

(2012) 12 DEL CK 0040
In the Delhi High Court
Case No : CO. A (SB) 35 of 2010

M/s Unit Trust of India and Others

APPELLANT

Vs

M/s Jagan Nath Sayal and Co. and Another

RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Companies Act, 1956 — Section 10F, 111, 111A

Citation : (2013) 113 CLA 214 : (2013) 118 SCL 49

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Mohinder J.S. Rupal, for the Appellant; Samrat K. Nigam, Kartikey Mahajan, Ms. Ankitya Mahajan, for R-1 and Mr. G.L.N. Murthy, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has been directed against the impugned order of Company Law Board (CLB) dated 08.06.2010 wherein directions had been given to M/s Hero Honda Motors Ltd. (hereinafter referred to as the Company) to rectify the Register of Members and to enter the name of M/s Jagan Nath Syal & Co. (hereinafter after referred to as respondent No. 1) in the Register of Members qua 1250 equity shares of Rs. 2 each; the unpaid dividend was also admitted to be paid to him for the interregnum period. Appellant before this Court is the Unit Trust of India (hereinafter referred to as the appellant).

2. The case of the respondent is that he had bought 200 equity shares of the value of Rs. 10 each in a broker to broker transaction from M/s Dev Saigal & Co. vide invoice dated 20.05.1992. This document finds mention at page 67 of the paper book. These 200 shares were lost on the same date itself; not only these shares but his bag full of shares of other companies had also been lost; an FIR of the same date i.e. 20.05.1992 was registered in the concerned police station which forms a part of the record. On 26.05.1992 the respondent wrote to the Delhi Stock Exchange giving him the details of the various shares which had

been lost by him as also his submission that an FIR had been lodged with the Roop Nagar Police Station; distinctive numbers of these shares which include the 100 shares in dispute were also given.

3. Learned counsel for the appellant points out that the distinctive numbers which find mention in this communication dated 26.05.1992 do not match with the distinctive numbers which have been given in the petition and attention has been drawn thereto. Attention has also been drawn to the subsequent communications exchanged between the respondent and other bodes i.e. the letter dated 09.06.1992 addressed by the Delhi Stock Exchange (DSE) to its members; letter of the respondent to the Company dated 05.06.1992; letter dated 13.05.1997 by the respondent to the Registrar/Share Transfer Agent (STA) of the Company as also another letter dated 16.05.1997 written by the STA to the respondent wherein in all these communications also there has been a cutting over the original distinctive numbers and they have been rewritten; submission of the appellant being that these overwritings have not been explained; who has made these overwritings and why the distinctive numbers have been cut out and re-written with new members.

4. To this specific query, learned counsel for the respondent has a satisfactory explanation. Admittedly several shares of the respondent had been lost on 20.05.1992; they were not 200 shares of the M/s. Hero Honda Motors Ltd. alone; shares of other various companies amounting to almost more than 2500 shares had been lost and this is evident from the details given in these communications. It is also not case of the appellant that the numbers in each of these communications are different; record shows that earlier the distinctive numbers had been given as 11916764-813, 112466-515 which were renumbered in all subsequent communications as 4070816-865; 3465966-015; this was apparently and evidently because of inadvertence and a mistaken identification; there could be but no other explanation and this fact finding returned by the CLB based on sound discretionary principles calls for no interference.

5. The appellant has also assailed the order of the CLB on the ground that there has been an inordinate delay on the part of the respondent in approaching the CLB; submission being that the shares had been lost in May 1992 yet respondent No. 1 has approached the CLB only in the year 2009.

6. For this submission also the answer given by the respondent is satisfactory. Record shows that the loss of the shares was noted on 20.05.1992; an FIR had been lodged in the local police station at Roop Nagar Police Station on the very same date. Thereafter on 26.05.1992 a letter was addressed by respondent No. 1 to the DSE detailing these submissions; this was followed by a communication from the DSE to its members notifying them about this loss. On 05.06.1992 respondent No. 1 wrote to the Company seeking issuance of duplicate shares; this was followed by another communication dated 13.05.1997 addressed to the STA of the Company which was duly replied to by him vide his communication dated 16.05.1997. Record also shows that a suit for declaration i.e. Civil Suit No.

861/1998 was filed by the respondent No. 1 against the Company seeking transfer of these shares in his record. It is also an admitted fact that in the year 1998, the Company had marked a "stop transfer" of these shares; the dividend qua these shares remained unpaid as objections against these shares were pending before the company. This suit was withdrawn on 22.11.2000. Vehement submission made by the learned counsel for the appellant on this count being that this suit was withdrawn unconditionally and as such the present petition u/s 111 of the Companies Act was barred.

7 This is a misdirected submission. It is not the case of the appellant that the principle of res judicata was applicable; Order 23 Rule 3 would also not apply. A petition u/s 111 of the Companies Act is a summary procedure vesting the CLB with the jurisdiction to rectify the share register; it is not a suit.

8. Even after the withdrawal of the suit in 22.11.2000 respondent no. 1 did not allow the matter to rest; he continued with his vigorous efforts to get share register rectified. The petition u/s 111 of the Companies Act was filed in 2009. In this interregnum period respondent No. 1 wrote letters to the Mumbai Division of the Company seeking a rectification in the share register (which is evident from his letter dated 19.07.2002 followed by their reply dated 23.07.2002). On 27.11.2005 the Stock Holding Corporation answered the letter of respondent No. 1 which was also of the same date; communication dated 08.02.2006 was also addressed by the Company to the appellant wherein the Company requested them to confirm the fact as to whether they had sold 100 shares to respondent No. 1 or not to which admittedly no reply had been sent by the appellant. Vehement submission of the learned counsel for respondent No. 1 on this count being that the appellant was all times ignoring the correspondences of respondent No. 1 and that of the company as well. Communication dated 16.03.2006 written by respondent No. 1 to the DSE is also on record. Thus these correspondences establish the fact that the respondent No. 1 had been continuously following up this matter.

9. It is also an admitted fact that 29.09.2002 the 100 shares which were originally in the name of Kamal Doot were transferred by the Company in favour of respondent No. 1 on his executing the necessary documents i.e. indemnity bond etc. These shares were also the subject matter of the same theft which had been taken place on 20.05.1992. A specific query has been put to the learned counsel for the Company as to why if 100 shares of Kamal Doot had been transferred in favour of respondent No. 1 on his executing an indemnity bond etc. why the remaining 100 shares which were on the same footing had not been transferred to which there appears to be no explanation by the Company.

10. The CLB in this context has rightly observed that an individual has been pitted against a big financial institution and in this factual scenario because of the arbitrary discretion exercised by the Company respondent No. 1 had little choice but to come knocking on the doors of the court.

11. It is also not the case of the appellant that they had taken any action to get these shares re-registered in their names; they have admittedly not taken a single step in this regard; no communication had been sent by the appellant to the Company asking for this "stop transfer" in 1998 to be removed.

12. It is in this background that the order of the CLB has to be tested.

13. An appeal u/s 10F of the Companies Act can be filed only on a question of law; a mis-interpretation or mis-reading of document is question of law. There is no dispute that in this case a question of law has arisen as the submission of the appellant is that the correspondences exchanged between the parties were not appreciated by the CLB in its correct perspective.

14. Submission being that the CLB should have returned a finding that no active steps had been taken by respondent No. 1 up to 2009 (when the present petition was filed) and the petition was barred by limitation. Record does not substantiate this submission of the appellant; respondent no. 1 was pursuing his case right from the inception and correspondences (as noted supra) are prima facie evident of this fact. It is also not the argument of the appellant that respondent No. 1 had not purchased the shares from him; his whole argument is bordered on the issue of limitation; submission being that because of the inordinate delay on the part of respondent No. 1 in taking active steps, the present petition u/s 111 of the Companies Act is liable to be dismissed.

15. As noted (supra) this submission is contrary to the record. Order of the CLB on this count calls for no interference

16. The last submission of the appellant is that prayer made in the petition u/s 111 of the Companies Act has sought a declaration for the ownership of these shares and such a prayer cannot be entertained by the CLB; it is a rectification of the share register rectified alone which is permissible u/s 111A of the Companies Act.

17. A wholesome reading of the petition negatives this argument. Case of the respondent all along has been that he had purchased these shares on 20.05.1992 but they were lost on the same date; accordingly it had been prayed that in the absence of the original documents i.e. share certificates and the share transfer forms a direction be given to the Company to rectify the Share Register entering his name in the list of share holders qua these 100 shares.

18. As noted (supra) out of the 200 shares which had formed part of the transaction dated 20.05.1992 Company has already transferred 100 shares in favour of respondent No. 1. Discriminatory attitude of the Company qua respondent No. 1 has been correctly noted by the CLB.

19. In this background, impugned order directing rectification of the Share Register in favour of the respondent No. 1 qua these 100 shares as also for additional bonus shares with a direction to pay the unclaimed dividend to respondent No. 1 calls for no interference. Appeal is dismissed.