

(1961) 09 CAL CK 0010
In the Calcutta High Court
Case No : Suit No. C.P. 25 of 1961

Mt. Nazmunnessa Begum, Administratrix	APPELLANT
Vs	
Vidyasagar Cotton Mills Ltd.	RESPONDENT

Date of Decision : 08-09-1961

Acts Referred:

Companies Act, 1956 — Section 111, 111(1), 111(3), 153, 155
Succession Act, 1925 — Section 211(1)

Citation : AIR 1962 Cal 380

Hon'ble Judges : S.P. Mitra, J

Bench : Single Bench

Advocate : Sumbhu Ghose, for the Appellant; S. Sen, for the Respondent

Final Decision : Allowed

Judgement

S.P. Mitra, J.—This is an application for an order inter alia, that the Share Register or Register of Members of the respondent Company be rectified by inserting the name of the petitioner as the holder of 11,825 fully paid up ordinary shares and 591 fully paid up 7% cumulative preference shares in the place and stead of Mohamed Bashir, deceased. The petitioner's case is that Mohamad Bashir died intestate on the 11th March, 1960 leaving as his heirs and next of kins the petitioner who is his widow, his son Mohamad Riaz and several married and unmarried daughters. On the 16th December, 1960 the petitioner applied to this court for the grant of Letters of Administration of the property and credits including the aforesaid shares of Mohammad Bashir to the petitioner. On January 20, 1961, Letters of Administration were granted to the petitioner by this court. The petitioner's solicitors on the 20th January, 1961 wrote to the respondent Company requesting the Company to insert the petitioner's name in its share register as the holder of the said shares. Between the 21st and the 24th January, 1961 the Company did not take any steps in the matter. On the 24th January, 1961 a meeting of the Board of Directors was called to be held on the 25th January fro consider the petitioner's application. At the meeting in which five

Directors were present including the petitioner, she requested the Chairman to enter her name in the Share Register in the place of Mohamad Bashir. Thereupon Manzoor Ahmed, one of the Directors objected to the proposal on the plea that the meeting had not been properly called. The other Directors also refused to do anything in the matter and vacated the room at the request of Manzoor Ahmed.

2. On December 24, 1960 the Company's Directors resolved to hold the Annual General Meeting on the 9th February, 1961. According to the petitioner the object of the other Directors was to prevent the petitioner from exercising her votes in respect of the shares held by Mohamad Bashir at the Annual General Meeting. They are determined not to insert the petitioner's name as the holder of these shares and in these circumstances she has applied to this Court.

3. An affidavit-in-opposition has been affirmed by Altaf Hossen on the 4th February, 1961. The material averments in this affidavit are that the Letters of Administration dated the 20th January, 1961 issued in the goods of Mohamad Bashir were delivered along with other documents to the Company's accountant on the 21st January, 1961. The office of the Company remained closed from the 21st to the 23rd January, 1961. On the 24th January, the petitioner sent telegrams to the Company's Directors for holding a meeting on the 25th January. The telegram addressed to Altaf Hossain did not reach him in time and as he had to attend this court at the request of the petitioner he could not attend the meeting on the 25th. Altaf Hossain states that the petitioner had no authority to call the meeting under the Articles of Association of the Company and denies that it was a proper meeting. The Company has also received a letter dated the 27th January, 1961 from Manzoor Ahmed's Advocate stating that Manzoor was a co-sharer in respect of the shares of Mohamed Bashir and requesting the Company to register his name to the extent of his interest therein. A similar letter dated the 29th December 1960 was also received by the Company sometime ago from Manzoor himself. On the 28th January the Company wrote to the petitioner's solicitors that her application for registration would be placed before the next meeting of the Board of Directors. The solicitors were also informed that the transfer book of the Company had been closed from the 26th January to the 9th February, 1961 in view of the impending Annual General Meeting. A copy of this letter was sent to the petitioner on the 28th January, 1961 and the petitioner was further informed that the Company had received a lawyer's letter raising objections to registration.

4. Altaf Hossain submits that as the Company has given assurance to the petitioner and her solicitors that the matter would be considered at the next meeting of the Board this application is premature.

5. I have in the foregoing paragraphs tried to bring out the principal contentions of the parties. There are a few other relevant facts which I shall refer to later in this Judgment, Incidentally I ought to mention that Manzoor Ahmed applied to me for being added as a Party to this application, or to represent his case before me. I rejected his prayers on grounds stated in my judgment on Manzoor's

application. I have now to deal with the arguments advanced by the learned counsel for the Company and the petitioner.

6. On behalf of the Company it has been urged that Letters of Administration were obtained by the petitioner from this court on the 20th January, 1961. On the 21st January, the petitioner's solicitor's letter asking for registration was received by Sudhir Chandra Dutta, the Company's Accountant. It was the Saraswati Puja day. The 22nd of January was a Sunday. On the 23rd of January also the Company's office was closed on account of Netaji's Birthday. On the 24th January the petitioner's solicitor's letter reached the Calcutta office of the Company, but on that day the petitioner sent telegrams to the Directors convening a meeting of the Board on the 25th. The petitioner had no right to call this meeting as under Article 45 of the Articles of Association only the Managing Agents could convene such a meeting. This article provides further that the Managing Agents shall also on the requisition of one-third of the Directors proceed to call a Directors' requisition Meeting within a week. At the meeting which was held on the 25th, objections were raised and no decision was taken. The Company informed the petitioner's solicitors on the 28th January that her application would be placed at the next meeting of the Board, but the petitioner moved this court on the 30th January, 1961.

7. A person may perhaps invoke the provisions of Sub-clause (b) of Section 155(1) of the Companies Act, if, 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. A transfer to which no objection can be made ought to be confirmed by the Directors at the first meeting at which in the ordinary course of business it can be confirmed, and thereupon registered. If not so confirmed, there is "unnecessary delay": Buckley on Companies Acts, 13th Edition page 289. In the instant case, according to learned counsel for the Company, it did not have the opportunity to confirm the transmission at the first meeting of the Directors after the application by the petitioner was made, at which in the ordinary course of business it could be confirmed.

8. Then again, assuming that the meeting of the Directors was validly convened by the petitioner on the 25th January, 1961 it has been stated by Altaf Hossain, one of the Directors in paragraph 12 of his affidavit affirmed on the 4th February, 1961 that the telegram addressed to him did not reach him in time. He was attending this court on the 25th January, 1961 and therefore could not attend the meeting of the Board of Directors. Reliance was placed on the observation of Lord Sterndale, M. R. in *Young v. Ladies Imperial Club* (1920) 2 K. B. 523 at p. 527 that

"I cannot entertain any doubt, with certain very limited exceptions where a special meeting of a committee or any other body has to be specially convened for a particular purpose, every member of that body ought to have notice of and a summons to the meeting."

9. Before I express my views on the arguments of learned counsel for the Company it is necessary to examine the facts more closely. As I have said, Letters of Administration were issued to the petitioner by this court on the 20th January, 1961. On that very day the petitioner's solicitors addressed a letter to the Company, a copy whereof has been annexed to the petition. The Company is informed of the death of Mohamad Bashir and the grant of Letters of Administration to the petitioner. It is stated that the petitioner has become entitled to the shares and to get herself registered as holder thereof and having become so entitled she has elected to be registered as the holder of the shares in her name. The original Letters of Administration, the share scrips and a notice in writing addressed by the petitioner to the Company stating that she elects to be registered are forwarded to the company. The solicitors have also stated as follows :

"We are instructed that the next Annual General Meeting of the Company is going to be held on the 9th February, 1961. The ordinary shares enclosed herewith are a substantial portion of the issued ordinary shares of the Company having voting rights and our client desires that her name should be recorded in the Register of Members of the Company in time to enable her to vote at the next Annual General Meeting of the Company in respect of such shares."

10. It may be relevant in this connection to refer to Regulation 26 in Table A in Schedule 1 to the Companies Act which runs thus:--

26(1) Any person becoming entitled to a share in consequence of the death of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either-

(a) to be registered himself as holder of the share; or

(b) to make such transfer of the share as the deceased could have made.

(2) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased had transferred the share before his death.....

11. In the present application, it appears that, the petitioner had complied with the provisions of Regulation 26. I do not think any further evidence in support of her application for registration could be properly required by the Company's Board of Directors. In any even the Board has not done so.

12. The Company's case is that the petitioners solicitors' letter of the 20th January, 1961 was received by the Company's accountant on the 21st January, and it reached the Company's Calcutta office after the intervening holidays on the 24th January. The petitioner might have been in error in convening a meeting of the Board on the 25th. But I do not see why steps were not taken for a proper meeting of the Board of Directors to consider the petitioner's application particularly in view of the fact that the petitioner communicated to the company

in writing that she desired to exercise her votes at the Annual General Meeting which was to be held on the 9th February, 1961. It cannot be said that there was delay on the part of the petitioner in making the application inasmuch as she applied immediately after obtaining the Letters of Administration.

13. Far from holding a meeting of the Board of Directors to consider the application of the petitioner, on the day following the infructuous meeting of the 25th January the share transfer book of the company is attempted to be closed till the date of the Annual General Meeting without complying with the provisions of Section 154 of the Companies Act which runs thus :

"154 (1) A company may, after giving not less than 7 days" previous notice by advertisement in some newspaper circulating in the District in which the registered office of the Company is situate, close the Register of Members for any period or periods not exceeding in the whole forty five days in each year, but not exceeding thirty days at any one time.

2. If the Register of Members is closed without giving the notice provided in Sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the register is so closed."

14. No notice as envisaged by Section 154 was given by "the company; and on the 28th January 1961 the company writes to the petitioner's solicitors that their client's application for registration will be placed at the next meeting of the Board of Directors for necessary action. The second and third paragraphs of this letter are as follows :

"It may also be informed that the share Transfer Book of the company has been closed from 26th January, 1961 to 9th February, 1961 both days inclusive as the Annual General Meeting of the share holders of the Company will be held on 9th February 1961.

The decision of the Board of Directors will be communicated to you in due course."

15. It is clear from the company's letter of the 28th January, 1961 that the persons who are managing the affairs of the company had no intention of registering the petitioner's name, at any rate, before the Annual General Meeting. The excuse of closure of books was advanced when in fact there was no closure according to law. It is also interesting that the books were closed on and from the 26th January, 1961 which was a holiday. It is on these facts that I have to pronounce my opinion as to whether the application is maintainable u/s 155(1) (b) of the Companies Act. An application under the sub-clause may be made when "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. I agree

with learned counsel for the company that "unnecessary delay" has not taken place. I also agree that prior to the 30th January 1961 there was no refusal by the company to register. But an application is also sustainable when "default" is made by the company. "Default" to my mind is not "refusal". I may quote with respect the meaning given to this word by Bowen L. J. in *In re. Young and Harston's Contract* (1886) 3.1 Ch. D. 168 at p. 174 which is as follows :

""Default is purely a relative term, just like negligence. It means nothing more, nothing less, than not doing what is reasonable under the circumstances--not doing something which you ought to do, having regard to the relations which you occupy towards the other persons interested in the transaction."

16. Applying this definition to the acts I have enumerated, there is no doubt that "default" has been made by the company in the instant case and as such the petitioner is justified in coming to this Court.

17. I may refer in this connection to the case of *Re. Stranton Iron and Steel Co.* (1873) 16 Eq. 559. The Articles of Association of the company provided that every member should have one vote for every share up to 100, one for every five shares in the next one hundred and for every ten shares after two hundred. The Directors were empowered to decline to register any transfer of shares made by a member who was indebted to the company; or, in the case of shares not fully paid up, to a transferee of whom they did not approve. Notices having been issued of a meeting at which would be proposed resolutions for winding up of the company voluntarily and for the appointment of a liquidator, the largest creditors of the company who were also the holders of 1,000 fully paid up shares, in order to secure full voting powers at the meeting, made nine transfers of 100 shares each to as many nominees of their own, and sent them for registration; but the company refused to register the transfer. On motion on behalf of the transferor under the 35th Section of the Companies Act 1862, the company were ordered to register the transfers in time to enable the transferees to vote at the meeting. It may be noted that notices of the Extraordinary General Meeting were signed by the Secretary on the 16th July, 1873 and the meeting was to be held on the 28th July. On July 23, 1873 the nine transfers aforesaid were made. A correspondence followed and registration was refused. The court was moved on Saturday the 26th July and it was ordered by Sir James Bacon, V. C. that the registration was to be made before the Meeting was held on the Monday following.

18. Learned Counsel for the company was arguing that u/s 285 of the Act a meeting of the Board could be held at specified intervals.

There was no obligation on the Part of the company to hold a meeting to consider only the petitioner's application. Moreover, in the letter of the 28th January, 1961 the company has not given any grounds for not holding the meeting. It merely states that by reason of the closure of the books the application could not be considered at that moment. The company was within its

rights to suspend registration and mere suspension of registration is not "default". I do not accept this contention on the facts of this case. As I have already stated, the petitioners solicitors in their letter of the 20th January, 1961 made it clear that the petitioner desired that her name should be recorded in the register of members to enable her to vote at the Annual General Meeting on the 9th February, 1961 in respect of a substantial portion of the issued ordinary shares of the company. On the 28th January, 1961 the petitioner is told that her application would be considered at the next meeting of the Board and at the same time she is informed that the transfer book has been closed from the 26th January, 1961 to the 9th February, 1961, a closure made illegally without complying with the provisions of Section 154 of the Act. The conduct of the company, in my view, gives a clear indication of "default".

19. The next point urged on behalf of the company is that Section 153 of the Act provides that no notice of any trust express, implied or constructive shall be entered on the register of members or of debenture holders, or be receivable by the Registrar. In the Cause Title of her petition the petitioner has described herself as administratrix to the estate of Mohamad Bashir. In paragraph 13 of the petition she says that at the meeting of the 25th January, 1961 of the Directors, she requested the Chairman to enter her name in the Share Register in respect of these shares "in the place and stead of the said Mohamad Bashir, deceased as the administratrix to the estate of the said Mohamad Bashir deceased including the said shares." Her claim to be registered as an administratrix in view of Section 153 is wholly unsustainable. I entirely agree with this argument of learned counsel for the company. But I find from the petitioner's solicitor's application to the company dated the 20th January, 1961 that the petitioner wanted to be the registered holder not as an administratrix but "in her name". Secondly, in Clause (a) of the prayers in the petition also she has asked for an order that the Share Register and/or Register of Members of the respondent Company be rectified by Inserting the name of "your petitioner as the holder of the said shares in the place and stead of the said Mohamad Bashir." In these circumstances it would be improper to reject the application on this ground.

20. Then, it was suggested on behalf of the company that an administratrix stands on a different footing from an executrix. An executor is a personal representative, but an administrator is not. My attention was drawn to Article 29 of the English Table "A" at page 816 in Buckley on the Companies Acts, 13th Edition. This article provides that in the case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representative of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing contained in the article shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons. Similar are the provisions of Regulation 25 in Table "A" in Schedule 1 to the Companies Act in India. An administrator, according to learned counsel for the company, is not a personal representative. He is merely

put in charge of the estate of the deceased by the Court.

21. The English article in the previous editions read as follows :

"The Executors or Administrators of a deceased member (not being one of the several joint holders) shall be only persons recognised by the company as having any title to the shares registered in the name of such member and in the case of the death of any one or more of the joint registered holders of any registered shares, the survivors or survivor shall alone be recognised by the Company as having any title to or interest in the share."

22. Learned counsel for the Company has placed strong reliance on the changes effected in this article. He points out that administrators were specifically mentioned in the article as it previously stood as they were not personal representatives. In the absence of such specific provision no recognition can be given to them. There is no such article in the instant case. He also referred to Section 82 of the English Companies Act 1948 which is as follows :

"The production to a Company of any document which is by law sufficient evidence of probate of the Will, or Letters of Administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the Company, notwithstanding anything in its article, as sufficient evidence of the grant."

23. Learned counsel has urged that there is no counter-part of "this section in India. He also invited me to consider the copy of the Letters of Administration annexed to the petition. This document shows that Nazmunnessa Begum had, undertaken to administer the property and credits of the deceased and to make a full and true inventory thereof. She had no right therefore to claim that the shares have become vested in her. By inserting her name in the Register of Members the Company would admit her ownership which could not be done on the basis of the charter given to her. The applicant in the premises is not competent to make this application.

24. The short answer to all these points made on behalf of the Company is the provision in Sub-section (1) of Section 211 of the Indian Succession Act which reads thus :

"The Executor or Administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such."

25. Regulation 25 in Table A in the Indian Act lays, down that on the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was a sole holder, shall be the only persons recognised by the Company as having any title to his interest in the shares. The petitioner in the instant case is the legal representative, so long as the Letters of Administration stand" un-revoked, of Mohamad Bashir and shall be the only person recognised by the Company.

26. The next contention of the Company is that in a dispute between the Company and the applicant the Court very often interferes. But in an application involving the rights of third-parties the Court as a matter of principle does not interfere. This argument was obviously advanced in the context of the claim made by Manzoor Ahmed. As I have dismissed his application he be added as a party to the present application or to represent his case before me there are no third parties whose interests have to be taken into consideration. The conflict at the moment is entirely between the Company on the one hand and the applicant on the other.

27. Learned counsel for the Company has addressed me on the rights of Directors to refuse registration. He relies on Regulation 22 (2) (sic-26 (2) ?) of Table A which gives the Board the same right to decline or suspend registration as it would have had, if the deceased had transferred the share before his death. He has urged further that the Directors are not bound to give reasons for their refusal. If they exercise their power wantonly and capriciously, it must be alleged and proved; and the Court will then interfere but not otherwise : vide Palmer's Company Precedents Part I, 17th Edition, pages 451 to 453.

28. There is no dispute as to the propositions of learned counsel but they apply where the articles, authorise the Directors to reject transfers to transferees of whom they do not approve. In *re Smith and Fawcett Ltd.* (1942) 1 Ch 304, Article 10 of the Articles of Association of a private Company provided:

"The Directors may at any time in their absolute and uncontrolled discretion refuse to register any transfer of shares, and Clause 19 of Table A shall be modified accordingly."

The issued capital of the company consisted of 8002 ordinary shares, of which the two Directors of the Company, A and B held 4,001 each. A died and his son as his executor applied to have the testator's shares registered in his name. Y refused to consent to the registration but offered to register 2001 shares and to buy 2000 shares at a fixed price. The executor applied to the Court by way of motion that the Register of Members of the Company might be rectified by inserting his name as the holder of 4001 shares. It was held by the Court of Appeal, affirming Simonds J., that Article 10 gave the Directors the widest powers to refuse to register a transfer and, that, while such powers are of a fiduciary nature and must be exercised in the interest of the Company there was nothing to show that they had been otherwise exercised.

29. In the present case the articles do not give to the Directors absolute and uncontrolled discretion to refuse to register any transfer on shares. Article 24 of this Company is as follows:-

"The Board may subject to the right of appeal conferred by Section 111 decline to register any transfer of shares upon which the Company has lien, and in the case of shares not fully paid up and may decline to recognise any instrument of transfer unless a fee of Rs. 2/- is paid to the Company in respect thereof and the

instrument of transfer is accompanied by the certificate or the share to which it relates and such evidence as the Board may reasonably require."

30. In view of the provisions of Article 24 of the Articles of the Vidyasagar Cotton Mills Ltd., I do not consider that the principles invoked by learned counsel for the Company are applicable to the facts of this case.

31. Lastly, it was contended on behalf of the Company that the present application does not come within the scope of Section 155 of the Companies Act at all. Learned Counsel argued on the distinction between Section 111, and Section 155. According to him when a person has already become a member, but default is made, or unnecessary delay takes place in entering him on the Register, Section 155 may be attracted; but not otherwise. The expression "having become a member" has been used in the Indian Act but it is not there in Section 116 (b) of the English Act. So long as the share of a deceased member remains standing in his name, his representatives do not become members of the Company in respect thereof, but when the representatives are registered they become personally liable, and the Company has nothing more to do with the deceased member; Palmer's Company Precedents, 17th Edition, Part I, pages 459 to 460. Moreover Regulation 21 of Table A in Schedule I to the Companies Act 1956 provides that the Board may, subject to the right of appeal to the Central Government) conferred by Section 111 decline to register--(a) the transfer of a share, not being fully-paid share, to a person of whom they do not approve; or (b) any transfer of shares on which the Company has a lien. It was urged that a person who had purchased shares but his purchase had not been approved by the Board could not make an application u/s 155. His Only remedy was by way of an appeal u/s 111. Reliance was placed particularly on Sub-section (7) of Section 111 which prescribes that, all proceedings in appeals under Sub-section (3) or in relation thereto shall be confidential, and no suit, prosecution or other legal proceedings shall lie in respect of any allegation in such proceedings.

32. Similar arguments were advanced to me in Company Petn. No. 243 of 1960 : (AIR 1961 Cal 52S) In re, Coronation Tea Co., Ltd. I have held for reasons stated in my judgment in that matter that in view of the provisions of Sections 9 and 111(1) of the Companies Act, Sub-section (3) of section 111 merely puts a fetter on the powers of the directors and does not in any way abridge the powers of the Court. In fact learned counsel for the Company in the instant case at one state conceded that at the highest Sections 111 and 155 provide for concurrent reliefs in respect of the same right.

33. A distinct and unequivocal enactment is required for the purpose of either adding to or taking from the jurisdiction of a superior Court of Law: Craies on Statute Law, 5th Edition, page 115. If the intention of the legislature was to abridge the powers of the Court under Section 38 of Old Act it should have made express provisions in the 1956 Act to that effect. Section 155 has not been enacted subject to Section 111. I may repeat the observations of the Bombay

High Court in *Sadashiv Shankar Dandige Vs. The Gandhi Sewa Samaj Ltd. and Another*, that Section 155 is the controlling section and gives the Court an overriding power notwithstanding any previous order of the Central Government. It would be meaningless to give the Court a general power to decide any question including any question relating to the title of a person as is given by Section 155(3) and then indirectly cut off that power by giving the Central Government the same power to decide the same question in appeal first. Section 111 may have given a speedy remedy in cases which should not normally come to Court, but the power of the Court to order rectification of the Register of Members u/s 155 remains, in my opinion, unaffected by Section 111. Indeed Sub-section (3) of Section 111 provides that the party may appeal to the Central Government. It is not incumbent upon the party to prefer this appeal and it may very well choose to come directly to the Court. It is true that Sub-section (2) of Section 41 of the Act provides that every person (apart from subscribers of the memorandum) who agrees in writing to become a member of a Company and whose name is entered in the Register of Members shall be a member of the Company. It seems to me that this definition cannot be applied to the expression "any person having become a member" in Section 155(1)(b) of the Act. This expression means to my mind "having become entitled to be a member" or "having got the right of membership". Alternatively the word "become" means "come to be". If a person has "come to, be" a member then every qualification prescribed by Section 41 is not necessary for him. Unless the words "having become a member" are given one of the meanings suggested by me Section 155(1)(b) cannot be reasonably construed: I therefore overrule the contention of learned counsel for the Company that this application does not come within the scope of Section 155.

34. Incidentally, I ought to mention that learned Counsel for the company submitted to me that proceedings u/s 155 are of a summary nature and an application where a complicated question of title is involved does not come within its purview. He referred to *Jayashree Shantaram Vankudre Vs. Rajkamal Kalamandir Private Ltd.*, . Since I have dismissed the application of *Manzoor Ahmed* this point need not be considered in this application.

35. In the result, therefore, there will be an order that the share Register or Register of Members of the respondent Company be rectified by inserting the name of the petitioner as the holder of 11,825 fully paid-up ordinary shares and 591 fully paid-up 7 per cent cumulative preference Shares in the place and stead of *Mohamed Bashir* deceased. The Company would pay the costs of this application. Certified for Counsel.