered in her name alone. But that is exactly what has been done now as is reflected by the entry dated June 13, 1980. We do not think that, in the circumstances, any court would accept such invitation under s. 155 of the Act for

indulging in a futile exercise of the kind. The provisions of the said section are certainly not meant for correcting such procedural or formal errors.

39. We may mention here that the position that respondent No. 2 was the sole in her Shantaben was sought to be disputed by filing an affidavit-in-rejoinder in the present interlocutory proceeding on behalf of respondent No. 1 and the contention which was for the first time taken in the said affidavit was that Navin Kapadia was not a Hindu but a Muslim and, therefore, the law of succession applicable to his estate as well as to the estate of Shantaben would be different and respondent No. 2 would not be the sole heir. In the first instance, no such contention has been raised in the petition itself. Secondly, even the contention raised in the affidavit-in-rejoinder is vague inasmuch as it is not averred whether the Muslim law applicable to the succession was Sunni or Shia. Further, if such contention is raised in the petition, that will certainly have to be decided by oral evidence and cannot be decided on affidavits since the allegations made in that behalf are vehemently denied on behalf of both respondent No. 2 and the appellant-company. What is more, such a disputed question cannot be decided in a summary enquiry under s. 155 and the proper proceedings to decide the same would be a civil suit. Much less can it be decided, at this interlocutory stage, we have, therefore, not permitted respondent No. 1 to raise the said question and it must be said in fairness to Shri Parekh for respondent No. 1, that he has also not pressed his arguments on the basis that succession to respondent No. 2 was governed by the Muslim law. We have, however, made a mention of this fact because the said allegations do find a place in the affidavit-in-rejoinder and to which there is a passing reference made in the judgment of the learned judge.

40. This is with regard to the merits of the different grounds of attack against the entries in respect of the shares in dispute, viz., at Exs. A, B and F. Apart from the merits which, as shown hereinabove are in favour of the appellant-company and respondent No. 2, the shareholder, we may also point out that there is not equity whatsoever in favour of respondent No. 1 entitle it to the interim relief prayed for in the judge''s summons. On the other hand there are reasons more than one why the court should set its face against granting any such relief to respondent No. 1. In the first instance, the provisions of s. 155 themselves show that they can be invoked only when the entries made in the register are "without sufficient cause". It necessarily implies that it is not each and every incorrect entry which would be corrected by the court, while exercising its power under the said section, if there is some basis, a basis on which a reasonable person or body of question, then the court will not exercise its powers under the said section. If this is so, then can it be said that in the present case, the entries made in respect of the said shares have been made by the appellant-company without any basis or to use the language of the section "without sufficient cause" ? According to us, the answer to the said question must be in the negative. We have pointed out on scrutinising the merits of the attack against the said entries, that the company had acted on credible and legitimately acceptable material and cannot be said to have acted either unreasonably or unjustifiably while making

the said entries. To repeat, the entries at Exs.A. and B were attacked only on two grounds, viz., that they were made during the period the company was closed and, secondly, they were made in contravention of the provisions of s. 84 of the E.D. Act read with art. 56 of the company''s articles of association. We have shown that there is nothing in law to prevent the entries with regard to the transmission of shares being made during the period the company is closed under s. 154 of the Act. We have also further pointed our that neither s. 84 of the E.D. Act nor art. 56 of the articles of association prevents the entries consequent upon the transmission by the operation of law. In any case, on the latter point, the circular issued by the Govt. of India as early as in the year 1968 supports the action of the company in making the said entries. Therefore, it could hardly be said that the entries in respect of Exs.A. and B were made by the company without sufficient cause. As far as the shares at Ex.F. are concerned, we have pointed our that even assuming that all that is said by respondent No. 1 is correct, the gist of the grievance of respondent No. 1 is that instead of following the course which the company did, the company should have followed a different course suggested by respondent No. 1. In view of the fact that eventually on June 13, 1980, the entry was made in the name of respondent No. 2 which would also be the result by adopting the course suggested by respondent No. 1, the exercise suggested by respondent No. 1 was unnecessary. Further, no prejudice was shown to have been caused to anybody much less to respondent No. 1 by the course adopted by the company. As regards the alleged contravention of the provisions of the MRTP Act, the company admittedly stands deregistered under the said Act from November, 1980. Assuming, without accepting that as long as the company was not so deregistered, the entry in question should not have been made, the most that the company would have been required to do was to require respondent No. 2 to make a fresh application for transfer of the said shares in her name. That was an exercise uncalled for in the circumstances of the case. Further, the company was supported in its action by an expert legal opinion. Hence, it could hardly be said that the entry in question was made by the company "without sufficient cause". This factual and legal position itself is sufficient to displace the petitioner.

41. Secondly, the entries in respect of the shares at Exs. A and B have been standing in the register of members right from May 8, 1980, whereas the entry in respect of the shares at Ex.F. has been there on and from June 13, 1980. Since these entries were made, there was already an annual general meeting held on July 18, 1980, and respondent No. 2 exercised her voting rights in respect of all the said shares in the said meeting and has been exercising all other rights in respect thereof since that date. The present petition was filed on June 10, 1981. There is, therefore, an unexplained and inordinate delay in questioning the said entries.

42. Thirdly, it is not disputed that respondent No. 1, who is the petitioner in the present case, has itself filed a suit in the City Civil Court, Bombay, which is pending, viz., Suit No. 2145 of 1980. The said suit was filed in April, 1980, for an

injunction restraining respondent No. 2 from getting the shares at Exs. A and B transferred in her name and restraining the company from transferring the same in her name. The grounds alleged against the said transfer are the same as are alleged for the rectification of the entries in the present petition. After filing the suit, respondent No. 1 took out a notice of motion for an interim injunction on the lines of the prayers in the suit. That motion was dismissed by the city civil court on April 21, 1980, and the appeal filed therefrom also came to be summarily rejected by this court as early as on May 28, 1980. After waiting for more than a year, respondent No. 1 filed the present petition on June 10, 1981, which is obviously for preventing respondent No. 2 from exercising her voting rights in respect of the said share in the annual general meeting for the year 1981, which was to be held on July 31, 1981. There is no reason way respondent No. 1 should be allowed to use the processes of the courts in the manner particularly by a grant of the interim relief as prayed for by it.

43. Fourthly, as emphasised earlier, it is not disputed that respondent No. 2 is the sole heir of Shantaben and in her capacity as such sole heir, she would be entitled to all the said shares. All that is sought to be done by respondent No. 1 is to prevent respondent No. 2 from getting the benefit of the said shares as such sole heir and to prevent her from exercising her legitimate rights in respect of the said shares in her said capacity. Even assuming, without accepting that all the contentions advanced on behalf of respondent No. 1 are correct and, therefore, the entries made in respect of all the said three lots of shares require rectification and the petitioner would succeed in the petition, all that would mean is that respondent No. 2 will be entitled to the said shares from a subsequent date when a fresh entry would be made in her name. Such entry would only formally perfect her title to the shares which she today holds beneficially. She has already been exercising her legal rights in respect of the shares hitherto. There is no reason why she should be prevented from the exercise of the said rights at this stage if eventually she would be entitled to the said rights. An interim relief as prayed for by respondent No. 1, if granted, would only result in freezing the rights which she is already exercising and has been so exercising from May/June, 1980. The court should lean in favour of maintaining the status quo which has been prevailing for more than a year. There is no special reason shown by respondent No. 1 to disturb the status quo at this interim stage. Lastly, as we have pointed out repeatedly above, the gist of the allegations of respondent No. 1 comes only to this that the company and respondent No. 2 have not followed the proper procedure in making the entries in question. It has not been shown to us that even, after following the procedure suggested, the resultant entries would be any different from the ones which are standing in the register. That, according to us, is the most important reason for not interfering with the entries and granting any relief to the petitioner at least at this stage.

44. For all these reasons, we allow both the appeals and set aside the impugned order. Respondent No. 1 will pay costs of the appeals to the appellants separately in each appeal.

45. This also disposes of Notices of Motions Nos. 1119 of 1981 and 1128 of 1981 in the appeals. 55.

