

(1979) 12 DEL CK 0018

In the Delhi High Court

Case No : Company Appeal No. 23 of 1979

Natraj Stores (P) Ltd. and Another

APPELLANT

Vs

Krishan Lal Kochar and Others

RESPONDENT

Date of Decision : 14-12-1979

Acts Referred:

Citation : (1980) 17 DLT 528

Hon'ble Judges : S.B. Wad, J;Rajinder Sachar, J

Bench : Division Bench

Advocate : K.S. Bindra and L.M. Sanghvi, for the Appellant;

Judgement

Rajinder Sachar, J.

(1) This is an appeal against the order of the learned single judge by which he directed that the names of respondents be entered in the register in respect of the shares of the company .(not exceeding 2500) standing in the name of K.S. Mehta, appellant No. 2. This order was passed on a petition u/s 155 of the Companies Act moved by the respondents for directions that their names should be placed on the register of members of the company appellant No. 1.

(2) Appellant No. 1 is private limited company and appellant No. 2 is the managing director. Appellant No. 2, his wife and son constitute the cover-whelming share-holding of the company. The case of the respondents was that appellant No. 2 had agreed to sell 2500 shares of the company of the face value of Rs. 100.00 each for a total sum of Rs. 1,25,000.00 and that the said amount had been paid and received by appellant No. 2, that a resolution was passed by the Board of Directors on 1.8.1977 transferring the shares in the name of the respondent and also a further resolution was passed appointing Kochar and Rama Rani as joint directors and the remuneration was also fixed and even they worked for a couple of months, but later on the shares had not been registered in the records of the company and hence the petition.

(3) Appellant No. 2 claimed that in fact nothing had been finally settled and

relied on an agreement dated 23.6.1977 to show that the shares had been sold at a price of Rs. 100.00 each and that full amount had not been paid and no board resolution had been passed for transferring the shares to the name of the respondents. Various objections were raised before the learned single judge; one of them being that he should not exercise his powers u/s 155 and relegate the parties to the suit. This plea was negatived. Mr. Bindra learned counsel for the appellant again urged before us that the matter raised complicated questions of fact and the proceedings u/s 155 were inappropriate for that purpose. The argument misses the point that it is discretionary with the court u/s 155 to refuse to go into the question if the matter raises complicated question of fact and feels that it is matter to be decided in the regular suit, but that does not mean that there is an automatic bar to the relief being given u/s 155 simply because one of the parties chooses to raise a defense and call it a complicated one while the judge finds that the matter is such which he could decide on the material on record without any difficulty. This is what has happened in the present case. The learned judge had noticed the various pleas and has come to the conclusion that the question at issue can be decided on the basis of documentary evidence on record and that it is not necessary to have the matter tried as a suit separately. This approach was within the discretion of the learned single judge and we cannot say that there was any irregularity or illegality in it.

(4) In support of the claim of the respondents that the shares had been sold to him for Rs. 1,25,000.00 at the rate of Rs. 50.00 per share the learned judge had relied on the four receipts annexure I to IV which have been executed by appellant No. 2 as a token of receipt of total amount of Rs. 1,25,100 from the respondents as full consideration for sale of specific number of shares of Rs. 100.00 each fully paid up. Receipts are not challenged. There is also a copy of the resolution of the meeting of the Board held on 1.8.1977 transferring 2500 shares in the name of the respondents group. This resolution also bears the initials/signatures of appellant No. 2. The resolution also appointed Krishan Lal Kochhar as joint managing director of the company and approved monthly salary of Rs. 900.00 p.m. with effect 1.8.1977. An agreement was also to be entered into between the respondents and the company in which the terms and conditions of the appointment was to be laid down and appellant No. 2 was to execute the contract on behalf of the company. It was also resolved that Rama Rani is appointed as Additional Director of the company on a monthly salary of Rs. 800.00 with effect from 1.8.1977. By another resolution of the same date i.e. 1.8.1977 Board's approval was given for payment of Rs. 800.00 to Kanta Ghai as employee of the company. It is not disputed that Kochhar, Rama Rani, Sushil Kumar and Kanta Ghai were paid Rs. 900.00 , 800.00 , 500.00 , & 800.00 respectively. The only Explanation given by appellant No. 2 was that these payments were made only as an allowance. Mr. Bindra has sought to urge that they were paid by appellant No. 2 from his own account. That is not strictly correct. Appellant No. 2 made the payment from the company account though it is now sought to be put from the record that they were to be debited to the

personal account of appellant No. 2. Considering that the company was a private limited company of which appellant No. 2 is the managing director and considering that the money had gone out of the company funds, the learned judge was right in his conclusion that the resolution of 1.8.77 approved the transfer of the shares to the respondents, and that the case of the appellant No. 2 that these were draft resolution and had been given, to the respondents and other relative to persuade them and their other relatives to conclude the agreement was not acceptable. It is not disputed that the full amount as per receipts has been received by the appellant No. 2 for the transfer of the shares. The case of the appellant was based on the purported agreement dated 23.6.1977 produced by him. This agreement though purports to be signed by respondent No. 2 has been denied to be bearing his signatures. No doubt that he admits that the stamp paper had been purchased by him but he says that it was purchased for an agreement to be executed between him and the company. A reference to the agreement will show that it recites Kochar had agreed to. pay Rs. 1,25,000.00 within a month and the balance of Rs.1,25,000.00 within three months and that after the receipt of the full amount appellant No. 2 would move for issuance of 2,500 shares allotted as per amount paid by the Kochar. If this agreement was signed by Kochar it is not understood why and in what manner the resolution of 1.8.1977 transferring the shares to the respondents was effected and even further agreement of appointing Kochar and his relatives to the board of directors was approved. The only reasonable inference available is that the document of 23.6.1977 was not signed by the respondent and the story put up by Mr. Mehta was not believable. More eloquent testimony is available in the shares transfer forms which have been signed by Appellant No. 2 as transferee. Appellant No. 2 has not denied his signatures on the shares transfer forms. The only argument of Mr. Bindra was that unless the original shares were produced before the company the transfer cannot be effected. The respondents have explained that the originals of the share transfer deeds were handed over to Mr. Mehta for effecting the necessary transfer of the shares. The respondent cannot take advantage of his own wrong by putting forth the plea that his original of the transfer deeds were not produced before the company no direction should be given by the judge. It is because the respondent has not produced the original transfer deeds to the company that the litigation has been started. He thus cannot seek to avoid the consequence by this own wrong act. There is no Explanation why if some money was still outstanding appellant No. 2 should have signed the share transfer form. Not only that it was a conscious and final transfer and not merely a stage of draft is also clear from some of the correction made in the share transfer deeds as initiated by appellant No. 2. It is unfortunate that subsequently due to reasons not very clear from the record that appellant No. 2 is backing out of the agreement which he had solemnly entered into. The learned single judge has given detained reasons for coming to the conclusion and we do not find any infirmity in the judgment. We dismiss the appeal in limini.