
(1974) 12 CAL CK 0005
In the Calcutta High Court
Case No : Company Petition No. 231 of 1974

Moni Mohan Mukherjee

APPELLANT

Vs

Jalpaiguri Cinema Co., Ltd.

RESPONDENT

Date of Decision : 13-12-1974

Acts Referred:

Companies Act, 1956 — Section 111, 155

Constitution of India, 1950 — Article 133, 136, 137, 226, 227

Citation : 79 CWN 512

Hon'ble Judges : R.M. Dutta, J

Bench : Single Bench

Advocate : U.B. Mukherjee and Mr. S. Bhattacharya, for the Appellant; B.S. Sen and Mr. P.N. Chatterjee, for the Respondent

Judgement

R.M. Dutta, J.—The Court: The petitioner Moni Mohan Mukherjee has applied this Court inter alia, u/s 155 of the Companies Act, 1956, for rectification of the Share Register by inserting therein his name in the place and instead of the previous registered owners of the shares purchased by the petitioner. The said shares were purchased by the petitioner between December 2, 1966 and December 26, 1966 and the same were lodged with the company between January 4, 1967 and January 12, 1967 for registration thereof. An application was duly made to the company for such registration. The company declined to register the said shares. On 25th March, 1967 the petitioner appealed against such refusal before the Company Law Board and proceeded u/s 111 of the Companies Act, 1956. The appeals were allowed by the Company Law Board by its orders dated December 19, 1969 and December 22, 1969 whereby the company was directed to register the said shares in the name of the petitioner and to enter the same in the Register of members. The Company filed a writ petition under Articles 226 and 227 of the Constitution of India against the said order of the Company Law Board but the same was dismissed on May 13, 1970. The company thereafter preferred an ap-appeal but the same was also dismissed by the order of the Division Bench on or about February 26, 1971. The company

thereupon asked for leave to appeal to the Supreme Court under Art. 133 of the Constitution and applied for stay of execution but the same was rejected. Thereupon the company applied for special leave to appeal to the Supreme Court under Art. 136 of the Constitution but the same also was dismissed by an Order dated October 26, 1971.

2. Inspire of the aforesaid orders the company has failed and neglected and defaulted in rectifying the Share Register in terms of the said orders and in spite of demands made by the petitioner requiring the company to comply therewith by various letters written from time to time.

3. It appears that the company is bent upon not to carry out the orders. Under those circumstances the petitioner has applied, inter alia, u/s 155 of the Companies Act, 1956 to pursue an efficacious remedy provided therein to meet such a situation.

4. A similar application in respect of the same, company was made and an order was made by Roy Chowdhury J. by delivering a judgment on 29th November, 1973 in Company Petition No. 289 of 1973 in the matter "of Jalpaiguri Cinema Co. Ltd. vs. Pramatha Nath Mukherjee. It appeared to me that the present case is covered by the said decision of Roy Chowdhury J. But it was contended on behalf of the petitioner that certain points have not been dealt with in that judgment and, accordingly the matter was argued before me at full length.

5. Mr. Bikas Sen on behalf of the respondent Company referred to the case of Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjunwala and Others, and contended that the remedy provided u/s 111 of the Companies Act, 1956 was a remedy which was -an alternative to the remedy provided u/s 155 thereof and drew my attention to the following observation of the Spreme Court appearing at p. 1678 of the said Report:

But the power to entertain the appeal is not unrestricted: being an alternative right to approach the Civil Court, it must be subject an alternative right to be subject to the same limitations which are implicit in the exercise of the power by the Civil Court u/s 155.

6. In the above case the Supreme Court considered the exact status of the Central Government" in deciding an application u/s 111 of the Companies Act, 1956 and held that in making an order under Sec. 11l the Central Government has to exercise its power by giving reasons in support of its orders because it functions as a Tribunal exercising judicial powers. The Supreme Court also held that there had been no proper trial of the appeals, no reasons having been given in support of the orders by the Deputy Secretary who heard the appeals and as such quashed the orders passed by the Central Government and ordered re-hearing and disposal of the appeal according to law.

7. In my opinion, by the said observation it was not held that the remedies provided under the said two sections were alternative to each other or that if one

such remedy would be pursued then the applicant would be debarred from pursuing the other. The above observation was made wholly for the purpose of finding out the exact status of the Central Government in functioning and giving its decision under the said provision.

8. Mr. Sen relied on a single Bench judgment of the Punjab High Court in the case of Arjansingh Bir Singh Vs. Panipat Woollen and General Mills Co. Ltd. and Others, in which the learned Judge held that "since Section 155 did not purport to confer over-riding powers on the Court, it should be held that the said two Sections provide alternative remedies." The learned Judge relied on the said Supreme Court case and distinguished two of the cases of this Court, In Re: Coronation Tea Co. Ltd., and Mt. Nazmunnessa Begum, Administratrix Vs. Vidyasagar Cotton Mills Ltd., . In the Punjab case the company rejected the application for transfer but when directed by the Central Government by an order. u/s 111 implemented the order but a little beyond the statutory period. Thereafter a shareholder made the application u/s 155 of the Act and complained against such transfer so made in pursuance of the order of the Central Government. The petitioner therein challenged the transfer as illegal because certain formalities were not observed by the Managing Agents in transferring the said shares in pursuance of the said order of the Central Government. It was also alleged that the person concerned, whose claim was so transferred in the Register was an undesirable person and as such he should not be allowed to be connected with the company as a shareholder.

9. In the said Punjab case the remedy as provided u/s 111 was quite adequate to the applicant thereto because the company complied with the said order of the Central Government. But what would not be complied with ? All that the Section has provided is that in default some penal consequences would follow. In other words, the applicant himself will not get the remedy he asked for but in the interest of public by way of Public Policy the persons concerned would be punished if default would be committed in complying with the order of the Central Government. At best the penal provision might act as a deterrent but nothing more so far as the aggrieved person is concerned. Therefore, if sufficient relief has been provided u/s 155 of the Companies Act, 1956, I fail to see, why the same cannot be adhered to in seeking complete relief which could not be had u/s 111 of the said Act. To my mind, the reliefs provided under the two Sections are not the same and the one is not the alternative of the other. It is true that if in effect the applicant gets relief u/s 111 then in respect of the same subject-matter another remedy cannot be sought for u/s 155 so as to upset the orders of the Central Government and to obtain a relief against such order as was the case before the Punjab High Court. I respectfully agree with the views of the learned Judge of the Punjab High Court that the Court has no overriding powers u/s 155 because to have such powers would mean that the Court would sit on appeal over the decision of the Central Government. That was never the intention of the legislature in enacting the said two sections.

10. In this application we are concerned primarily with the nature of the remedies provided under the said two Sections; Section 111 provides for penalty in case of non-compliance but the most efficacious remedy has been provided u/s 155 whereby the order passed by the Court can be executed to the full extent as ordered by giving complete relief to the person in whose favour the order is made. There is no reason why the aggrieved person should not be allowed to pursue his remedy by applying u/s 155 of the said Act under such circumstances.

11. In view of my finding that the said two Sections do not provide similar remedy to the applicant concerned, the case of *Budhu Lal v. Chattu Gope* reported in AIR 1958 Cal. 850 at Page 856 and the case of *Baikuntha Nath Dey and Another Vs. Nawab Salimulla Bahadur and Others* have no application to the case before me.

12. I hold that in the facts and circumstances of this case, the two remedies provided under the said two Sections are not the same and as such by adopting the remedy provided u/s 111, the action does not operate as a bar in pursuing the remedy provided u/s 155 of the Companies Act, 1956. The view I have taken is supported by a decision of the Bombay High Court in the case of *Sadashiv Shankar Dandige Vs. The Gandhi Sewa Samaj Ltd. and Another*, where the learned Judge made an order u/s 155 directing the company to register the shares in the books of the company under similar circumstances.

13. The case of *Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala* (supra) was considered by the Division Bench of this Court in the case of *Vidyasagar Cotton Mills Ltd. Vs. Mt. Nazmunnessa Begum*, . The Bench construed the observations in the Supreme Court judgment and at page 709 held as follows:

Under Section 155 of the Indian Companies Act as it stood before its amendment in 1960 it was well settled that a person aggrieved by the refusal to register the transfer of shares had two remedies namely, (1) to apply to the Court for rectification of the register under Sec. 155 and (2) to appeal against the resolution refusing to register u/s 111.

14. Under those circumstances, I have no hesitation to hold that the application is maintainable, even though, an order was made under Section 111 by the Company Law Board.

15. The next point, which has been specifically argued before me, is the point of limitation. Mr. Sen contends, following certain observations made in a Bench decision of this Court in the case of *Techno Metal India (P.) Ltd. Vs. Prem Nath Anand*, , that Art. 136 of the Limitation Act, 1963, would be applicable to applications under the Companies Act, 1956. But whatever be the observations made therein, the Bench ultimately followed the observation made by the Supreme Court in the case of *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, , where it observed as follows :

We think that, on the same principle, it must be held that even the further

alteration made in the Articles contained in the third division of the schedule to the new Limitation Act containing references to applications under the Code of Civil Procedure Cannot be held to have materially altered the scope of the residuary Art. 137 which deals with other applications. It is not possible to hold that the intention of the legislature was to drastically alter the scope of this Article so as to include within it all applications, irrespective of the fact whether they had any reference to the Code of Civil Procedure.

16. In the above case, the Bench of this Court considered the question of the applicability of Art. 137 of the Limitation Act in respect of winding up applications. But after considering the matter from various angles, ultimately, it was of the opinion that an application for winding up of the company was an application under the Companies Act and not under the CPC and as such held that the Limitation Act did not apply. Following the said Supreme Court case the Bench dismissed the appeal. That being the position, I am bound to hold that the Limitation Act has no application in an application u/s 155 of the Companies Act, 1956. The question was directly raised and considered in the case of *Sha Mulchand and Co. Ltd. (In Liquidation) Vs. Jawahar Mills Ltd.*, . In that case it was held that in an application for rectification of Share Register Art. 181 of the Old Limitation Act was not applicable because the said Article applied to applications under the CPC only.

17. In any event, since the petitioner had been diligently pursuing his remedy in the different courts of law, there was no point in making an application u/s 155 so long as the petitioner was pursuing the same. There is no delay or laches on his part in seeking his remedy. The company is in default in complying with the order and the default is a, continuing one and I do not see any reason how the question of limitation becomes material in the facts of this case. Mr. Sen argues that the starting point of limitation should be from the original date of refusal by the company to register the shares in the name of the petitioner. That happened prior to the order dated December 2, 1969 made by the Central Government and as such the time has now expired. In my opinion, there is no substance in that contention and the same should be rejected. In my opinion, the other points are covered by the judgment delivered by Roy Chowdhury J. in the Company Petition No. 289 of 1973 dated 29th November, 1973 as mentioned hereinabove and I agree with the said decision. The result, therefore, is that the petitioner is entitled to an order in terms of prayers (a), (b) and (d).