

(2020) 05 MP CK 0048
In the Madhya Pradesh High Court
Case No : Civil Revision No. 882 Of 2019

Parenteral Drugs (India) Limited

APPELLANT

Vs

Jagdish Mangal Huf & 2 Ors.

RESPONDENT

Date of Decision : 11-05-2020

Acts Referred:

Companies Act, 2013 — Section 2(81), 46, 56, 57, 58, 59, 84, 84(4), 408, 430, 434, 447, 485

Code Of Civil Procedure, 1908 — Section 9, Order 7 Rule 11

Securities Contracts (Regulation) Act, 1956 — Section 2(h), 84

Citation : (2020) 05 MP CK 0048

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : Vijayesh Atre, Vishal Baheti

Final Decision : Disposed Of

Judgement

1. Regard being had to the similitude of the seminal issue that arises for consideration, this order shall govern disposal of both these petitions.

2. The moot question in both these petitions is that as to whether after incorporation of Section 430 of The Companies Act, 2013 w.e.f. 1.6.2016, the civil Court is barred to proceed with the civil suit already pending before it?

3. The petitioner in both these petitions is Managing Director (MD) of Parental Drugs (India) Pvt. Ltd, a public limited listed company.

4. According to the Respondent No.1, the company initially allotted him 12000 shares and later allotted 12934 bonus shares. Thus, total 24934 shares were allotted to him. But he misplaced the share certificates. On 01.09.2010, he lodged a report with the Police Station Jooni, Indore and on

09.09.2010 applied to the company to issue duplicate certificates. When his request was not acceded, he made a complaint to SEBI. Vide letter dated

07.10.2010, SEBI informed him that the matter is being inquired. On 29.10.2010, he received an email from the petitioner/company that the company has received 2 transfer deeds along with original share certificate for transfer of 14267 shares in favour of Smt. Leela bai, therefore, duplicate

certificate cannot be issued in his favour. Aggrieved by this denial of the company, the respondent No. 1 filed civil suit No. RCS A 7000013/2013 on

11.11.2010 in the Court of IInd Civil Judge Class-II, Indore for following relief:

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5. During pendency of the suit, the petitioner filed an application under Order 7 Rule 10 of CPC challenging the maintainability of the suit, which was

dismissed. Appeal preferred by the petitioner before Add. Distt. Judge was also dismissed. The order of the appellate Court was not challenged by the

petitioner and it has attained finality.

6. This time the petitioner filed an application under Order 7 Rule 11 of CPC stating that after incorporation of new company law 2013, the civil Court

has lost jurisdiction to try the suit as the dispute between the parties falls under Section 56, 57, 58 & 59 of the Companies Act, 2013 and as per Section

430 such dispute can only be agitated before the Company Law Tribunal or the Company Law Appellate Tribunal.

7. The application was dismissed vide order dated 22.11.2019 passed by XVth Civil Judge Class-I, Indore observing that the respondent No.1/Plaintiff

has denied execution of any transfer deed as claimed by the petitioner and has asserted that his signatures on this deed are fake and forged. It was

further observed that the plaintiff (Respondent No. 1 herein) has filed civil suit for injunction to restrain the defendant from transferring the disputed

shares. This is purely a civil dispute and as per Section 9 of the CPC the Court was competent to try the suit. This order is under challenge in the

present petition.

8. Thus, the entire controversy revolves around the core question as to whether the dispute between the parties is covered under the provisions of the

Companies Act?

9. It is submitted by the learned counsel for the petitioner that the matter pertains to ownership of the equity shares and all the issues relating to the ownership of shares, issuance of share certificates and other ancillary issues raised by the Respondent No. 1 falls under ambit and scope of and are subject matter of the provisions of Section 58-59 of the Companies Act, 2013. Therefore, as per the provisions of Section 430 of the Act, 2013, after constitution of the Company Law Tribunal vide notification dated 1st June 2016 issued under Section 408 of the Act, 2013, the Civil Court is not competent to try the case filed by the Respondent No.1.

10. The learned counsel has referred Section 58, 59 and 430 of the Companies Act, 2013 and has placed reliance on Shashi Prakash Khemka (dead) through LRs Vs. NEPC Micon (now called NEPC, India) reported in 2019 SCC online SC 22(p3a ra 4,5,6 & 8), Vikram Jairath Vs. Middleton Hotels Pvt. Ltd. reported in 2019 SCC Online Cal 351 (Para 14 & 15), SAS Hospitality Pvt. Ltd. Surya Construction Pvt. Ltd. reported in 2018 SCC OnLine Del 11909 (para 14 onwards) and Chiranjeevi Rathnam Vs. Ramesh reported in 2017 SCC OnLine Mad 23049 (Para 19).

11. Issue of allotment of duplicate shares is dealt with in Section 84 of the Companies Act, 1956, which is as under:

84. Certificate of shares.-

(1) A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to such

shares.

(2) A certificate may be renewed or a duplicate of a certificate may be issued if such certificate-

(a) is proved to have been lost or destroyed, or

(b) having been defected or mutilated or torn is surrendered to the company.

(3) If a company with intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to ten thousand

rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may

extend to [one lakh rupees], or with both.

(4) Notwithstanding anything contained in the articles of association of a company, the manner of issue or renewal of a certificate or issue of a duplicate thereof, the

form of a certificate (original or renewed) or of a duplicate thereof, the particulars to be entered in the register of members or in the register of renewed or duplicate

certificates, the form of such registers, the fee on (911) FA 406-16 payment of which, the terms and conditions, if any (including terms and conditions as to evidence

and indemnity and the payment of out-of-pocket expenses incurred by a company in investigating evidence) on which a certificate may be renewed or a duplicate

thereof may be issued, shall be such as may be prescribed."" (emphasis supplied)

12. In the year 2013, the new Companies Act (Act No 18 of 2013) was introduced. Corresponding to Section 84 of the old Act is Section 46 of the

new Act, 2013, which is as under:-

46. Certificate of shares.

(1) A certificate, issued under the common seal of the company, specifying the shares held by any person, shall be prima facie evidence of the title of the person to

such shares.

(2) A duplicate certificate of shares may be issued, if such certificate â?

(a) is proved to have been lost or destroyed; or

(b) has been defaced, mutilated or torn and is surrendered to the company.

(3) Notwithstanding anything contained in the articles of a company, the manner of issue of a certificate of shares or the duplicate thereof, the form of such

certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed.

(4) Where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.

(5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the

face value of the shares involved in the issue of the duplicate certificate but

which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447. (emphasis supplied)

13. Hon'ble the Supreme Court has dealt with this matter in *Shripal Jain Vs. Torrent Pharmaceuticals Ltd. & Ors.*, 1995 Supp (4) SCC 590. This case

was in respect of issuance of duplicate certificate for the loss of original ones. It was held that proper forum to grant relief in such a case is not the

civil Court but the Registrar, who should have held an inquiry u/S

84 (4) of The Companies Act with the Rules and take a decision himself. Para 3 of the judgement reads as under:

3. We are of the view that the Registrar of the Company was in patent error in referring the appellant to the civil court in the facts and circumstances of the present

case. He should have himself held an enquiry into the matter under Section 84(4) of the Companies Act read with the Companies (Issue of Share Certificates) Rules,

1960 and taken a decision himself in the matter.

14. The same issue was later brought before the Bombay High Court for consideration in *Nine Media and Information Services Ltd. v. Hero Honda*

Motors Ltd., 2016 SCC OnLine Bom 10706 : (2017) 1 Mah LJ 566 : (2016) 6 AIR Bom R 466 at page 5 7w1herein almost in the similar facts as of

the case in hand; the Bombay High Court has followed the dictum of the Hon'ble Supreme Court rendered in *Shripal Case (supra)*. Para 17,18,19 &

22 of the judgement of the Bombay High Court reads as under:

17. Thus, section 84(4) of the Companies Act makes it clear that it is the jurisdiction of the Registrar of Companies to issue the share certificate, to renew the same or

to issue a duplicate of the certificate if, original certificate is proved to have been lost or destroyed. Sub-section (4) of section 84 of the Companies Act makes it clear

that the Registrar in such situation, can also have the power to make necessary inquiry and for that purpose even to collect the evidence, vide investigation and the

expenses for the same will be borne out by the concerned party and only after inquiry, the Registrar may renew the certificate or issue the duplicate thereof. Thus, a

specific jurisdiction is conferred on the Registrar of the Companies in respect of the issuance of duplicate certificate, whenever the original certificate is lost or destroyed.

18. In the instant case, the very case of the appellant is that the shares purchased by the appellant came to be lost in transit. Therefore, it follows that, under section

84(4) of the Companies Act, the Registrar of the Companies will have the jurisdiction to issue the duplicate share certificate, after making necessary inquiry, in which

he can even investigate and collect the evidence. The trial Court has also, accordingly, come to that conclusion, especially, placing reliance on the decision of

Hon'ble Supreme Court in the case of Shripal Jain (supra).

19. The facts of the present case, as submitted by learned counsel for the appellant, squarely fall within the four corners of the law, as laid down by the Apex Court in

this decision. In the said decision also, the share certificates purchased by the appellant in respect of M/s. Torrent Pharmaceuticals Ltd. were stolen. The appellant

therein approached the Registrar of Companies, namely, respondent No. 2 in the appeal, for issue of duplicate certificates. The Registrar directed the appellant to

have a direction in this respect from the Civil Court, as had happened in the instant case also. The Civil Court rejected the application of the appellant. The appellant

challenged the said decision in the High Court. The High Court dismissed the Civil Revision Application, filed by the appellant in limine. The appellant challenged the

said order before the Hon'ble Supreme Court and the Hon'ble Supreme Court observed as follows:

â??3. We are of the view that the Registrar of the Company was in patent error in referring the appellant to the civil Court in the facts and circumstances of the present case. He should have himself held an enquiry into the matter under section 84(4) of the Companies Act read with the Companies (Issue of Share Certificates)

Rules, 1960 and taken a decision himself in the matter.â??

22. In view thereof, and in the light of the order passed by the Apex Court in the above said decision, it becomes necessary to hold that the respondent No. 2-

Registrar of Companies in the present case also, was in patent error in referring the appellant to obtain the order from the Competent Court, though he could have

himself held the inquiry into the matter under section 84(4) of the Companies Act read with the Companies (Issue of Share Certificates) Rules, 1960 and taken a

decision himself. Therefore, as was done by the Apex Court in the above case, in this case also, it is necessary to remand the case back to the Registrar by giving liberty to the appellant to approach the Registrar.

15. Section 55 and 56 of the Companies Act, 2013 deals with "issue and redemption of preference shares" and "transfer and transmission of securities". Section 58 and 59 prescribe redress or mechanism for resolution of dispute in respect of refusal of registration and rectification of register of members. for ready reference both Sections are reproduced here:

58. Refusal of registration and appeal against refusal (1) If a private company limited by shares refuses, whether in pursuance of any power of the company under

its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it

shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the

company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent

by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to

the company.

(4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where

no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or subsection (4), may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt

of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but

which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

59. Rectification of register of members

(1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a

competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for

rectification of the register.

(2) The Tribunal may, after hearing the parties to the appeal under sub-section

(1) by order, either dismiss the appeal or direct that the transfer or transmission shall

be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the

latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be

entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board

of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository

participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register

or records concerned.

(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one

lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may

extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

16. According to Section 2 (81) of the Companies Act word 'securities' shall have the same meaning as defined in clause (h) of Section 2 of The

Securities Contracts (Regulation) Act, 1956 (42 of 1956). As per Section 2(h) of the Securities Contracts (Regulation) Act, 1956, securities means and

it includes shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company

or other body corporate.

17. Section 430 of the new Companies Act bars jurisdiction of civil Court to here or to adjudicate the matters fall under the scope and ambit of the

Companies Law, 2013. Section 430 of the Act, 2013 is reproduced below:

Section 430. Civil court not to have jurisdiction (Notified on 01-06-2016)

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to

determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action

taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

18. Section 434 of the Act, 2013 provides that all the company matter pending before High Court or before District Court shall be transferred to the

Company Law Tribunal. Section 434 is as follows:

Section 434. Transfer of certain pending proceedings (Notified on 01-06-2016).

(1) On such date as may be notified by the Central Government in this behalf,â?" (w.e.f. 15.11.2016)

(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board)

constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the

Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;

(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the

date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed

within a further period not exceeding sixty days; and

(c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and

reconstruction and

winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may

proceed to deal with such proceedings from the stage before their transfer:

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the

Central Government.

Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:

Provided also thatâ

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such

proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts;

shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959

Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-

section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance

with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959. Provided further that any party or parties to any proceedings regarding to the

winding up of companies pending before any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018,

may file an application for transfer of such proceedings and the Court may be order transfer such proceedings to the Tribunal and the proceedings so transferred

shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016.

(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before

the Company Law Board or the courts, to the Tribunal under this section. (emphasis supplied)

19. In the present case, the parties are at variance with regard to the issue of duplicate share certificate. In the backdrop of the law laid down by

Hon'ble the Apex Court and followed by the Bombay High Court and the afore stated provisions of the Companies Act, in the facts and

circumstances of the present case, it is manifest that the dispute between the parties is a company matter and not a civil dispute as held by the learned

trial Court. After incorporation of new Companies Act, 2013 such matters has to be heard and decided by the Company Law Tribunal constituted

under the new company law and is the only competent authority and has jurisdiction under the law to decide the conflict between the parties in respect

of any company matter. It can hold enquiry into the matter under Section 84 of the Act, 1956 or 46 of the Companies Act, 2013 read with the

Companies (Issue of Share Certificates) Rules, 1960 or The Companies (Share Capital and Debentures) Rules, 2014 and take a decision in the matter.

20. In all the judgements cited by the petitioner, the disputes between the parties were found to be related to the company matters as enshrined in the

Companies Act; like increase of authorized capital, allotment of shares or bonus shares, appointment of directors etc, therefore, they were relegated to

the competent authorities constituted under the Companies Act. In this case also the conflict between the parties is found to be the dispute covered

under the Companies Act, therefore, applying the above dictum of law, the petition is allowed. The order of the learned Trial Court dated 22.11.2019

delivered by XVth Civil Judge Class-I, Indore is set aside.

21. The Civil Court is directed to return the plaint to be presented before the concerned Company Law Tribunal within two months from the date of

return of the plaint in accordance with law.

22. The matter is pending since last 10 years, therefore, the Tribunal is directed to decide the matter within 6 (six) months from the date of receipt of

the matter following the due process of law. No adjournment shall be given to the parties except in unavoidable circumstances.

23. No time shall be extended without the express permission of this Court.

24. However, in the mean time status quo shall be maintained in respect of the disputed shares.

25. With the aforesaid; the petition stands allowed and disposed off.