
(1965) 02 AHC CK 0024
In the Allahabad High Court
Case No : Company Petition No. 3 of 1964

Mahendra Kumar Jain

APPELLANT

Vs

Federal Chemical Works Ltd. and Others

RESPONDENT

Date of Decision : 03-02-1965

Acts Referred:

Companies Act, 1956 — Section 155

Citation : (1965) 35 CompCas 651

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : N.D. Pant, for the Appellant; K.C. Agarwal and S.N. Kakkar, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This is an application u/s 155 of the Companies Act, 1956, for the rectification of the share register of the Federal Chemical Works, Ghaziabad (hereinafter called the company).

2. The company was incorporated as a private limited company in 1936. In December, 1944, it was converted into a public limited company. The registered office of the company is at Ghaziabad.

3. Sri Mahendra Kumar Jain, the petitioner, alleges that he is the holder of four hundred A class shares of rupees one hundred each and 7,450 B class shares of rupees ten each in the company since 30th December, 1948. The petitioner urges that he repeatedly requested Sri Mitter Sain Jain, who is the works manager of the company, to allow him to inspect the share register as he suspected that some interpolation had been made therein. The inspection was not granted. Ultimately the petitioner came to know in December, 1963, from the office of the Registrar of Companies at Kanpur that in the annual return filed by the company on 30th December, 1950, before the Registrar, the petitioner was shown as holding no shares of A class and holding only 550 B class shares in the company.

4. The petitioner claims that he has not executed any deed of transfer nor has he transferred any part of his holding in favour of any one and it is a mystery how his name has been removed from four hundred A class shares and 6,900 B class shares held by him. It is prayed that the company be directed to enter the petitioner's name in the share register of the company in accordance with the aforesaid holding.

5. The company appears to be a family concern, the shareholders being confined to the petitioner's father, mother, his brothers and their wives. These shareholders have been impleaded as parties to this petition and they have filed a counter-affidavit. It is averred that the shares which the petitioner now claims to be his were initially acquired in the years 1945 to 1947 by Sri Mitter Sain Jain, the petitioner's father. At that time the petitioner was a minor and was only a benamidar of Sri Mitter Sain Jain. The shares were partly paid up at that time. A large sum of money had yet to be paid for them. The petitioner was not willing to continue to be liable for their payment and as such the petitioner voluntarily transferred the shares at the suggestion of Sri Mitter Sain Jain to respondents Nos. 2 to 6 who are the petitioner's mother and brothers, etc. It is also alleged that the petitioner was a director of the company since 1947 to 1956. He was also the manager of the company and that he attended the meeting of the board of directors of the company held on September 9, 1950, at which the transfer of shares by the petitioner to respondents, Nos. 2 to 6 was approved. It is also suggested that the petitioner was in active management of the company till 1956 and he had access to the books of the company. The allegation that he did not know of the transfers of the shares in favour of respondents Nos. 2 to 6 till December, 1963, is characterized as false. It is stated that the petitioner knew of the transfer in December, 1950, as he attended the meeting of the board of directors held on September 9, 1950.

The following issues have been framed :

" 1. Whether in the year 1950 the petitioner, Mahendra Kumar Jain, transferred 400 A class shares and 6,900 B class shares to his mother, brother and sisters ?

2. Whether the requirements of Section 108 of the Companies Act were fulfilled in respect of those transfers ?

3. Whether the petition is barred by limitation ?

4. Whether the petition is not maintainable on account of its involving complicated questions of title ?"

6. Issues Nos. 3 and 4 have been heard as preliminary issues. I will take up issue No. 4 first.

7. The learned counsel for the opposite parties has urged that the petitioner's title to the shares is seriously disputed. The case of the opposite parties is that the petitioner was not the owner in his own right but only a benamidar for his father, Mitter Sain Jain.

8. The second question in controversy is whether the petitioner voluntarily transferred the shares to his brothers and sisters or not. The parties are not agreed as to whether the petitioner did or did not attend the meeting of the board of directors at which the transfer of the shares was approved. Again the question as to when the petitioner really came to know of the transfer of these shares is also in dispute. The determination of these questions will involve a detailed and thorough investigation on conflicting oral testimony as well as documentary evidence.

9. Section 155 of the Companies Act confers a jurisdiction on the High Court to rectify the register of the members of the company. Sub-section (3) authorises the court to decide any question relating to the title of the applicants where the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand.

10. It is well settled that Section 155 confers a jurisdiction of a summary nature and that it contemplates a relief which is available at common law as well. The primary remedy is the remedy under the general law. The remedy under the Companies Act is a summary remedy. The object of this provision is not to supersede or oust the remedy at common law. As observed by Shah J. in *Manilal Gangaram Sindore v. Western India Theatres Ltd.* 1963] 33 Comp. Cas. 826

" ...this procedure is resorted to by persons aggrieved by the refusal of the directors of a company to rectify the register and enter the name of the transferee in place of the name of the transferor of shares in the register of members, but it is recognised by a long line of judicial decisions that the court is not bound to give the relief under that section in that proceeding if it finds that complicated questions of facts and law are involved. It has got the power to direct the party concerned to a civil court and to file a proper action for the purpose of securing the relief which he seeks in the summary proceeding."

11. Primarily the civil court has jurisdiction to decide such matters and it is only by way of summary remedy that Section 155 comes in. If the petitioner's title is not seriously questioned and the matter is such as could be decided on affidavits there will be no objection to a person applying for the summary remedy.

12. In *re Sussex Brick Co.* [1904] 1 Ch. 598 it was held that where facts requiring consideration are complicated and not simple, a separate action alone would be the proper remedy.

13. In *Ex parte Shaw* [1877] 2 Q.B.D. 463 the dictum was that " It is a matter of discretion whether the court or judge will exercise the summary jurisdiction. In a complicated^! doubtful case the jurisdiction ought not to be exercised, but when the legal title in the applicant is clear the order ought to be made."

14. The same view has been adopted by the Calcutta, Madras, Pepsu and Hyderabad High Courts in :

Mahadeo Lal Agarwala and Another Vs. The New Darjeeling Union Tea Co. Ltd.

and Others, , T.A.K. Mohideen Pichai Taraganar Vs. Tinnevely Mills Co. Ltd. and Others, , Panna Lal v. Jagatjil Distilling and Allied Industries Ltd. [1952] 22 Comp. Cas. 343 All and Mohamed Athar v. Narsingh Das AIR 1953 Hyd. 127.

15. In In Re: Dhelakhat Tea Co. Ltd., . Mukharji, J. held :

" ...disputed questions of fact should not be tried in a summary procedure in an application for rectification of the share register u/s 155 because they are more appropriate subjects for a trial in a suit on evidence after a full discovery of documents and inspection."

16. I have indicated above that several disputed questions of fact require determination in this case. The petitioner's title to the shares is itself seriously disputed. Having regard to the facts and circumstances, I am not inclined to exercise the power conferred on this court u/s 155.

17. The petition is, from this point of view, not maintainable. Issue No. 4 is decided against the petitioner. In this view of the matter it is not necessary to decide the other issues. The petitioner will be at liberty to take such steps in the civil court as he may be advised to do.

18. This petition is, therefore, dismissed. Under the circumstances of the case, I make no order as to costs.