(1992) 02 MAD CK 0026

In the Madras High Court

Mrs. E.V. Swaminathan APPELLANT

Vs

K.M.M.A. Industries and Roadways Private Ltd. and others RESPONDENT

Date of Decision : 27-02-1992

Acts Referred:

Companies (Court) Rules, 1959 — Rule 10, 11, 12
Companies Act, 1956 — Section 108, 111, 116, 116(3), 153(3)

Citation : (1993) 76 CompCas 1

Hon'ble Judges : A.R Lakshmanan, J

Bench : Single Bench

Advocate : T. Raghavan and A.K. Mayilsamy, for the Appellant; K. Alagiriswamy, for the Respondent

Judgement

This Judgment has been overruled by : M/S. Ammonia Supplies Corporation (P) Ltd. Vs. M/S. Modern Plastic Containers Pvt. Ltd.

and Others, AIR 1998 SC 3153 : (1998) 94 CompCas 310 : (1998) 4 CompLJ 211 : (1999) 1 CTC 273 : (1998) 6 JT 116 : (1998) 5

SCALE 147 : (1998) 7 SCC 105 : (1998) 1 SCR 413 Supp : (1998) AIRSCW 3062 : (1998) 7 Supreme 191

Lakshmanan, J.—The petitioner has filed the above company petition u/s 155 of the Companies Act, 1956 (Act 1 of 1956), with the

following prayers :

(a) to rectify the register of members of the first respondent-company be deleting the name of the third respondent with refgard to 775 shares

standing in the name of the petitioner in the register of members ;

(b) to enter the petioners''s name in respect of the said 775 equity shares in the registered of members in the place of third respondent ; and

(c) to direct the repondents herein to pay the costs of the petition.

2. The facts leading to the filing of this petition may be set out as follows :

The first respondent is a private limited company incorporated under the provisions of the Companies Act, 1956, and has its registered office at

No. 7-C, Alexandra Road, Tiruchirappalli. The second respondent is the wife of Mr. R.P. David Christian, Yercaud, Salem District. The third

respondent is the son of Mr. R.P. David Christian. The authorised capital of the first respondent-company is Rs. 2,00,000 divided into into 2,000

equity shares of Rs. 100 each. The issued and subscribed capital is Rs. 1,27,500 divided into 1,275 euity shares of Rs. 100 each. The main

objects of the company are to carry on business as stage carriage operators and such other types of business as are set forth in its memorandum of

association. The petitioner is a shareholder of the first respondent-company holding 775 equity shares. The petitioner has also been designated as

the managing director of the company. According to the petitioner, her husband, Swaminathan, and the second respondent''s husband, David, who

are brothers have acquired all the shares from the members of the company. Through the petitioner was named the managing director of the

company, R.P. David, the husband pf the second respondent, has been ateending to the affairs of the company in view of the close relationship and

the confidence reposed by the petitioner in him. The registeres, books and other records of the company are maintained at Thiruchirappli in the

registered office of the first respondent company. They are in the custody of the second respondent, Mrs. R.P. David, and her husband, Mr. R.P.

David. The certificates covering 775 shares belonging to the petitioner were also left at the registered office of the company. The petitioner has

further stated that certain misunderstandings have arisen between the petitioner''s husband, N. Swaminathan, and his brother, R.P. David, husband

of the second respondent, regarding division of the properties belonging to the late Sathianathan, the father of R.P. David and N. Swaminathan.

The petitioner submits that, taking advantage of their physical custody of the books and records of the company, R.P. David and the second

respondent have purported to record proceedings in relation to the first respondent-company altogether excluding the petitioner from membership

of the board and its general body. Ever since the disputes had arisen between the petitioner husband and R.P. David, the petitioner has had no access to the books and records of the first respondent-company. The petitioner came to know about the various false and fictitious records which

have beeen created by the second respondent and her husband, R.P. David, in an attempt to take complete control of the first respondent-

company and totally exclude the petitioner from having anything to do with the affairs of the first respondent-company. From the inspection of the

records of the Registrar of Companies, the petitioner came to know that the second respondent filed an annual return of the first respondent-

company on December 21, 1978, showing that the petitioner ceased to be a director and that the petitioner had transferred 775 shares to Asha

John Divyanathan, the third respondent, who is the son of the second respondent and R.P. David. The said transfer is purported to have been

effected on March 2, 1978. According to the petitioner, she never executed any deed of transfer of her shareholding in the first respondent-

company to the said Asha John Divyanathan, the third respondent or any one else nor was there any board meeting on March 2, 1978, or on any

other date approving any such transfer. According to the petitioner, she should have had notice of the meeting if any such meeting had been

convened. The petitioner being the managing director never convened any such meeting either on March 2, 1978, or on any other date. No such

meeting could have taken place since the board of the first respondent-company comprises only two directors, being the petitioner and the second

respondent and the petitioner never attended any meeting of the board. Thus, the petitioner has stated that respondents nos.2 and 3, in collusion

with R.P. David, have contravened the provisions of section 108 of the Companies Act and illegally and unauthorisedly altered the statutory

records of the company like the register of members by delating the petitioner''s name therefrom and substituting the name of the third respondent

herein. According to the petitioner, from the records of the Registrar of Companies, it is found that second respondent herein. According to the

petitioner, from the records of the Registrar of Companies, it is found that second respondent herein purported to have filed a return in Form 32 on

December 21, 1978. The said form purports to disclose the co-option of Asha John Divyanathan, the third respondent, as the director of the first

respondent-company on March 15, 1978, and also purports to intimate that the petitioner ceased to be a director with effect from March

20,1978. The said form also discloses that the the second respondent was purported to have been appointed managing director of the first

respondent-company with effect from March 20, 1978. According to the petitioner, the above statements referred to in Form No. 32 are false and

are false to the knowledge of the persons who have made the return. No meeting of the board of directors of the first respondent-company was

held on March 15, 1978, or on March 20, 1978, or on any date. The petitioner never had any knowledge of such meeting or attended such a

meeting. The petitioner further states that the third respondent was never appointed as director of the company. The petitioner has every reason to

believe that, after disputes had arisen between the perties, false entries have been caused to be made by the second respondent and R.P. David in

the books and records of the first respondent-company taking advantage of the fact that the books and records of the company are in their

custody.

3. The deletion of the petitioner''s neme as a shareholder from the register of memners is without sufficient cause. The inclusion of the third

respondent''s name in the register of members is also without sufficient cause. The petitioner has not transferred any shares to the third respondent.

There was no meeting of the board at which the alleged transfer could have been put through. The petitioner filed a criminal complaint on October

9, 1980, against the second and third respondents and Mr. R.P. David for offences under sections 120B, 379, 403, 467 and 471 if the Indian

Penal Code, and sought for seizure of the minutes, share transfer application forms and other statutory books which are ordinarily to be kept at the

registered office of the company. The sub-Inspector of Police submitted his report to the Judicial First Class Magistrate, Tiruchirappalli, to the

effect that he conducted a search in the premises No.7-C Alexandra Road, Cantonment, Tiruchirappalli, where the registered office of the

company is situate and that no documents were available and, therefore, could not be produced. He also conducted a search in the residential

premises of respondents Nos. 2 and 3 at Yarcaud where also no records were found. According to the petitioner, this would clearly establish that

respondents nos. 2 and 3, in collusion with R.P. David removed the records from the registered office where they are required to be kept and manipulated the same and caused certain returns to be filed with the Registrar of Companies knowing the same to be false thereby showing that the

petitioner has ceased to be a director and managing director of the company.

4. Respondents Nos. 1 To 3 filed a common counter-statement. The counter-statement was signed by Mrs. R.P. David and her son, Asha John

Divyanathan. They denied that the petitioner is a shareholder of the company on the date of the petition. The petitioner is not a member of the

company nor a shareholder. Neither is she a director. The allegation that R.P. David acted unilaterally is not correct. The petitioner''s husband was

consulted and associated with every act, deed and things of the affairs of the company. The books and other records of the company were always

with the managing director of the company and they were kept in the registered office and are open to inspection by all persons who have a legal

right to inspect them. They denied that the share certificates relating to 775 shares were left at the at the registered office. The reference to the

alleged misunderstanding between R.P. David and Swaminathan in regard to the division of the father''s property implying a motive for recording

alleged purported proceedings as set out in para 5 of the petition has been put forth out of context and has been made with an ulterior object to

lend colour to an unsustainable claim. The transactions effected and recorded in the books and registers of the company on March 2, 1977, are

true and correct. The allegation that there was no such meeting on March 2, 1977, is denied as false. The statement that no such meeting could

have taken place since the board consists of only two members and the petitioner did not attened any such board consists of only two members

and the petitioner did not attend any such board meeting is also denied as devoid of truth. The allegation that the second and third respondents

have illegally and unauthorisedly altered the records of the company like register of memebers by delating the petitioner''s name therefrom and

substituting the name of the third respondent is motivated and false. The statements made in the normal course of business of the company. The

allegations that such statements of facts is incorrect and that no meeting of the board of directors took place on March 2, 1977, are self-serving

and false statements. The allegation that the deletion of the petitioner''s name name from the register of members is without sufficient cause is incorrect and unsustainable. The inclusion of the third respondent''s name in the register of members is in order, correct and valid in law. The

further allegation that the transfer of shares is contrary to section 108 is not correct. It is significant that the petitioner has not stated in what way

section 108 of the Companies Act us contravened. It is totally incorrect and wholly unsustainable in law to say that the petitioner has any right or

title to continue to be a member of the company and to have the register rectified. The petitioner is not acting on her own. She filed a private

complaint in C.C.NO. 1153 of 1980 on the file of the Judicial First Class Magistrate, Trichy, on October 5, 1980. The complaint relates to the

same subject-matter as in this petition. After filing the complaint, she had not shown any inclination to prosecute the case. Instead, she has been

filing other proceedings to fish out information. One such proceedings is the present company petition. In the circumstances, the second respondent

reserves her right to controvert the allegations mentioned in paragraph 5 and including those relating to share certificate and transfer of shares by

filing an additional counter.

5. The petitioner filed a reply statement dated December 1, 1983. She denied the various averments contained in the counter-statement.

According to her, the allegations contained in the counter-statement are not sustainable either in law or on facts.

6. I have carefully gone through the entire pleadings, the voluminous oral evidence and the documentary evidence filed by both parties. I have also

heard the elaborate arguments of Mr. T. Ragavan, senior advocate, appearing on behalf of the petitioner and Mr. K. Alagiriswamy, senior counsel,

appearing on behalf of the respondents. I have given my anxious and deep consideration to the respective contentions raised by counsel on either

side. Before I proceed to deal with the contentions raised, it is necessary for me to deal with the contention raised by Mr. K. Alagiriswamy, senior

advocate, counsel for the respondents,that the proceedings u/s 155 of the Act are summary and discretionary in nature and, therefore, this court

should not exercise its discretion in favour of the petitioner. It is the further contention of learned counsel that the proceedings u/s 155 is summary

in character and that there is no need for this court to delve deep into the facts of the case and analyse the same and record findings on the basis of such facts.

7. I express my inability to sustain the plea of Mr. K. Alagiriswami that the proceedings u/s 155 are summary and duscretionary and that the facts

of the present case do not warrant the exercise of my duscretion in favour of the petitioner. The scope and ambit of proceedings u/s 155 have

come up for judicial consideration of this court and also other High Courts as well as the apex court. There is no need for me to refer in detail to all

the pronouncements except to refer to the dicisions in Gulabrai Kalidas Naik and Others Vs. Laxmidas Lallubhai Patel of Baroda and Others, and

The Public Passenger Service Limited Vs. M.A. Khader and Others, , which were followed by the Kerala High Court in Mathew Michael v.

Teekoy Rubbers (India) Ltd. [1983] 54 Comp Cas 88 and affirmed by a Bench of that court in Mathew Michael v. Tekoy (India) Ltd. [1990] 69

Comp Cas 145 and Indian Chemical Products Vs. State of Orissa and Another, . In Indian Chemicals Products Ltd. v. State Orissa [1966] 36

Comp Cas 592, it has been held by the Supreme Court as follows (page 597) :

The jurisdiction created by section 38 is very beneficial and should be liberally exercised.

8. In The Public Passenger Service Limited Vs. M.A. Khader and Others, , it was held that if, by reason of complexity or otherwise, the matter

can more conveniently be decided in a suit, the court may refuse the relief u/s 155 in exercise of its discretionary jurisdiction and relagate the

parties to a suit. It is necessary to observe that the Supreme Court has not stated that if the dispute involves question of law and fact, the company

court should have no jurisdiction. The Supreme Court has only stated that it would be open to the company court to refuse the relief u/s 155 of the

Act if the matter could be more conveniently tried in a suit.

9. In Gulabrai Kalidas Naik and Others Vs. Laxmidas Lallubhai Patel of Baroda and Others, , one of the question that was posed before the

learned judge for decision was whether the company court would entertain a petition for relief u/s 155 of the Companies Act if it involved disputes

on questions of fact. It will be sufficient to set out the headnote which is as follows :

There is nothing in the language of section 155 of the Companies Act, 1956, which even remotely suggests that the jurisdiction conferred on the court is of a summary nature and that it precludes a full inquiry in respect of the title to shares. On the other hand, sub-section (3) of section 155

gives discretion to the court, ` to decide any question which it is necessary or expedient to decide in connection with the application for

rectification''. This expression is wider in amplitude than the well-known expression `questions which are ancillary or incidental to the main

question''. The jurisdiction conferred by section 155(3) is a comprehensive jurisdiction which enables the court in an application u/s 155 to examine

all questions, complex, intricate or otherwise, relating to the title to shares, and further enlarges the jurisdiction of the court considers necessary or

expedient to decide in connection with the application for rectification of the register of shareholders is made, it would be open to the court, while

considering the main relief, to decide all questions that may arise in such an application on rival contentions. To illustrate, if a petitioner asserts his

title to the shares and the respondent contends that the title was acquired by a forged document, forgery would be put in issue and it would be

necessary to decide the issue of forgery before the main prayer for rectification of register can be granted.

Section 155(3) is in pari materia with section 116 (3) of the U.K. Companies Act, 1948. But, in England, under the relevant rules u/s 116, an

application for rectification of the share register has to be made by originating summons or originating petition, while in India it has to be made by

originating summons or originating petition, while in India it has to be made by way of a petition. A petition is more or less analogous to a suit. This

procedural distinction must be borne in mind while examining English decisions. Under the Indian Companies Act, 1913, power was conferred on

various High Courts to make their own rules for regulating the practice and procedure in matters arising under that Act. The Bombay High Court

made rules under that Act which remained in force until they were displaced by rules under that Act which remained in force until they were

displaced by rules made by the Supreme Court which came into force on October 1, 1959. This aspect has to be taken into consideration while

appreciating the ratio of some of the decisions of the Bombay High Court which held that the juridiction u/s 155 is of a summary nature.

The learned judge, Desai J. (as he then was) has arrived at the conclusion which he did on a lucid analysis, after a careful study, if I may say so with great respect, of the relevant sections and rules under the English Companies Act 1948 and the Companies Act, 1956, and the relevant

decisions on the question. Desai, J. has also considered the decision of the Supreme Court in The Public Passenger Service Limited Vs. M.A.

Khader and Others, , and held that the question of jurisdiction of the court u/s 155 of the Act was not canvassed before the Supreme Court and

that the Supreme Court did not dicide that when complicated questions of fact and law are to be raised u/s 155 of the Act, the court would

become functus officio.

The learned judge further observed as follows (page 456 of 48 Comp Cas) :

Therefore, both on principle and on authority, it becomes crystal clear that a petition u/s 155 cannot straightway be disposed of by merely saying

that as complex and complicated questions of title are raised, the matter ought to be decided by way of a suit and the party ought to be relegated

to a suit. At best, it can be said that the question is addressed to the discretion of the court and, if the court exercises discretion one way, namely,

to undertake to hear the petitions, its decision cannot said to be one without jurisdiction. The Companies Act, 1956, is a very comprehensive

statute. It is possibly one of the lengthiest statutes. There are as many as sections 658 . It has created certain rights. It creates a special machinery

for enforcement of these rights and resolution of disputes arising in respect of rights under the Act. Membership of a company confers right is

created by the Companies Act. To exercise the right, evidence of membership is necessary and the Act casts an obligation to maintain a register of

members. These provisions comprehened a possible dispute. The Act creates a machinery and forum for resolution of disputes. If such be the

comprehensive legislation and if the dispute involves interpretation of some of the provisions of the Companies Act, when a right to shares is

asserted and denied, it would be rather inappropriate to say that a civil judge who is ordinarily not called upon in his work-a-day life to deal with

the provisions of the Companies Act to deal with and decide it. Therefore, in my opinion, even complex and complicated questions of title can be

appropriately examined in a petition for rectification made u/s 155 of the Companies Act.

In Mathew Michael v. Teekoy Rubbers (India) Ltd., [1983] 54 Comp Cas 88, the

Kerala High Court has held as follows (headnote) :

Though the Company court in India is empowered u/s 155 of the Companies Act, 1966, to decide `any question which it is necessary of

expedient to decide in connection with the application for rectification'' and the jurisdiction conferred is wide and comprehensive not being a

summary pne, courts have been reluctant to interfere with the decision of the directors in the matter of registering transfer, where the articles of

association confer on them an absolute discretion, which is always presumed to have been exercised bona fide. Unless the articles otherwise

provide, the directors are not bound to disclose their reasons, and the presumption would be displaced when a petitioner positively proves tht the

power has been used without bona fides and the directors have acted `appressively, capriciously or corruptly or in soma way mala fide''>

The above pronouncements lend full support to my view that evern complicated and complex questions of title can be appropriately examined in a

petition for rectification made u/s 155 of the Act.

In my considered view, there is no limitation on the powers of this court in regard to the manner in which the power has to be exercised u/s 155(3)

of the Act. The amplitude of the power u/s 155(3) has to be considered with reference to the Companies (Court) Rules framed by the Supreme

Court of India and in particular rules 10,11 and 12 are apposite, Section 155 of the Act of 1956, and rule 10 reald as follows:

Power of court to rectify register of members. - (1) If -

(a) the name of any person -

(i) is withou sufficient cause, entered in the register of members of a company or

(ii) after having been entered in the register, is withou sufficient cause, omitted therefrom; or

(b) default is made, or unneccessary delay takes place, in entering on the register thefact 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 topay the

damages, if any, sustained by the party aggrieved. In either case, the court in its discretion may make such order as to costs as it thinks fit. court in

its discretion may make such order as to costs as it thinks fit.

(3) On an application under this reason, 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 memebers or alleged members or between members, or alleged members on the one hand and the

company on the other hand; and

(b) generlly, may decide any questiuon which it is necessary or expedient to decide in connection with the application for rectification.

Sub-section (3) of section 155 of the act gives unlimited jurisdiction to the court as to the rectification of the register of members. There are no

words of limitation for the exercise of the jurisdiction by this court is sub-section (3), Under sub-section (3), jurisdiction is conferred on""the court.

10. The word ""court"" has been defined thus:

the court"" means,-

(a) with respect to any matter relating to a company (other than any offence against this Act), the court having jurisdiction under this Act, with

respect to that matter relating to that company, as provided in section 10;

11. Therefore, section 155(3)(a) of the Act confers jurisdiction on the company court to decide any question relating to the title of any person who

is a party to the application to have his bame entered in or omitted from the register, whether the question arises between members or alleged

members, or between members or alleged members on the one had and the company on the other hand. Section 155(3) of the Act confers further

powers on the court generally to decide any question which is necessary or expedient to decide in connection with the applicatin for rectification of

share register. There is nothing in the section which debars the court from deciding any question relting to the title of any person who is a party tot

he application to have his name entered in or omitted from the register. If the contention that, when complicated questions of fact and law arise, the

court should decline to consider any applicationfiled u/s 155 of the Act on its merits has to be upheld, the jurisidction of the court can be ousted by conduct of parties bysetting up unnecessary pleas and stating that the matter involved complicated questions of law and fact. The result of such a

situation will be that the wide pwer that have been conferred on the company court u/s 155 of the act will be rendered purposeless and nugatory

and the very object of introducing a section like 155 will be defeated.

12. That the powers of the court u/s 155(3) of the Act are of wide amplitude can be seen by a reference to the companies (court) Rules, 1959,

framed by the Supreme Court of India, which came into force on October 1, 1959, Rules 10, 11 and 12 read as follows :

10. Applications how made - Unless otherwise provided by thse rules or permitted by the judge, all applications under the Act shall be made by a

person or by a judge''s summons as hereinafter provided.

11. (a) Petitions. - The following applicatons shall be made by petiton:-....

(6) Applications u/s 155 for rectification of the register of members...

(23) (b) Judge''s summons - All other applications under the act or under these rules shall be made by a judge''s summons, returnable to the judge

sitting in court or in chambers as hereinafter provided.

12. Matters to be heard in open court and in chambers. - (a) The following matters shall be heard in open courts :_

(1) Petitions....

(18) (b) Every other matter or application may be heard and determined in chambers provided that the Judge may be adjourn any such matter into

court.

13. Therefore, a distinction is clealy made in the Companies (Court) Rules, 1959, between matters which had tobe heard by petitions and matter

which had tobe dispsed of by way of application in the form of judge''s summons. This itself would chinchingly show that a petition u/s 155 of the

Act has to be instituted by way of original proceedings. There is nothing in the section or inthe rules which prevents the parties to the application

from adducing oral or documentary evidence. Neither section 155(3) nor the Rules enact that if any complicated question of fact or law had to be

decided, the company court should refer the parties to a civil suit.

14. These rules, in any opinion, make distinction between matters whichare to be heard by petitions and matter which are to be disposed of way of

an application in the form of judge''s summons. A petition u/s 155 of the act has to be instituted by way of original proceedings. Neither the

provisions of the Act nor the rules provided thereunder impose any embargo on the parties to the application from adducing oral or documentary

evidence. There is nothing in section 153(3) or under the rules to suggest that, if complicated questions of fact or low require to be decided, the

company court should throw up its hands in despair and direct the parties to resort to ordinary civil courts. The legislative history behind section

155(3) would also be a relevant factor. Section 38(3) of the Indian Companies Act, 1913, is in pari materia with section 155(3) of the Companies

Act, 1956, But the priviso to section 38 of the Act of 1913 is as follows:

Provided that the court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an

issue shall lie in the matter directed by the Code of civil Procedure, 1908, on the grouns mentioned in section 100 of that Code.

15. Rules 11, 11(23)(b) 12 of the companies (court) Rules, 1959, run as follows:

11(a) The following under various sections are mentioned.

In rule 12, applications under various sections are mentioned.

It is singnificant that the application u/s 38 of the act, of 1913 is omitted from the lost of applications which have to be preferred by way of of

original petitions.

Rule 11(23)(b). All the other applications arising under the Act shall be made by a judge''s summons.

16. It is very significant to note that an application u/s 38 of the 1913 Act is omitted from the list of applications which have to be preferred by way

of original petitions. Rule 11(23) (b) provides that all other applications arising under the act shalla be made by judge''s summons. Thus, it is

evident that a rectification application u/s 38 had to be filed by judge''s summons did not by oroginal pettitions. A departure has been made under

the Companies Act, 1956, andthe Rules, made thereunder. Under the Act of 1956, the application u/s 155 has to be by way of an original petition.

hence, in my view, the legislature has not fettered the powers of the court u/s 155 and it being a beenficial provision, the power of the court should

be liberally exercised, Therefore, I reject the contention, The Companies (Amendment) Act, 1988 (section 111) reads as follows :

The Amendment Act of 1988 has assimilated the provisions of section 111 and 155 and conferred the powers of the court under section155 on

the Companu Law Board statutorily, as also the powers of the Central Government u/s 111.

The amendment when it refuses to register a transfer, or transmission be operation of law, of the right to any shares, in, or debentures thereof, is

required to send notice of refusal tothe transferee and the transferor or the person giving intimation of transmission, within two months from the

date on which the transfer deed or the intimation of transmission is delivered to the company. The company is also now required to give reasons

for suc refusal, vide sub-section (1). An aggrieved person, being the transferor or transferee or any other person, may apply to the Company law

Board under sub-section (2) or (4) against refusal or for rectification of the register of members, if his name is enetred in the register without

sufficient cause, or for omission of his name from the register or default in making an entry of his name in the register. An appeal may be filed within

two months of the recept of notice of refusal or within four months from the date of lodgment of the transfer application in case not notice has been

sent by the company. There is no limitation period provided for making an application for rectification of the register of members under sub-section

(4) For default in registration of the transfer within two months or for not giving reasons for refusal, as provided in sub-section (1), the offence is

punishable under sub-section (12). The Company Law Board is empowered to award damages sustained by the aggrieved party and pass interim

orders or an injunction or stay regarding payment of dividend, allotment of bonus or right shares. The Board may decide any question relating to

the title of the parties and direct registration of transfers. No petition can be filed in respect of a private registeration of tranfers, NO petition can be

filed in respect of a private company which, by its articles, has imposed restriction against the right to tranfer its shares (vide sub-section (13).]

However, a petition lies under the section in case of refusal by a private company, which is not a subsidiary of a public company where shares,

etc., have been transmitted by sale held by a court or other public authority. (vide sub-section (11).

Earlier, the appellate power was vested with the Central Government and now the power has been statutorily conferred on the Company Law

Board. The Board can now decide any question relating to the title of any person under sub-section (7); this power was earlier vested with the

court u/s 155, Since the Board is now exercising judicial and quasi-judicial functions, the proceedings are no more confidential as earlier provided

in sub-section (3), now omitted by the Amendment Act of 1988. Now, the parties cannot claim confidentiality in these proceedings. The Board

was earlier required to give notice to the transferor and the tranferee under then sub- section (5). Sub-section (5) now provides for hearing the

parties and the Board is not obliged to issue notice of hearing also to the requiror, unless the petition has been filed by him; the Board is required to

give hearing to the company and the aggrieved party who may be either the tranferor or the tranferee. It may, however, be noted that rule 5 of the

Companies (Appeal to the Central Government) Rules, 1975, provides for notice to the tanferor also. There rules will continue toapply so long as

the Company Law Board does not frame its own rules of procedure to regulate the proceeding u/s 111.

Under sub-section (6), the Board has been empowred to pass interim orders, including any order of injunction or stay and other interlocutory

orders, regarding payment of dividend or allotment of bonus or right shares during the pendency of the appeal It may be noted that under sectin

206A, inserted by the Amendment Act of 1988. provision has been made for tamsfer or dividend to a special account and for keeping in abeyance

any offer of right shares and any issue of bonus shares, in respect of any instrument of tranfer lodged with the company.

17. The reliance placed by mr. K. Alagisamy on the judgments of our High Court in Cuddalore Construction Company Ltd., In re [1967] 37

Comp Cas 440 (Ramaprasada Rao J. as he then was) and the judgment of the Karnataka High Court inMuniyamaa v. Arathi Cine Enterprises P.

ltd. [1991] 72 Comp Case 555 (Shivshankar Bhat J.) do not lay down any principle that, in appropriate cases, this court should not exercise its

discretionary jurisdiction to decide even complicated and complex question of law or fact. It may be that, in the case of cuddalore Construction

Co. Ltd. In re [1967] 37 Comp Cse 440, Our High Court refused to exercise its jurisdiction on the ground that the applications were filed after

inordinate and unexplaned delay. so also the Karnataka High Court declined to exercise its jurisdiction because of the conduct of the petitioners therein. the ruling of the gujarat High Court in Gulabrai kalidas bail v. Kaxmidas Lallubhai Patrl of Baroda [1978] 48 Comp Cas 438, has been

preferred by a Division Bench of the Keralaa High Court in Antony (K.P.) v. thandiyode Plantations P. Ltd. [1987] 62 Comp Cas 553,

18. Therefore, the aforesaid two judgments cited by Mr. K Alagiriswami do not lend any support to the wide and sweeping propositin that powers

u/s 155 are summary in nature.

19. Even assuming that thejurisdiction u/s 155 is discretionarym such discretion should be exercised in favour of the petitioner, becasue of the fact

the parties have, on trial, elaborately let in voluminous evidence. the matter has been pending in court for more than a decade. The parties are

closely related. Hence, on the facts of this case and in the interest of justice ad the issues invoved, this court has to exercise its discretion in favour

of the petitioner without driving the parties to the agony of continuing the litigent before some other forum. The contentions tht the petitioner is guilty

of delay has been raised only at the Bar and not in the pleadings. Hence, I do not propose to entertain in the plea urged on behalf of the

respondents.

20. At this stage, it is necessary to refer to the following contentions raised by Mr. T. Raghavan, learned senior advocate, ably assisted by Mr.

A.K. Mayilswamy, advocate for the petitioner.

(a) that the respondents have not produced the share transfer from and the share certificates alleged to have been tranferred in favour of the third

respondent.

(b) That the evidence of R.W. 1 (R3) that the share certificates and the members"" register were missing is too artificial and cannot be believed. At

any rate, R-3 should have produced the reconstruction records.

(c) That the resolution of the board of directors meeting of March 2, 1977, approving the tranfer was not there originally and the words ""passed

unanimously"" which were there originally had been erased and the resolution for tranfer of shares belonging to the petitioner was sub-sequently

introduced and, therefore, no reliance can be placed on such a resolution.

(d) That the best person to speak about the resolution of March 2, 1977, is the second respondent andshe had deliberately kept herself away from the witness box, and

(e) that there is violation of the mandatory provisins of section 108 of the Act.

21. In order to appreciate the above contentions, it is necessary for me to refer to certain salient features of the case, Admittedly, the first

respondent is a private limited company the shareholding in which is held by the petitioner and the second respondent who are closely related to

each other. The case of the petitioner is tht she never transferred 775 shares to the third respondent who is none else than the son of the second

respondent. Further, according to the petitioner, she never executed any deed of tranfer in the first respondent company to the third respondent or

any one else. Even the meeting said to have been held on March 2, 1977, wherein the said transfer of shares in claimed to have been approved

was neither convended nor held. It is specifically averred in para 5 of the petition that the registers and records of the company are maintained at

Trichy at the registered officer of the company and they are in the custody of the second respondent and her husband R.P. David, and that

certifictes covering 775 shares belonging to the petitiners were also left at the registerd officer of the company. The respondents who ahve filed a

common counter-statement have specifically reserved their right to controvert the allegations raised in para 5 of the petition including those relating

the those share certificate and transfer of shares by filing an additinal counter.

22. It is significant to notice that the respondent have not filed any additional counter.

23. It is the case of the respondents that the petitioner had transferred her entire holding in favour of the third respondent. Therefore, in my opinion,

the onus of proof is on the respondents that there was tranfer of shares by the petitioner of all her shareholding infavour of the third respondent.

24. The petitioner who examined herself as P/W/-1 had stated in unmistaxable terms that she did not sign any document for effecting the sale of her

shares toany one. During her cross-examination, she had categorically stated that she did not tranfer her entire shareholding to the third respondent

voluntary and that she wa snot a party to the resolution passed on March 2, 1977, for approving the share tranfer, R. W-1 who is the third

respondent in the petition had stated that be became a shareholders of the company on March 2, 1977. According to him his father told him during

February, 1977, that he should take over the shares of the company and his father fave a formate which was signed by the petitioner, After signing

the formate, according to R.W-1 it was handed over to this father. It is the claimof R.W.- 1 that he was holding 775 shares therefores, There is no

iota of evidence to show as to how and whent he petitiner transferred her entire shareholding to the third respondent. No detials the forthcoming as

to the amount of consideration paid by the thrd respondent and as so to how and when such consideration was paid. For reasons best known to

him, the second respondent who has been the sharesholders all along and the managing direcotr of the company and who alone is competent to

speak about the alleged transfer of shares has kept herself out and did not enter the witness box.

25. The onus is on the respondent to established that the petitioner transferred the entirely of her equity shareholding infavour of the third

respondent Hence I find that the respondents have miserably failed to discharge the burden cast on their shoulders and failed to established that the

shares were transferred by the petitioner. On going through the entirety of the evidence, this court is left with theindelible view that the respondents,

taking advantage of their being at the helm of affairs and in the custody of records, have manipulated the exhibit R-20 Even to a naked eye, it is

visible that the resolution with regard to the alleged transfer of shares has been introduced subsequently. The words ""passed unanimounsly"" below

the resolution has been erased and the resolution has been introduced and written. It is useful to extract exhibit R-20 here.

Proceedings of the meeting of the directors of the company held at the registered officer of the company on Wednesday the 2nd March, 1977, at

11 a.m.

Mrs. E.V. Swaminathan presided.

The minutes of the previous meeting were read and approved.

It is hereby resolved to transfer route No. 86 "" Srirangam to Kalakurichi along with bus No. TNS 5553 plying on the route to mr.Asha John

Divyanathan.

Passed unanimously.

It is hereby resolved to apply to the transport authorities for the early transfer of the above.

It is hereby resolved to tranfer 775 shares from Mrs. E.V. Swaminathan to Asa John Divyanathan.

Passed unaniniously,

With a vote of thanks, the meeting terminated.

(Sd.)

Mrs. R.P. David

Director.

Mrs. E.V. Swaminathan,

Chairman.

As seen above, the words ""passed unanimously"" (underlined"") are written as part of the resolution itself for want of speace. When I compare

various other resolutions contained in exhibit R-1, It is clear that each of the resolutions is extracted and in the next line it is written ""passed

unanimously"".

26. Hence, in my view, the resolution relating to transfer of shares and the words ""passed unanimously"" have been introduced subsequently with a

view t buttress the claim of the third respondent. Even the colour of the ink used for writing the impugned resolution pertaining to transfer of shares

is different from other resolutions said to have been passed on the very same day. I also satisfied myself about the erasure by using the magnifying

glass in the court in the presence of respective lawyers on either side.

27. R.W. 1 who is categorical in his claim that the petitoner sold the shares has not only failed to say about the consideration paid and as to the

quantum of such consideration but also failed to produce the share certificates, register of members and other records. When questioned for the

first time, he comes forward with a case that the aforesaid documents and records of the company were missing in 1986, including some of the

records of his father and mother. The explanation given by R.W-1 with regard to the loss of these vital documents and the non-production of the

so called reconstructed documents does not merit any acceptrance. With regard to the loss of the document,R.W. 1 claims to have only spoken to

the inspector concerned whose name he doe snot remember. No. written complaint was admittedly made. Even the Income Tax return in which he

claims to have incuded has not been produced. Accoring to him he did not know the amount of consideration paid and the same was paid by his

facther. Therefore, I come to the conclusion that the respondents have miserably failed to prove their claim that the petitioner transferred al her

shareholding in the first respondent-company to the third respondent and that the third respondent is legally entitled to hold the said shares. I reject

the case of the respondent as the evidence tendered is totally unacceptable.

28. Coming to the next argument of Mr. K. Alagiriswamy that the provisins of sections 193 to 195 would be attracted and, therefore, presumption

is to be drawn with regard to the minutes of the meeting held onMarch 2, 1977, I find that it cannot be accepted because the presumption will arise

only for minutes which are properly andduly recorded and maintained in the regular course of business. I have already given my reasons as to the

erasures and additions contained in exhibit R. 20 Hence, I find that the presumption available u/s 194 and 195 cannot be invoked. The petitioners

have proved that the minutes with regard to the tranfer of shares are interpolated.

29. The next contention raised by Mr. Raghawan is that the provisions of section 108 of the Act have not been complied with and, therefore, the

so-called tranfer by the petitioner in favour of the third respondent cannot be registered. In support of the above contention, reliance has been

placed on the following decision, Mannalal khetan v. Kedar Nath Khetan [1977] 47 Comp Cas 185, wherein the Supreme Court has observed as

follows and held that the provisions of section 108 are mandatory and the board of directors cannot register a transfer of shares if the share tranfer

forms are not placed before the board (handnote) :

The provision contained in section 108 of the Companies Act, 1956, that a company shall not register a tranfer of shares in the company unless a

proper instrument of tranfer duly stamped and executed has been delivered to the company is mandatory in character. The prohibition against

tranfer without complying with the provisions of sections 108 is emphasized by the negative language used in the sectin.

30. The respondent, inthe instant case, have failed to establish that the provions of section 108 havebene adhered to. on this ground also, the

alleged trnafer of shares has to be held invalid.

31. I refrain from going into the question qrgued by Mr. T. Raghavan ithregard to

the resigntion of the petitiner as director on March 20, 1978

(page 56 of exhibit R-1) and the co-opinion of the third respondent as a director on March 15, 1978, meeting (page 54 of the minutes - exhibit R-

1) because it is wholly unnecessary for me to go into that question for granting relief to the petitioner in the present proceedings. I do not express

any opinion on the validity of the meetings in which the petitioner is claimed to have resigned as a director and the third respondent is co-opted as a

director. it is open to both parties to agitate the same in appropriate proceedings.

32. Coming to the argument of Mr. Raghavan tht the share transfer is also violative of clause 8 of the articles of association of the company which

depends on the issue as to whether R.W. 3 (R-3) was a member of the company on the date of transfer, since I have already refrained from going

that question in these proceedings, I desist from expressing any opinion of that issue as well.

33. The argument of mr. Alagiriswami that insertions and alterations were made in exhibits R-1 and R-20 in some places with the knowledge of the

petitioner is not supported by any evidence. I have also seen the minutes. The alternations were not even initalled.

34. The other argument of Mr. Alagiriswami that the handwriting in exhibit R-1 has not been denied does not help the respondents for the dispute

between parties is not with regard to the handwriting of Alagiri Rao, auditor of the company, in the minutes but with regard to the interpolation

contained in exhibit R-20.

35. The question of the petitioner''s registration as a director is not the subject matter of this petition. Regarding article 8, the argument of the

petitioner cannot be considered at this stage because of my observation made earlier in this judgment. The resignation of the petitioner as a director

and theco-option of the third respondent as a director are left open to be decided by the appropriate forum. On consideration of the entire matter,

I am of the view that the contentions of the petitioner deserve all consideration and merit acceptance for the reasons mentioned in the earlier

paragraphs of this judgment.

36. In the result, Company Petition No. 51 of 1982 is ordered as indicated above. The register of members of the first respondent company is

directed to be rectified be deleting the name of the third respondent with regard to 775 shares standing in the name of the petitioner in the register

of members and no enter the petitioner''s ame in respect of the said 775 equity shares in the register of memebrs in the place of the third

respondent. Taking into consideration the year relationship of the parties, there will be no order as to costs.

37. This matter being listed for being spoken to at the request of Mr. T. Raghavan, learned senior counsel, the first respondent company is directed

to issue notice of rectification to the Registrar within 30 days from the date of receipt of a copy of this order, i.e. February 27, 1992.

