
(1983) 02 AHC CK 0027

In the Allahabad High Court

Case No : Company Petition No's. 3 and 4 of 1981

Kumar Exporters P. Ltd. and Another and Ajoy Agarwal

APPELLANT

Vs

Naini Oxygen Acetylene and Gas Ltd. and Another

RESPONDENT

Date of Decision : 03-02-1983

Acts Referred:

Companies (Issue of Share Certificates) Rules, 1960 — Rule 4, 7
Companies Act, 1956 — Section 108, 112, 155

Citation : (1985) 58 CompCas 97

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : Bharatji Agarwal and R.K. Agarwal, for the Appellant; B.C. Dey, R.K. Sharma and V.K. Barman, for the Respondent

Final Decision : Allowed

Judgement

Agarwala, J.—These are two connected petitions filed u/s 155 of the Companies Act, 1956, hereinafter referred to as " the Act". Company Petition No. 3 of 1981 has been filed by M/s. Kumar Exporters Private Ltd., petitioner No. 1, and Ashok Agarwal, petitioner No. 2, against Naini Oxygen Acetylene and Gas Ltd., having its registered office at 79, Darbhanga Colony, Allahabad, hereinafter referred to as " the company " and Ramesh Kumar Bansal, hereinafter referred to as " Bansal". Company Petition No. 4 of 1981 has been filed by Ajoy Agarwal against the company and Bansal. The facts on the basis of which the present petitions have been filed are identical. Similarly, the defence taken up by the respondent company and Bansal is also identical. In the circumstances, since common questions of fact and law arise, I am deciding both these petitions by means of a common judgment.

2. The company has an authorised capital of Rs. 30 lacs divided into 2,50,000 equity shares of Rs. 10 each and 5,000 redeemable shares of Rs. 100 each. The issued and paid-up capital is Rs. 22 lacs comprising of 2,20,000 equity shares of Rs. 10 each. Bansal held 13,400 equity shares of Rs. 10 each in the company.

The company had allotted one single share certificate No. 11 to Bansal. The distinctive numbers of the shares as shown in the share certificate are 40,901 to 54,300, both inclusive. The shares issued in favour of Bansal were only partly paid up.

3. The case of the petitioner in the Company Petition No. 3 of 1981 was that Bansal transferred 2,500 shares out of said certificate to the petitioners. The case of the petitioners in Company Petition No. 4 of 1981 is that Bansal transferred 2,793 shares in favour of the petitioners out of share certificate issued to Bansal. The total number of shares transferred in favour of the petitioners, therefore, was 5,293. Since the share was valued at Rs. 10 each, it was agreed between the parties that a sum of Rs. 52,930 would be paid as consideration for the said shares. On April, 28, 1978, Ashok Agarwal wrote a letter to the company that a sum of Rs. 44,850 be transferred from his account to the account of R.K. Bansal. On the same day, another letter was issued by D.P. Agarwal, who is the father of Ashok Agarwal as well as Ajoy Agarwal, the petitioners in both the cases, that a sum of Rs. 8,081.60 from his account be transferred and credited to the account of Bansal. The total consideration which was paid to Bansal was Rs. 52,931.60. This amount was credited in the account of Bansal and it is not disputed by the counsel for the company that in view of payment of this amount to Bansal, all the shares were made fully paid up.

4. On December 4, 1978, Bansal executed transfer deeds in favour of the petitioners in respect of the shares which were agreed to be transferred by him. These transfer deeds along with share certificate No. 11 was received by the company on December 7, 1978. On October 27, 1979, a reminder was sent to the company to effect the transfer of shares in favour of the petitioners. This letter was received by the company on November 17, 1979. A second reminder was sent on December 15, 1979, but in spite of this reminder also, the shares were not transferred in favour of the petitioners. In view of the fact that the shares were not transferred in favour of the petitioners, the petitioners filed the present petitions in this court.

5. At the outset, it may be stated that it is admitted by Bansal in the counter-affidavit filed in this court that the signatures on the transfer deed dated December 4, 1978, were those of Bansal. It has been further admitted by Shri B. C. Dey, counsel appearing for the company, that the shares held by Bansal had become fully paid up but this could only be possible after the amount was credited in favour of Bansal by virtue of the letters issued to the company on April 28, 1978. In the circumstances, it is not necessary to go into the question as to whether the consideration in respect of the shares has passed to Bansal or not because if once it is admitted that the entire block of shares, namely, 13,400 shares, have been made fully paid up, that itself prima facie evidences the fact that the amount was transferred from the account of the petitioners to the account of Bansal.

6. Learned counsel for the petitioners has urged that the petitioners having

submitted the transfer deed along with the share certificate to the company, the company without any justifiable reason has refused to register the shares in favour of the petitioners and, as such, they were entitled to approach this court for rectification of the register of members u/s 155 of the Companies Act.

7. Sri B.C. Dey, learned counsel for the respondent company, has, however, urged, firstly, that the application for transfer of shares being not in accordance with Section 108 of the Companies Act was not an application in accordance with law and since the provisions of Section 108 of the Act are mandatory, the company was justified in refusing to register the shares in favour of the petitioners. Secondly, it has been urged that unless the certificate was split up, the company could not register the shares in favour of the petitioners. Thirdly, it has been urged that the original share applications are with the police department and, as such, the signatures on the transfer deed cannot be verified by the company and, therefore, the shares in any case could not be recorded in the name of the petitioners and, lastly, a submission has been further raised that since in the application form there is no signature of a witness showing that Shri Bansal signed the document of transfer, the transfer was justifiably not recorded by the company.

8. In order to examine the first contention raised by the learned counsel for the respondent company, it is necessary to state a few facts. In para. 6 of the affidavit filed in support of Petition No. 3 of 1981, it has been categorically stated that the petitioner submitted the share transfer forms duly executed by Sri Bansal on September 4, 1978, along with the share certificate forms to the company for registration. This was received by the company on December 7, 1978. This transfer form related to 2,500 equity shares. Simultaneously, the petitioner in Petition No. 4 of 1981 also submitted a share transfer form duly executed by Bansal in respect of 2,793 equity shares. This has been stated in para. 6 of the affidavit filed in support of Petition No. 4 of 1981. It is, therefore, clear that on December 4, 1978, two transfer forms duly signed by Bansal in respect of 2,500 equity shares and 2,793 equity shares were submitted to the company along with the share certificate No. 11, which was in respect of 13,400 equity shares in favour of Bansal. This averment has not been denied in the counter-affidavits of Anil Saran filed in both the petitions. The only case set up is that the application was not maintainable, as there was no request for sub-division of the certificate. The factual position, therefore, which emerges is that in respect of the same certificate, two transfers were effected by Bansal, for 2,500 equity shares and 2,793 equity shares, and both these transfer forms along with the share certificate in favour of Bansal were placed before the company, which were received by the company on December 7, 1978.

9. The argument of the learned counsel for the company, consequently, is that since only one share certificate was submitted, which had not been sub-divided, the application for transfer was not maintainable in law. Sub-clause (1) of Section 108 of the Companies Act excluding the proviso, which is relevant for

decision of the case, is quoted below :

" 108. Transfer not to be registered except on production of instrument of transfer.--(1) A company shall not register a transfer of shares in, or debentures of, the company, unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the certificate relating to the shares or debentures, or if no such certificate is in existence, along with the letter of allotment of the shares or debentures."

10. The above clause, therefore, provides that a company shall not register a transfer of shares unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor has been delivered to the company along with the certificate relating to the shares so sought to be transferred. In the instant case, it is not disputed that the instrument of transfer duly stamped and executed by Bansal had been delivered to the company along with the composite share certificate. The mere fact that the share certificate contained more number of shares than what were transferred in favour of the petitioner by virtue of the transfer deed, cannot take away the effect of the production of the share certificate. If, therefore, once the company had before it the share transfer forms duly executed and stamped along with the share certificate, though the share certificate may be for a larger number of shares, it cannot be said that there is non-compliance of Section 108 of the Companies Act.

11. Learned counsel for the company has relied upon a decision of the Hon'ble SuprSme Court in Manna Lal Khetan v. Kedar Nath Khetan [1977] 47 CompCas 185. In that case, the Supreme Court opined that since negative words have been used in Section 108 of the Companies Act they are indicative of the legislative intent that the statute is mandatory. In my opinion, the intention of holding Section 108 of the Companies Act to be mandatory is only to the extent that the company must have before it the share transfer form duly executed and stamped along with the share transfer certificate, but it cannot be interpreted to mean that even when a share certificate is there, though for a larger amount, there is non-compliance of Section 108 of the Companies Act. The larger share certificate includes the shares sought to be transferred and, as such, there would be full compliance of Section 108 of the Companies Act if an application for transfer of a smaller number of shares is accompanied by a share certificate relating to a larger number of shares. In the circumstances of the present case, therefore, in my opinion, the application forms were accompanied with a certificate relating to the shares sought to be transferred. In this view of the matter, I do not find any force in the first contention raised by the learned counsel for the company.

12. In regard to the second contention raised by the learned counsel for the company, in my opinion, this contention also is not substantiated. Section 112 of the Companies Act lays down the procedure for certification of transfers;

Certification, in effect, means a statement by the company that certain documents have been delivered to the company for the purpose of transfer of shares. It is a kind of receipt. It is a representation by the company to any person acting on the faith of such certificate that documents show a prima facie title to the shares in the transferor's name in the instrument of transfer. This provision has been made to facilitate the sale of smaller number of shares in case the share certificate is for a larger number of shares. If Parliament contemplated that no transfer could be made unless the share certificate was split up, it was not necessary to make any such provision as has been made in Section 112 of the Companies Act.

13. In Palmer's Company Law, Volume I, 22nd edition, page 404, it has been observed as under :

" If the certificate includes other shares which are not transferred by the instrument of transfer or if the certificate is in respect of shares sold to more than one transferee, the transferor lodges his certificate with the company, and the company's secretary, at the request of the transferor or his broker, certifies the transfer with a statement to the effect that a certificate in respect of the shares in the transfer has been lodged with the company. This process is known as " certification "."

14. Similarly, in Ramaiya's Guide to the Companies Act, 9th edition, page 288, it has been observed as under:

" Where the certificate is lodged with a view to the transfer of part only of the shares comprised therein, the company in due course issues to the transferor a fresh certificate for the balance; or, according to the practice of some companies, indorses on the deposited certificate particulars of the shares transferred, and then returns the certificate to the depositor. Sometimes on the deposit and before the issue of a fresh certificate, the depositor is given a balance ticket."

15. I fully agree with the observation made by Ramaiya in the above-mentioned commentary. I do not find any prohibition laid down in any section of the Companies Act that a party cannot apply for transfer along with a certificate for larger shares unless sub-division is made earlier. In the circumstances, the mere fact that the certificate was not sub-divided earlier, did not take away the power of the company to record the transfers sought by the petitioner.

16. The above view which I have taken is further fortified by a perusal of the Companies (Issue of Share Certificates) Rules, 1960, published by a notification of the Government of India in the Ministry of Commerce and Industry, Department of Company Law Administration, dated June 30, 1959. On a reading of Rules 4 and 7 of the said Rules, it is clear that when a composite certificate is sought to be sub-divided or when a certain number of shares are sought to be transferred from a composite certificate, the said fact has to be recorded in a manner prescribed under Rule 7 in the register of members or in the register of renewed and duplicate certificates. In view of the above, I am of the opinion that

merely because the share certificates had not been sub-divided earlier, there was no justification for the company to refuse registration of shares in favour of the petitioner when there was an application along with a share certificate presented to the company.

17. So far as the third and fourth contentions of the learned counsel for the company are concerned, these questions do not arise in the instant case, as in para. 4 of the counter affidavit of Ramesh Kumar Bansal, in both the petitions, it has been categorically admitted by him that he had signed the share transfer forms. In the circumstances, the mere fact that some papers are with the police or that a witness had not signed testifying to the signature of Bansal, it cannot be said that the transfer forms were, in any manner, invalid in law or that the company could not register the transfer in favour of the petitioner.

18. Section 155 of the Companies Act provides that if default is made by the company in entering on the register the fact of any person having become a member of the company, it is open to him to apply to the court for rectification of the register. In the instant case, I am satisfied that the company did not rectify the register within time without any justification in law. In the circumstances, the petitions are liable to succeed.

19. In the result, Petition No. 3 of 1981 is allowed and respondent No. 1 is directed to register the name of petitioner No. 1 in place of Ramesh Kumar Bansal in respect of 2,500 equity shares. Petition No. 4 of 1981 is also allowed and respondent No. 1 is directed to rectify the register and record the name of the petitioner in place of Ramesh Kumar Bansal in respect of 2,793 equity shares. The petitioners shall be entitled to their costs in both the petitions from respondent No. 1.