
(1984) 10 KAR CK 0018
In the Karnataka High Court
Case No : Company Petition No. 3 of 1983

M.M. Anandaram and Others

APPELLANT

Vs

Mysore Lachia Setty and Sons P. Ltd.

RESPONDENT

Date of Decision : 30-10-1984

Acts Referred:

Companies Act, 1956 — Section 108, 110, 150, 155

Citation : (1985) 58 CompCas 162(1) : (1984) 2 KarLJ 433

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : V.K. Vardachari, for the Appellant; Jayaram, for the Respondent

Judgement

Chandrakantaraj Urs, J.—This is a petition under s. 155 of the Companies Act, 1956 (hereinafter referred to as "the Act"). The petitioners are the transferees of certain shares of M/s Mysore Lachia Setty and Sons P. Ltd., which is the respondent company in this proceeding represented by its director in-charge. The prayer in the petition is for an order of this court directing the respondent company to recognise the transfer of 40 shares (8 to each of them) and make the alternation in the register of members in accordance with the transfer.

2. The petition was filed on January 3, 1981, and notice was ordered to the respondent on February 7, 1981. The respondent after service of notice has entered appearance and contested the petition. The facts which themselves are not in dispute as can be made out from the pleadings of the petitioners as well as the respondent may be briefly stated and they are as follows : Eight brothers joined together and incorporated Mysore Lachia Setty and Sons P. Ltd. under the Act on November 26, 1946, with a paid up capital of Rs. 1,00,000 divided into 400 shares of Rs. 250 each. The father of the petitioners, late M. L. Manjunatha Setty, together with his seven brothers contributed Rs. 12,500 each and were allotted 50 shares each. However, in the year 1964, differences between the shareholders surfaced and the petitioners' father together with one other brother, M. L. Janardhana Setty, formed a group while the remaining brothers

formed the opposite group. In that circumstance, a partition suit came to be filed to which all the shareholders were parties and it is stated that suit is in the final decree stage on the date of petition. It is alleged that the group of brothers opposed to late Manjunatha Setty and Janardhana Setty despite the pendency of the partition suit in the Supreme Court of India, effected a partition in the family on January 6, 1978, ignoring Manjunatha Setty and Janardhana Setty. On account of the differences among the brothers, late Manjunatha Setty was not elected as a director of the company. It is stated that Manjunatha Setty has, besides the petitioners, a son by his first wife by name M. Madhava Murthy, who is the applicant in C.A. No. 7 of 1984 and who has sought to implead himself in this proceeding. He filed a suit for partition in the court of the Civil Judge, Chickmagalur, in O.S. No. 218 of 1965 which has stood transferred since to one of the City Civil Courts in Bangalore in O.S. No. 405 of 1980. It will be useful to state here itself that the issues in the said suit are related to the properties of Manjunatha Setty which are liable for partition as properties of an HUF.

3. By share transfer forms dated September 7, 1968, Manjunatha Setty transferred 40 shares out of the 50 shares which he held in the respondent company to the petitioners. Soon thereafter, Manjunatha Setty as transferor sent the share transfer forms to the respondent company with a request for giving effect to the transfers. But the company returned all the transfer applications and wrote to Manjunatha Setty that the board of directors had unanimously rejected all the transfer applications under the articles of association. Photostat copies of the share transfer applications under the articles of association. Photostat copies of the share transfer forms are enclosed to the petition as annexures A to E of annexure III while the covering letter dated November 22, 1968 (true copy), is at annexure II. Soon thereafter, each of the petitioners separately wrote a uniform letter dated December 24, 1968, addressed to the managing director of the respondent company protesting against the rejection of the transfer by the board of management as they were not in any way disqualified to become shareholders of the company in accordance with the articles of association. In their letters aforementioned, each of the petitioners called upon the respondent company to register the transfer without further delay failing which they would take necessary legal steps to enforce their rights in the matter at the cost of the company. They also indicated that on hearing from the board, they would tender the documents once again. True copies of those letters are produced as annexures to C.A. No. 636 of 1983 which is an application made by one of the petitioners to amend the pleadings in the main petition.

4. The said application when it came up for orders, the court in the light of the arguments advanced at that time and in order to settle the dispute in the family, directed that the petitioners may make a fresh application for transfer to the company which should be disposed of by the board within two weeks from the date of application and the decision thereon communicated to the court. Reference will be made to this later in the course of this order; but to continue the narration of facts, nothing appears to have happened after the letters of

December 25, 1968, were addressed by the petitioners. In the meanwhile, M. L. Manjunatha Setty died on May 12, 1974, leaving behind him a will in which he had disposed of his self-acquired estate including the residue of 10 shares which remained in his name after the transfer in 1968 of the 40 shares in favour of the petitioners. The petitioners on account of the pending litigation in the court of the Civil Judge, Chickmagalur, hoping for an early decision did not take any action. As it turned out, the litigation persisted and is yet pending in the City Civil Court. It is in that circumstance they have moved this court under s. 155 of the Act for rectification of the register of members.

5. The prayer is resisted by the respondent company solely on the ground that the application for transfer of shares to the names of the petitioners in the register of members of the respondent company having been disposed of by the board unanimously in November, 1965, itself and that decision having been accepted by the late Manjunatha Setty, it was not now open to the present petitioners to seek the transfer once again. It is alleged that the petitioners have approached this court despite there being a cloud on the title of the petitioners to the 40 shares in the suit filed by Madhava Murthy, son of the first wife of M. L. Manjunatha Setty. It is, therefore, contended that the petitioners do not have the locus standi to maintain this petition. It is also contended for the respondent that the petition is hopelessly belated and, therefore, the respondent company need not rectify the register at the instance of the petitioners now till the litigation inter se the petitioners and their step brother has come to an end.

6. It was having regard to these circumstances that the court earlier directed that the transferee-petitioners should make a fresh application to the respondent company for necessary changes in the transfer register and which should be considered by the board of the respondent company and the decision thereon communicated to the petitioners. Pursuant to that, the petitioners through their counsel sent postal acknowledgments of respondent company, the original share certificates issued to late Manjunatha Setty and the original transfer forms dated September 23, 1968, together with the copies of letters dated December 24, 1968, by which the petitioners had sought the transfer. The earlier direction was again clarified on January 15, 1984, by the court. In accordance with the clarification, the petitioners wrote a letter signed by all of them bearing the date 28th January, 1984, renewing their request for transfer of the 40 shares. That letter was also sent through their counsel. In response to that, a memo was filed by the respondent company on April 11, 1984, by which it was brought to the notice of the court that there was no compliance with the clear directions given by the court on January 15, 1984, inasmuch as there was no fresh application for transfer made and that the board having considered, expressed the board having considered, expressed the board's willingness to transfer the shares in question by way of transmission as heirs of Manjunatha Setty without reference to the pending litigation or the outcome of it if a fresh application was made by the petitioners. The extracts of the resolution of the board were also filed in the court with the memo. The petitioners were not willing to accede to the suggestion of

the board of the respondent company and, therefore, the matter was argued out on the merits of the original petition. At the time of hearing the arguments, M. L. Madhava Murthy, the application, who wants to implead himself in the proceedings has also been heard through his counsel.

7. This is a case which is a classic example of how family disputes, complicated as they are, have become more complicated resulting in multiplicity of litigation, delay and hardship to those who are affected. Sympathy, compassion and understanding seem to be the first casualties of inter-family litigation.

8. Mr. G. Ramaswamy, learned counsel for the petitioners, has contended that the Act provides for a transfer to be registered by the company concerned both on the application of the transferor as well as the transferee. In that circumstance, the rejection of the transferor's application by the respondent company, he has contended, does not dispose of the applications made by the transferee-petitioners on December 25, 1968, and, therefore, the company has defaulted in not making the transfers and the default having persisted, the cause of action that accrued in favour of the petitioners has continued and, as such, they have a right to move this court under s. 155 of the Act. He has further contended that the rejection of the transferor's request does not in any way affect the rights of the transferees in the shares or the right to move this court for rectification. He has further contended that the rejection by the board of the respondent company of the application of Manjunatha Setty in November, 1968, could not be considered as a rejection at all in the light of the fact that the rejection is not based on any valid grounds permissible under law or the articles of association of the company. He has also contended that it is not open to the respondent company to resist the transfer as long as the instrument of transfer itself is not disputed by the respondent company.

9. For the petitioners, Shri Ramaswamy, learned counsel has founded his arguments on the provisions contained in the Act and the articles of association of the company. Attention of the court is drawn to s. 150 of the Act. Section 150 of the Act casts a duty on every company to maintain a register of members in one or more books showing four particulars : name, address and occupation of the members, the number of shares held by members together with a distinguishing number for each share and its value paid or agreed to be paid, the date on which the name of the member was entered in the register and the date on which any person ceased to be a member. That the duty cast upon the company is mandatory in character is pointed out with reference to the penalty provided in sub-s. (2) of that section for default by the company. The thrust of the argument is that Manjunatha Setty having intimated the transfer of 40 shares in favour of his five sons, ceased to be a member which fact ought to have been entered in the register of members of the company, notwithstanding the refusal to record and to register the transfer as was done by the board of directors of the company. The company never questioned the legality of the transfer, any way not when the applications were made by the transferor or the transferees. The

learned counsel drew the attention of the court to the reason for refusing to record the transfer. The reason given by the board for refusal was the genuine reason, the board should have welcomed the opportunity to get rid of Manjunatha Setty. The reason for refusal being extraneous to the provisions of the Act and the articles of association of the company, the refusal was mala fide, motivated and, therefore, illegal, it is contended.

10. Shri A. N. Jayaram has countered that contention by stating that late Manjunatha Setty did not question the refusal of the board to register the transfer and, therefore, it would not now be open to the sons to contend that there has been default. I do not think that is the correct position in law. It is indisputable that under ss. 108 and 110 of the Act, both the transferor and the transferee may seek the registration of transfer subject to the conditions and restraints imposed in those sections. Therefore, the rights of the transferee of a share does not depend on the conduct of the transferor. He may seek to register the transfer or he may not. Once he has signed the instrument of transfer and it is duly stamped, title in the share or shares on passes to the transferee. The moment late Manjunatha Setty intimated the transfer and requested the alteration in the register of members in or about September, 1968, he admitted he had lost title to the 40 shares and that should have been entered in the register of members and that is the default which the petitioners point out and not the bare fact of refusal in 1968. In other words, the board failed to register the fourth particular in sub-s. (1) of s. 150 of the Act. The legality of the transfer was never doubted by the respondent company.

11. It is further argued for the petitioners that their letters dated December 24, 1968, communicated to the board, remained unattended by the company and there being no express refusal to register the transfer on the applications of the transferees, the respondent company could not be permitted to now contend that the petitioners had either accepted the refusal communicated to their father or that the present petition is belated.

12. Shri A. N. Jayaram for the respondent company relied upon the decision of the Madras High Court in the case of Cuddalore Construction Co. Ltd., In re [1967] 37 Comp Cas 440, to support the argument that the petitioners were guilty of laches and, therefore, not entitled at this point of time to relief from this court. The passage in the headnote relied upon is as follows :

"The expression "rectification" of a company's register, which is a purposeful expression with a special signification of its own, implies a prior error, mistake or defect apparent on the face of the record of the register which after rectification is made good and corrected by removing such a mistake or error. The power to correct a register has to be exercised with caution as in such a summary adjudication, a roving enquiry is not contemplated. A claim to rectify the register cannot be asked for ex debito justitiae but must be based on certain accepted principle, particular care being taken to find that the applicant seeking such a discretionary and equitable relief is not guilty of laches. Where a winding-up

order intervenes whereby the rights of creditors are made paramount, application for rectification must be refused."

13. One can have no quarrel with the general principles enunciated by the learned judge in the matter of the company court's approach to rectification under the Act. The question is whether those principles have application to the facts of this case. The last sentence in the passage extracted above is the key. In that case, the facts were different. A person seeking rectification wanted deletion of his name from the register of members after a winding up order had been made, evidently to escape his liability, if any, as a contributory. In such a situation, laches is a factor which the company court must take note of. That has been made clear in the judgment as the petitioner therein was right through aware of the winding up proceedings concerning the company in question and was all along conscious that he was shown as a member of the company in the register of members. He chose to apply for rectification only after the winding up order was made. It is that factor which went against him. In the case of the petitioners, they have explained the reason for delay in moving the company court. Petitioners and their father were involved in more than one litigation. They hoped, the end of those litigations would resolve the present dispute also. It did not work out that way. They have, therefore, approached this court now. The explanation is not unreasonable. The existence of the litigative circumstances is admitted by the respondent company. The default persists and the petitioners, therefore, may choose any time to approach this court as long as the cause of action is a continuing cause of action.

14. Shri A. N. Jayaram has then contended that by refusal of the transferor's application, the board acted in the matter and, therefore, it cannot be called upon once again to act in the very same matter. In a way it is true. Late Manjunatha Setty did not challenge that refusal in 1968 or thereafter till his death. But, earlier in the course of this order, I have pointed out how default was committed by the company in terms of s. 150 of the Act. As correctly pointed out by Shri G. Ramaswamy, counsel for petitioners, s. 155 of the Act gives a wider power to the court.

15. Section 155(1)(b) of the Act is as follows :

"155. (1) If - ...

(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, ... may apply to the court for rectification of the register."

16. In other words, what is clear is, there is no bar on court's jurisdiction as long as the default persists and person or persons remain aggrieved for one of the reasons given in clause (b) of s. 155(1) of the Act. Section 110 of the Act specifically confers power on either the transferor or the transferee to move an application for transfer with the company. Rejection of one application, in my

view, will not preclude the other, say, the transferee as in the instant case to make another application or move this court for rectification so long as the default continues. Refusal by the company is not the end of the matter but the beginning of the proceedings under s. 155 of the Act.

17. In this connection, one should not lose sight of the fact that the company has neither disputed the title of the transferor or his competence to transfer the shares in question. The reason for refusal, at the cost of repetition, I must say, was capricious and not for any legal or tenable reason.

18. It was next contended by Shri A. N. Jayaram that after the death of the transferor, the title of the petitioners is in doubt and under litigation and, therefore, the company court should not entertain the application under s. 155 of the Act. I do not think that contention was well taken. That there are instruments of transfer in favour of the petitioners is not in dispute. Third parties may question the title of the transferees, but certainly not the company. In this regard it is useful to notice two cases cited for the petitioners by their counsel.

19. In the case of *South Indian Bank Ltd. v. Joseph Michael* [1978] 48 Com Cas 368, a Division Bench of the Kerala High Court has summed up the scope of s. 155 of the Act, after discussing several Indian and English cases, as follows (p. 376) :

"The principle to be deduced from these decisions is that while the court would generally assume that the directors acted bona fide in the general interests of the company, if either from the reasons disclosed or from the relevant records it is seen that the directors acted in excess of the power conferred by the articles or on a wrong principle, or, while in the purported exercise of their power under the articles, they acted "oppressively, capriciously or corruptly, or in some way mala fide;, the court would intervene to nullify the illegal action of the directors : *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala* [1961] 31 Com Cas 387 (SC). If, on the other hand, the reasons disclosed are legitimate, the court would not overrule the directors' decision merely because the court itself would not have come to the same conclusion. The question is, did the directors act on a ground permitted under the articles, and if they did, was their power exercised bona fide in the interests of the company ? In *Bede Steam Shipping Co. Ltd., In re* [1917] 1 Ch 123 (CA), the articles as in the present case, conferred a limited discretionary power of refusal on the directors, and their refusal to register the transfer of shares, for reasons not personal to the transferee, was held to be ultra vires. In *Smith and Fawcett Ltd., In re* [1942] 1 All Er 542 (CA) the position was held to be different as the articles had conferred an absolute and unlimited power on the directors and it was not established that they had acted mala fide. In *Bajaj Auto Ltd. v. N. K. Firodia* [1971] 41 Comp Cas 1 (SC), notwithstanding the absolute and unlimited nature of the power conferred on the directors, the refusal to register was held to be invalid as it was found to be a mala fide and arbitrary exercise of power."

20. I am in respectful agreement with the view expressed. There cannot be another way of looking at s. 155 of the Act. The respondent company which took the capricious stand in rejecting late Manjunatha Shetty's application for transfer cannot now be permitted to even indirectly question the legality of the transfer merely because there is litigation pending before a civil court in regard to the estate of Manjunatha Setty. The civil court has made no order ad interim restraining the transfer or registration. In that circumstance, the respondent company's stand lacks bona fide.

21. In fact, a learned single judge of the Gujarat High Court (now in the Supreme Court) in the case of Shri Gulabrai Kalidas Naik v. Shri Laxmidas Lallubhai Patel of Baroda [1978] 48 Comp Cas 438 has held that powers under s. 155 of the Act are very wide and it is useful to extract the relevant passage which is as follows : (p. 443).

"A clear controversy about title to the shares is bound to arise. More often when, in a special statute, there is special forum on which limited jurisdiction is conferred, a question is more often raised : whether such a forum created by a special statute, with a special limited jurisdiction, could decide the question incidentally arising while exercising the limited jurisdiction. To thwart such a controversy, it is made crystal clear that not only the court can examine the question of title that may arise in an application u/s 155, but it would also have the jurisdiction to decide other questions which may arise as ancillary or incidental to the main controversy and the court cannot be asked not to decide them on the ground of lack or want of jurisdiction because the statute specifically confers such wide jurisdiction. There was definite purpose behind enacting sub-clause (b) to sub-section (3), namely, to thwart any suggestion that the court cannot such at jurisdiction and decide the questions which do not directly fall u/s 155, or, for that matter, under any other provisions of the Companies Act. In order to make section 155 an effective remedy for a relief, for placing one's name on the register of members or for compelling the company to omit some name, which name has been wrongly placed, not only the Companies Act has conferred right on an aggrieved person, to move the court u/s 155, but created a forum, namely, the court hearing matters under the Companies Act, and widened the jurisdiction by conferring power on the court not only to decide the question of title, but also to decide all questions which are ancillary and incidental to the main question."

22. It is very difficult to disagree with the exposition of law as above. But in the instant case, there is no need to stretch the jurisdiction of this court to its farthest extent under s. 155. Even the respondent company in its memo filed in court on April 18, 1984, conceded the right of the petitioners to be registered as members of the company by transmission of the shares as heirs of Manjunatha Setty. From that two things follow. Petitioners have title to the shares as heirs if not by the instruments of transfer of 1968. Petitioners do not suffer from any disqualification under the relevant articles of association of the company. At an

earlier stage in the proceedings, petitioners filed affidavits of their sisters as directed by the court by which the sisters have stated that they have no objections for the transfer of eight shares each to the petitioners in accordance with the transfer of forms. Therefore, I am satisfied that really there is no vexed question of disputed title to the shares in question bar the general claim of Madhava Murthy, the applicant in C.A. No. 7 of 1984, for a general partition of the estate of the Manjunatha Setty as an HUF including the fifty shares originally held by late Manjunatha Setty in the respondent company. In that view of the matter, reliance placed by Shri A. N. Jayaram on the ruling of the Calcutta High Court in the case of Daddy S. Mazda v. K. R. Irani [1977] 47 Comp Cas 39 is not of much assistance to the respondent company.

23. What remains is the consideration of the case of the applicant, Madhava Murthy, in C.A. No. 7 of 1984. Prayer in the application is to implead himself in this proceeding. I do not think he is either a necessary party or a proper party. He has not called upon the company to register him as a member of the respondent company, and therefore, there is no lis between him and the respondent. His lis, if any, is with the petitioners and that lis is in issue in O.S. No. 405 of 1980 on the file of one of the City Civil Courts in Bangalore. If he succeeds in the suit there, in so far as the 50 shares in question are concerned, he will be entitled to his share determined by that court and no more. Ten shares remained in the name of Manjunatha Setty when he died. He can always be accommodated out of those shares. By the directions I propose to give in the light of the conclusions reached by me, his interest will not suffer. Therefore, C.A. No. 7 of 1984 is rejected.

24. In the result, I am of the view that :

- (1) Petitioners are entitled to maintain this petition.
- (2) Respondent company cannot dispute the legality of the transfer of 40 shares in 1968.
- (3) Refusal to register the transfer in 1968 was unjustified and mala fide and, therefore, non est in law.
- (4) O.S. No. 405 of 1980 pending in the City Civil Court of Bangalore is not a bar for registering the transfer in question.
- (5) Respondent company is precluded from raising the question of qualification of petitioners to be members of the company in the light of its willingness to transmit the shares in question to the petitioners as heirs of late Manjunatha Setty as expressed in the memo filed in court on April 11, 1984.

25. I, therefore, direct the respondent company to register the transfer in accordance with the transfer forms dated September 7, 1968, concerning the petitioners within 30 days from today if petitioners submit the transfer forms and the share certificates to the company at its registered office and enter the names of the petitioners as members of the respondent company from the date of the

transfer, but the change in the register of members will be subject to the final decree in O.S. No. 405 of 1980 on the file of the City Civil Court, Bangalore.

26. I make no direction in regard to the past benefits respecting the shares transferred to the petitioners which may be settled in separate and appropriate proceedings. However, petitioners will be entitled to all the benefits of the shares held by them in the respondent company in future as of this day.

27. Having regard to the conduct of the respondent company, I should have awarded exemplary costs in favour of the petitioners. but by declining to do so I hope the same acts as a healing touch to reduce the mutual dislike the petitioners and other members of the company have for each other. Parties shall bear their own costs.

28. Order accordingly.