
(1963) 05 AHC CK 0010

In the Allahabad High Court

Case No : Special Appeal No's. 108 to 111 of 1963

Mareshwari Khetan Sugar Mills (P.) Ltd. and Others

APPELLANT

Vs

Ishwari Khetan Sugar Mills and Others

RESPONDENT

Date of Decision : 24-05-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46, 121, 64
Companies Act, 1956 — Section 108, 108(1), 155, 155(1), 34(3)

Citation : AIR 1965 All 135 : (1963) 33 CompCas 1142

Hon'ble Judges : D.S. Mathur, J; Bishambhar Dayal, J

Bench : Division Bench

Advocate : Bir Bhadra Pratap Singh and V.P. Misra, for the Appellant; Ambika Prasad and Raja Ram Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Mathur, J.—This judgment shall govern, special appeals Nos. 108 to 111 of 1963 which arise out of four applications u/s 155 of the Companies Act, 1956, for rectification of registers of members. Special Appeal No. 108 of 1963 is against the orders of the Company Judge passed in company case No. 16 of 1962 initiated on the application of Manna Lal Khetan against Lakshmi Devi Sugar Mills (Private) Ltd. Chhitauni, distt. Deoria, Kedar Nath Khetan and his adopted son, Gauri Prasad Khetan, and R. N. Chavan, special Mamlatdar and Receiver appointed by the Collector, Bombay, in recovery proceedings against Kedar Nath Khetan Mitand and Mata Din Hari Ram. Special Appeal No. 109 is against the decision in company case No. 17 of 1962 started on the application of Manna Lal Khetan, Matadin Khetan, Bhagwati Prasad Khetan, sons of Seth Hari Ram Khetan, and Smt. Mahadbiri Devi widow of Seth Hari Ram Khetan against Lakshmi Devi Sugar Mills (Private) Ltd. Chhitauni, distt. Deoria, Durga Prasad Khetan, Gauri Prasad Khetan and Sri R. N. Chavan, special Mamlatdar.

Special Appeal No. 110 of 1963 arises out of company case No. 18 of 1962, Kamla Prasad Khetan and Jwala Prasad Khetan, sons of Seth Onkarmal Khetan v.

Lakshmi Devi Sugar Mills (Private) Ltd. Kedar Nath Khetan, Durga Prasad Khetan, Gauri Prasad Khetan, Smt. Saraswati Devi and Sri R.N. Chavan. Special Appeal No. 111 relates to another Sugar Factory Maheshwari Khetan Sugar Mills (Private) Limited, Ramkola, district Deoria and arises out of company case No. 15 of 1962 started on the application u/s 155 of the Companies Act of the Ishwari Khetan Sugar Mills (Private) Ltd. Lakshmiganj, District Deoria, against Maheshwari Khetan Sugar Mills (Private) Ltd. Ramkola, district Deoria, Kedar Nath Khetan and nine others belonging to the three branches of Debi Dutt, common ancestor of the contesting parties to the four proceedings and also against Nagarmal Khetan and the Receiver appointed by the Collector of Bombay in the recovery proceedings against Kedar Nath Mitnand and Hari Ram. It may here be noted that some of the opposite parties are applicants in the other three proceedings and they are apparently pro forma opposite parties in whose interest the application has been made.

2. The Company Judge passed a common order in the first three cases relating to Lakshmi Devi Sugar Mills (Private) Ltd. and a separate order in the case relating to Maheshwari Khetan Sugar Mills (Private) Ltd. The Company Judge allowed all the applications and directed rectification of the registers of members of the two companies by restoring the names of the original share holders as they stood before 2-7-1959, In view of the fact that some of the original share holders had died or ceased to exist, it was left open to the heirs and successors to apply for further rectification in the ordinary way. The persons aggrieved in the four cases are Kedar Nath Khetan and his adopted son, Gauri Prasad Khetan, Durga Prasad Khetan and Gauri Prasad Khetan, Kedar Nath Khetan, Durga Prasad Khetan, Gauri Prasad Khetan and Smt. Saraswati Bai Khetan and Maheshwari Khetan Sugar Mills (Private) Ramkola, district Deoria, Kedar Nath Khetan, Durga Prasad Khetan and Gauri Prasad Khetan, and they have preferred special appeals which are Nos. 108 to 111 of 1963. As common questions of law and fact arise in all the four appeals they are being disposed of by one common judgment.

3. The parties have filed detailed affidavits giving the past history of the litigation and the disputes that had occasionally arisen among them. They have naturally tried to blame the other party for the situation in which they are now placed. For purposes of the present appeals it is not necessary to express any opinion on the past conduct of the parties and we shall, therefore merely refer to those facts which are pertinent for the decisions of the appeals leaving it open to the parties to agitate other points in a regular suit. It, however, appears that certain agreements were entered into by the various branches of the Khetan family on 12-8-1957 for the exchange of various blocks, of shares such that the branches pulling on well together may manage a sugar factory and the rivals branches may have no interest left therein. The agreements were not accompanied by formal instruments of transfer of shares nor were suitable corrections made forthwith in the registers of members, as the shares had been attached by the Collector of Bombay in proceedings for the recovery of Income Tax dues from the Khetan family. The family owned most of the shares in Ishwari Khetan Sugar

Mills, and Maheswari Khetan Sugar Mills and about 1/4th shares in Lakshmi Devi Sugar Mills.

The agreement was that the shares of the family in Maheswhari Khetan Sugar Mills and Lakshmi Devi Sugar Mills shall go to the group of Kedar Nath Khetan while the shares of Ishwari Khetan Sugar Mills, to the other group. The shares of Ishwari Khetan Sugar Mills were sold in the recovery proceedings and have been purchased by the relations of the group of the sons of Seth Onkar mal Khetan. The case of this group naturally is that the sale of the shares and the purchase thereof was fair and Honest and it was never represented that the shares belonged exclusively to this group. The case of the group of Kedar Nath Khetan is that the other group had made a representation that by virtue of the agreement the shares of Ishwari Khetan Sugar Mills exclusively belonged to them and by underhand methods the group managed to purchase those shares for a nominal value. This is a material point in controversy among the parties on which we need not express any opinion. These facts have been reproduced here simply to indicate the circumstances in which, according to Kedar Nath Khetan, changes in the registers of members of Maheshwari Khetan Sugar Mills and Lakshmi Devi Sugar Mills were made, the rectification of which has been sought for in the present proceedings.

4. The agreements were entered into on 12-8-1957 and changes were made in the registers of members in the year 1959. The present applications for rectification were made in 1962. The Company Judge has recorded the finding that the agreements of 12-8-1957 were not instruments of transfer and in view of S. 108 of the Companies Act, 1956 the companies could not make alterations in the registers of members and the alterations made were consequently unauthorised and illegal; that the transfer of the bulk of the shares in question was illegal and void because they were under attachment in pursuance of certificates issued by the Additional Collector of Bombay, and that the remaining shares which had not been attached but had been surrendered to the Receiver appointed by the Collector of Bombay along with blank instruments of transfer could not be registered in the name of any one other than the Receiver himself or a person to whom the Receiver may transfer or may have transferred such shares. The Company Judge was thus of opinion that the alterations made in 1959 in the registers of members were contrary to law and were ineffective. He consequently directed rectification of the registers of members by restoring the names of the original holders as they stood before the alterations were made in 1959.

5. Section 155 of the Companies Act, as amended under the Companies (Amendment) Act, 1960, runs as below:

"(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 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.

(2) The Court may either reject the application or order rectification of the register; and in the latter case, may direct the company to pay the damages, if any, sustained by any party aggrieved.

In either case, the Court in its discretion may make such order as to costs as it thinks fit.

(3) On an application under this section, the Court,

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members on the one hand and the company on the other hand; and

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

6. The present applications for rectification were made in 1962 and they shall, therefore, be governed by the law as amended in 1960. In other words, rectification can be ordered if the name of any person is entered in the register of members or after having been entered in the register is omitted therefrom, in either case, without sufficient cause. The existence or non-existence of sufficient cause shall naturally depend upon the satisfaction of the Court; but the burden of proof shall ordinarily lie upon the applicant himself to show that the name of a person was entered or was omitted from the register of members without sufficient cause. Where the company is guilty of fraud or the company had acted illegally by disregarding the mandatory provisions of the law, it can be said that the initial burden of proof which lay on the applicant stands discharged on his, establishing the fraud or the doing of the illegal act and thereafter the burden shifts to the company to show that the omission of the name and the entry of another name was with sufficient cause. But where the company is not guilty of fraud or non-compliance of the mandatory provisions of the law a heavy burden shall lie upon the applicant to establish that the case falls within the scope of Sub-section (1) of Section 155.

7. Question of burden of proof generally loses importance where both the parties adduce their evidence. Consequently, if the Company Judge had recorded the evidence of the parties and adjudicated upon their title or rights, or if we feel that the present was a fit case in which the Company Judge should have decided the question of title, on whom did the burden of proof lie would have been a mere theoretical problem and the matters in controversy could be adjudicated upon the basis of the material brought on record by either of the parties. In the

instant case, however, the Company Judge did not consider it desirable to enter into the complicated question of title. He rightly thought that the, adjudication of the rights of the parties be left for decision in a regular suit already pending or to be instituted hereinafter by either of the parties.

8. The scope of Section 155 of the Companies Act, 1956, is now beyond controversy. It is the settled view of most of the High Courts that the summary remedy provided by Section 155 need not be availed or the Courts may decline to exercise the power u/s 155 leaving it open to the aggrieved party to seek remedy before a regular court, where there exists a serious dispute relating to the title of a party to the proceeding. See *Ramesh Chandra v. Jogini Mohan* AIR 1920 Cal 789; *Mahadeo Lal Agarwala and Another Vs. The New Darjeeling Union Tea Co. Ltd. and Others*, ; *Jayashree Shantaram Vankudre Vs. Rajkamal Kalamandir Private Ltd*, ; *T.A.K. Mohideen Pichai Taraganar Vs. Tinnevely Mills Co. Ltd. and Others*, ; *Devakumar Mishra Vs. Rupak Ltd.*, ; *Laxminarayan Bhayya v. Praga Tools Corporation Ltd.* AIR 1953 Hyd 126 and *In re Ruby Consolidated Mining Co.*, (1874) 19 Ch. A. 664.

9. When the Court refuses to enter into complicated question of title in a proceeding u/s 155 of the Companies Act, 1956, the question of burden of proof becomes of importance considering that if the burden lay upon the applicant the application u/s 155 can be dismissed summarily, of course, leaving it open to him to seek remedy before a civil court. But if the applicant establishes that the company had acted fraudulently or had acted illegally by disregarding the mandatory provisions of the law, he discharges the burden which initially lay upon him and thereafter the burden shifts to the company to show that the alterations were made with sufficient cause i.e. if the company had applied u/s 155 the Court would have ordered rectification of the register or members in the same manner as the company had done, though illegally. This is based upon the general rule- that no one can be permitted to derive undue advantage of a fraudulent or illegal act of his and, parties must be relegated to the position they occupied before the fraudulent or illegal act was done unless under the law the improper act can be condoned. Consequently, even though the application for rectification is made by one party, the Court can pass an order keeping in mind what it would have done had the other party, namely, the company, not acted illegally but applied for rectification of the register of members.

If the company had not made alterations, in the register of members in the year 1959, and instead applied for rectification, the Court would have, in the circumstances of the case, refused to exercise jurisdiction u/s 155 and the entries Would have continued as in 1939 till such time as the company or share holders concerned obtained necessary relief from the civil court. In other words, rectification of the registers of members of the companies could be ordered as directed by the Company Judge, without his entering into the complicated question of title, if it were found that the two companies had acted illegally and had intentionally disregarded the mandatory provisions of the law.

10. No case law directly applicable to the facts of the instant case had been brought to our notice, but the procedure adopted in *P.V. Damodara Reddi and Another Vs. Indian National Agencies, Limited*, is in consonance with the law as laid down above. Therein the directors of the company cancelled the allotment of shares to the applicants, and thereafter the names of the applicants were removed from the register of members. It was held that the directors of the company had no power to make alterations to the register and the (remedy of the company was to apply to the Court u/s 38 (corresponding to Section 155 of the 1956 Act) for the rectification of its register and not to take upon itself to alter the register. Hon. Clerk, J. then considered if the allotment of shares to the applicants was valid, and after recording a finding in their favour directed rectification of the register of members as prayed for by the applicants. In other words, the application for rectification would have been dismissed had the allotment of shares been held to be invalid i.e. on the application of the company the names of the applicants would have been removed from the register of members.

11. It is true that in the above Madras case all the matters in controversy had been finally adjudicated upon; but there is no reason why the same rule be not applied even to those cases where no finding is being recorded on a complicated question of title in dispute among the parties to the proceeding.

12. The Company Judge has, as already mentioned above, recorded the finding that both the companies had disregarded the mandatory provisions of Section 108 of the Companies Act, 1956, and their action in transferring shares in the names of other persons was void under Order 21 Rule 46 C. P. C. and was even otherwise against the law. The important question for Consideration, therefore, is whether the transfer of the shares in question and consequent alterations in the registers of members of the companies are illegal and void.

13. Non-compliance of the provisions of Section 108 of the Companies Act, 1956 can be held to be illegal only if they are mandatory and not merely directory, and also if Section 108 is exhaustive, meant to cover all cases of alterations in the register of members. For recording a finding whether the provisions of Section 108 are mandatory or directory we shall have to consider not only the language and scope of the section but also the policy underlying it See *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, . While, making this observation their Lordships of the Supreme Court quoted with approval the following observation of Lord Campbell in *Liverpool Borough Bank v. Turner* (1860) 30 LJ Ch. 379:

"There is no universal rule to aid in determining whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Court to try to get at the real intention of the Legislature by carefully attending, to the whole scope of the statute to be construed".

To get at" the real intention of the Legislature, it is always necessary to get an

exact conception of the aim, scope and object of the enactment, as put by Lord Coke in Heydon's Case (1584) 76 ER 637 to consider:

- "1. What was the law before the Act was passed;
2. What was the mischief or defect for which the law had not provided;
3. What remedy Parliament has appointed; and
4. The reason of the remedy". This rule has been laid down by another authority as below:

"In order properly to interpret any statute it is as necessary now as it was when Lord Coke reported Heydon's Case (1584) 76 ER 637 to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide and the remedy provided by the statute to cure that mischief."

See Maxwell on Interpretation of Statutes, Tenth Edition, page 19. Thus to understand the scope of Section 108 of the Companies Act, 1956, we must consider not only the provisions of this Act but also the law in existence prior to the passing of this Act.

14. Section 108(1) has been worded as a prohibition against the registration of transfer of a share in 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 has been delivered to the company along with the certificate relating to the share, or if no such certificate is in existence along with the letter of allotment of the share. If the sub-section is read in isolation, it can be said that the provision is mandatory and the company has no power to register transfer of a share unless compliance thereof is made. It shall, however, be found that no penalty has been imposed for non-compliance of Section 108(1). It has not been provided in Section 155, nor in any other section, what the consequences shall be for the disregard of this provision. It could be provided in Section 155 that in case of non-compliance of Section 108 the Court shall order rectification of the register of members unless for reasons to be recorded, rectification was not necessary or proper. Similarly, non-compliance of Section 108 could be declared an offence. When the law does not prescribe the consequences or does not lay down penalty for non-compliance of Section 108, the provision can be considered to be directory and not mandatory.

15. It is true that the register of members is a valuable document not only from the view point of the company and of the share-holders but also of creditors. An entry in the register determines the right of the person to participate in the affairs of the company. At the same time he incurs the liability of a share holder. Creditors can also act upon an entry in the register of members by treating that person to be the holder of that share. Entry in the register of members is thus of great importance, but no one incurs any penal liability as a consequence of an incorrect entry being made in the register of members.

16. In the past company laws in India were enacted on the lines of, in fact, following the English Companies Act then in force, but when the Companies, Act 1950 was at the anvil the English Companies Act, 1948, and also the Companies Acts in force in other countries were duly considered and thereafter our Parliament enacted a law of its own. When the Parliament intentionally departed from the English law and also the provisions of the earlier Indian Companies Act we shall have to infer that they had an underlying object for making the change. This object can be given due weight while determining the scope of Section 108 of the Companies Act, 1956.

17. The law relating to companies as enacted in England from time to time did not place any restriction on the registration of transfer of shares till the enactments of the Companies Act in 1929, restrictions which were binding on the company notwithstanding anything in the articles of the Company, Section 63 of the English Companies Act, 1929, for the first time provided that:

"Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company."

An exception was, however, made in the case of shares "transmitted by operation of law". This continued to be the law of England even after a new Act was passed in 1948. Corresponding provision is contained in Section 75 of the English Companies Act, 1948.

18. A provision similar to Section 63 of the English Companies Act, 1929, was made in the Indian Act for the first time when the Indian Companies Act, 1913, was amended under the Companies (Amendment) Act, 1936. Sub-section (3) of Section 34 of the Indian Companies Act, 1913, as amended in 1936 was as below:

"It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the script".

The proviso to Sub-section (3) however, gave power to the company to register the transfer if it was satisfied that the instrument of transfer had been lost. Sub-section (6) of Section 34 was another exception to the provisions contained in Sub-section (3). It gave power to the company to register as shareholder or debenture-holder any person to whom the right to any share in or debentures of the company had been transmitted by operation of law.

19. When a new law was passed in 1956 a different provision was made in Section 108 of the Companies Act, 1956 Instead of laying down that "it shall not be lawful for the company to register" the Legislature provided that "a company shall not register" When the Parliament did not follow the wording of the English Companies Act, 1948, and departed from the corresponding provision of the

Indian Companies Act, 1913, as amended under the Companies (Amendment) Act, 1936, they can be deemed to have had in mind not to declare the non-compliance of Section 108 as unlawful and illegal. Reasons for making the change are not far to seek. The term "transmission by operation of law" has not been defined in any of the laws, neither in the English Companies Acts, nor in the Indian Companies Act; but the old laws give out the meaning of this term. In Table "A" of the First Schedule of the English Companies Act, 1862, and of the Indian Companies Act, 1882, separate sub-heads were given for "transfer of shares" and "transmission of shares". Persons receiving shares by operation of law included Executors or Administrators of a deceased member, any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member or in consequence of the marriage of any female member, A similar provision existed in Table "A" of the First Schedule of the English Companies (Consolidation) Act, 1908 and Indian Companies Act, 1913 as originally passed, though both kinds of transfers were listed under a common sub-head "transfer and transmission of shares". "Transmission by operation of law" thus covers those cases where a person or authority acquires an interest in the property, by operation of law, without any voluntary act on his part.

20. It shall be found that Section 108 of the Companies Act, 1956, is not exhaustive, nor was Section 34(3) of the amended Indian Companies Act, 1913, exhaustive. They cover only two kinds of transfer of shares viz., under an instrument of transfer duly stamped and executed by the transferor and the transferee and transmission by operation of law. There are other instances of a person acquiring title to the shares of a company. A joint Hindu family can own, shares and at the time of separation there shall be an actual partition of shares among the members thereof. Prior to the partition each and every member of the joint family has an interest in all the shares but after partition they become sole owners of the shares allotted to them. Partition of property can be with or without the intervention of the court, and it is not necessary that formal instruments of transfer of shares be drawn up. Consequently, if the company cannot give effect to the partition by making alterations in the register of members, it shall be necessary for the person to whom a share is allotted to move the Court u/s 155 of the Companies Act 1956, for rectification of the register and he shall be put to unnecessary inconvenience and expenses. Similarly, if the actual owner of the shares standing in the name of another person is not out of possession his obtaining a mere declaratory relief from the Courts of law shall not enable him to have the shares registered in his name. If we read Section 34(3) of the Indian Companies, Act 1913 and Section 108 of the Companies Act 1956 in the above light, namely, that neither of the provisions are exhaustive, we can safely assume that the Parliament had an underlying object when the wording of Section 34(3) was not adopted while enacting Section 108 of the Companies Act, 1956. When the Parliament did not intentionally declare non-compliance of Section 108 to be illegal. Section 108 cannot be held to be mandatory. It is true that there has to be substantial compliance of a provision

which is merely directory but in cases not strictly covered by the provision the authority can deviate from that rule and take a decision which is equitable and fair to both the parties.

21. The agreements in question were not followed by a formal instrument of transfer but both the companies could, in good faith, be of the opinion that by virtue of the agreement the group of Kedar Nath Khetan became the sole owner of the shares of Lakshmi Devi Sugar Mills (Private) Ltd. and Maheshwari Khetan Sugar Mills (Private) Ltd., originally belonging to the Khetan family, and they could make necessary alterations in the registers of members. No final opinion is being expressed on this point. The above observation has been made merely to lay down that the act of the two companies cannot be said to be mala fide. When the provisions of Section 108 of the Companies Act, 1956, are not mandatory and both the companies appear to have acted in good faith, their action in making alterations in the registers of members cannot be said to be illegal and ab initio void.

22. The Company Judge did not give due weight to the provisions of Section 64 C. P. C. But on the basis of Order XXI, Rule 46 C. P. C. and Form 18 in Appendix "E" declared the transfer of shares during the period of attachment to be illegal and void. By virtue of Section 121 C. P. C. the rules in the First Schedule including Order XXI, Rule 46 C. P. C. have the effect as if enacted in the body of the Code. Order XXI, Rule 46 C. P. C. thus forms part of the Code and the courts of law must interpret Order XXI, Rule 46 C. P. C. along with Section 64 C. P. C. and if there exists any conflict between the two provisions an attempt must be made to harmonise the two. Section 64 C. P. C. provides that;

"Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment shall be void as against all claims enforceable under the attachment".

Order XXI, Rule 46, on the other hand, lays down that "in the case of a share in the capital of a corporation, the attachment shall be made by a written order prohibiting the person in whose name the share may be standing from transferring the same or receiving any dividend thereon". Under Sub-rule (2) of the above rule a copy of such prohibitory order shall be sent to the proper officer of the Corporation apparently for his information.

23. The forms contained in the appendices do not, however, form part of the Code and as laid down in Order 48 Rule 3, C. P. C, such forms with such variation as the circumstances of each case may require shall be used for the purposes therein mentioned. Courts of law can modify the forms but must follow the law as contained in the Code and the rules framed thereunder. In other words, Form 18 in Appendix "E" cannot override the provisions of Section 64 and Order XXI, Rule 46 C. P. C. It may, however, be mentioned that under Form 18 contained in Appendix "E" the Secretary of the Corporation is prohibited and restrained from

permitting any transfer of share in the Corporation for making payment of dividend thereon. The prohibitory order contained in Form 18 being inconsistent with the provisions of Section 64 and Order XXI, Rule 46 C. P. C. can have no legal effect.

24. At this place it may also be observed that the Corporation and the Secretary thereof are invariably not parties to the proceeding in which attachment is made and no prohibitory order can strictly speaking, be served upon them. They are only parties to the proceeding who can be restrained from doing an act or who can be ordered to do a particular act. A copy of the order can, however, be sent to persons not parties to the proceeding so that they may know the true state of affairs and Court's order may not be disregarded by the parties to the proceeding. In other words, Form 18 in Appendix "E" cannot be utilised to declare the alterations made by the two companies in the registers of members to be illegal.

25. There does exist a conflict in Section 64 and Order XXI, Rule 46 C. P. C. but when we try to harmonise the two provisions, it shall have to be held that a private transfer of shares in a company after the attachment thereof is not wholly void. It is void as against all claims enforceable under the attachment and not otherwise. A property under attachment may not eventually be auctioned or transferred by or under the directions of the Court. After the debt is discharged or the decretal amount is paid up in full, the attachment can be withdrawn and the holder of the shares, whether original or transferee, regains all his rights and can deal with them in any manner he likes. A person can purchase the shares or properties under attachment with the hope that if the attachment is eventually withdrawn he would become complete owner thereof. In other words, therefore, transfer of shares under attachment is void if it becomes necessary to auction or otherwise transfer the attached shares for enforcement of the claims; but if the attachment is eventually withdrawn the transfer though made during the Continuance of the attachment would be perfectly valid conferring a right in the vendee.

26. Section 64 C. P. C. has been incorporated to safeguard the interest of creditors; it is not meant to deprive the owner of his interest in the property under attachment. In case the Legislature had the intention to declare the transfer to be completely void, the words "as against all claims enforceable under the attachment" would not have been incorporated in the section. Further, the Legislature would have drafted Section 64 C. P. C. on the lines of the Provincial Insolvency Act, and other enactments, by declaring that on attachment the properties shall vest in the Court or the Receiver, as the case may be. When the intention of the Legislature was not to divest the owner of all his interests in the property, we can construe Order XXI, Rule 46, keeping this intention in mind. In other words, a transfer in disregard of the prohibitory order under Order XXI, Rule 46 is not illegal, though it is void as against all claims enforceable under the attachment.

27. We can consider this matter from another angle also. A joint Hindu family or a group of persons can possess properties including shares in companies and in execution of a decree against all of them such properties can be attached. If it is not open to the above persons to partition their assets during the continuance of attachment of all or some of their properties, they may be put to considerable inconvenience. Even though they have the right to partition their property, they shall not be able to do so if the transfer of property under attachment is completely barred. Litigation may continue for years together. Law is not meant to cause inconvenience to people and we can adopt a liberal interpretation if it be said that the law is capable of two interpretations. On this ground also Section 64 C. P. C. can be given its ordinary meaning and Order XXI, Rule 46 C. P. C. construed liberally to bring it in line with Section 64 C. P. C,

28. In the instant case, according, to the appellants, the two companies had given effect to the agreement arrived at between the members of the Khetan family. After the registration of shares in the names of the appellants, the duplicate shares were placed at the disposal of the Receiver, with the result that the authority making the attachment could recover the dues from these shares also. As the transfer of the shares and the alterations made in the registers of members did not adversely affect the rights of the claimants, the action taken by the two companies cannot be declared to be ab initio void and illegal.

29. A Receiver is appointed under Order 40 Rule 1, C. P. C, A perusal thereof makes it clear that the property does not vest in the Receiver, he is simply conferred with all the powers necessary for the management thereof. When by the appointment of a Receiver a party is not divested of his rights in the property, he can make a transfer thereof, though the transferee shall not have the right to manage the property. In other words, a transfer can be made subject to the order by which the Receiver is appointed. The fact that certain shares were handed over to the Receiver with blank instruments of transfer shall not make any difference. Both the transferor and the transferee are necessary parties to the transfer and for so long as instruments of transfer remain blank, there is no transferee and, in the eye of law, there has been no transfer. For all practical purposes such shares are at par with shares under attachment though after the blank instruments of transfer are filled in i.e. the shares are transferred in satisfaction of the claims, the earlier transfers made, as in the case of shares under attachment, shall become void.

30. To sum up, the act of the two companies in giving effect to the agreement between the members of the Khetan family by making alterations in the registers of members cannot be held to be illegal or void and, in the circumstances, the burden lay upon the person making the application u/s 155 of the Companies Act, 1956, to prove facts which would justify rectification of the registers of members. The Court can refuse to exercise summary jurisdiction u/s 155 in cases where complicated question of title is involved, leaving it open to the applicant to seek his remedy before the civil court. The present was a fit case in

which this Court could refuse to exercise such jurisdiction, and as the burden of proof lay upon the applicants all the applications deserved dismissal though leaving it open to the applicants to seek such other remedy as they may be advised.

31. All the four Special Appeals are hereby allowed and the orders of the Company Judge are set aside. The application u/s 155 of the Companies Act, 1956, shall stand dismissed. Costs throughout on the parties.