

(1959) 08 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 26 of 1956

Peoples Insurance Co. Ltd.

APPELLANT

Vs

C.R.E. Wood and Co. Ltd. and Others

RESPONDENT

Date of Decision : 25-08-1959

Acts Referred:

Companies Act, 1913 — Section 91
Companies Act, 1956 — Section 155

Citation : AIR 1960 P&H 388 : (1961) 31 CompCas 61

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Judgement

(1) This is an application made by the People's Insurance Company Limited, in liquidation through its Official Liquidator, under S. 155 of the Companies Act, 1956, for rectification of the members' register. A brief resume of the early history which led to the filing of this application may be given.

(2) The People's Insurance Company Limited, was incorporated under the Indian Companies Act, 1913 and had its registered office at Qutab Road, Delhi. Respondent No. 1 is a private limited Company incorporated under the Indian companies Act, 1913 with its registered office in New Delhi. There are four sets of respondents in this case-

Firstly, C. R. E. Wood and Company (Private Limited, which is respondent No. 1,

Secondly, respondents Nos. 2 to 6 and 8,

Thirdly, respondents Nos. 7 and 9, and

Fourthly, respondents Nos. 10 to 13.

(3) On 9-8-1947, the petitioner-Company had purchased a block of 780 shares of the respondent Company for Rs. 78,000/-. These shares represented nearly two-thirds of the issued capital of that Company. Till 30-9-1951, these shares were shown in the books of the petitioner-Company as its property, but for the

first time reference to these shares in the balance-sheet of the petitioner-Company for the year ending 31-12-1951, was omitted. In the petitioner-Company's ledger the last entry when these shares were shown to be its property is dated 30-9-1951, vide Exhibit P.W. 2/12. On 2-9-1952, the Board of Directors of the petitioner-Company passed a resolution confirming sale of these 780 shares by the Company's Managing Director S. Sardul Singh Caveeshar. In this resolution no details were given as to the date of sale or the names and descriptions of persons to whom the shares were to be transferred. There was not even a mention of the consideration of these shares. It is alleged that the books of the Company do not show receipt of any consideration for these shares. Prior to 2-9-1952, two meetings of the Board of the petitioner-Company were held on 15-4-1952, and 12-7-1952, respectively but no matter regarding the sale of these share was brought up at those meetings.

(4) On 15-2-1951, the Controller of Insurance had objected to the purchase of these shares along with some other shares. The Controller had desired that the investment in respondent No. 1 Company and shares in some other concerns should be replaced by approved investments. At the meeting of the Board of Directors of the petitioner-Company held on 2-9-1952, at which the resolution confirming sale of shares of Messrs. C. R. E. Wood and Company Limited for Rs. 78,000/- was passed, there were present the following Directors:

1. S. Sardul Singh Caveeshar.
2. Pt. Ram Roop Sharma,
3. Shri. B. N. Bhardwaj,
4. S. Kartar Singh,.
5. Shri Shanti Lal Jhaveri, and
6. Pt. Ram Lal.

Out of the above six Directors, it is said that the following four Directors were directly interested and concerned in the transaction:

1. S. Sardul Singh Caveeshar who was the Managing Director of the petitioner Company, was also the also the Director and Managing Agent of respondent No. 1 and as such was interested in controlling the block of 780 shares of C. R. E. Wood and Company;
2. Shri B. N. Bhardwaj was the Managing Direction and Managing Agent of the respondent-Company;
3. Pt. Ram Roop Sharma is the father of respondents 3, 4 and 8, father-in-law of respondent 2, and brother-in-law of respondent 5, and he was also Director of the respondent-Company; and
4. Pt. Ram Lal is the father of Shri B. N. BhardwaJ.

(5) The petitioner inter alia contends that if these four Directors, who were directly interested in the transaction, are left out the meeting would be deemed to be without the requisite quorum in view of the provisions of Section 91B of the Indian Companies Act, 1913, and consequently the resolution passed at such a meeting would not be valid and binding on the petitioner.

(6) Now turning to the books of C. R. E Wood and Company, respondent No. 1, these shares were shown to be the property of the petitioner-Company till 25-6-1954, when they were transferred in the names of respondents 2 to 9 and there is entry to the effect in the register of members of the respondent-Company. There is also an entry dated 31-3-1956, in the register of members of the respondent-Company showing transfer of these shares from the names of respondent 2 to 9 to those of respondents 10 to 13. It is claimed on behalf of the petitioner that both these entries of 25-6-1954, and 31-3-1956, are fictitious and that they were made sometime during the pendency of this application. It is said that in fact there never was any sale of these shares and that the petitioner-Company is still the owner.

(7) On 5-2-1955, the petitioner-Company passed a resolution for being voluntarily wound up. On 29-4-1955, the District Judge, Delhi, at the instance of the Controller of Insurance, passed an order appointing Provisional Liquidator. On 20-5-1955, an order was passed by the District Judge, Delhi, for the winding up of the petitioner-Company. In February, 1956, the Official Liquidator made an application to the District Judge seeking sanction of the Court to file the present petition under S. 155 of the Act. The application under S. 179 of the Act was made before the shares were shown to have been transferred in favour of respondent 10 to 13 in the register of members of the respondents Company. The present petition was filed on 25-4-1956, after obtaining the sanction of the District Judge. In this application only nine respondents had been impleaded. An amended petition was made on 22-2-1957, and it included the names of respondents 10 to 13, the alleged transferees of the shares from respondents 2 to 9.

(8) The petitioner has prayed that the names of respondents 2 to 9 and now of respondents 10 to 13 be removed from the register of members of respondent No. 1 Company, and the name of the petitioner-Company be restored with effect from the date of alleged transfer of shares. It is also prayed that the dividends received so far by respondents 2 to 13 be ordered to be refunded to the petitioner.

(9) The plea taken up by the respondent-Company in its written statement is that 780 shares which had been purchased by the petitioner-Company were transferred in the names of respondents 2 to 9 on the basis of transfer deeds executed by the petitioner-Company and one share scrip in respect of these shares was delivered to the respondent-Company. The interest of the four Directors in the two concerns and of the relationship of Pt. Ram Roop Sharma with respondents 2, 3, 5 and 8, and of Pt. Ram Lal with Shri B. N. Bhardwaj was

not denied, but it was maintained that the provisions of S. 91B of the Indian Companies Act, 1913, did not apply and therefore, the meeting of the Directors held on 2-9-1952, at which the above mentioned resolution was passed, could not be said to be without quorum.

It was maintained that the resolution which was passed at the meeting was valid and binding on the petitioner-Company. On behalf of the respondent-Company it was also contended that the transfer of the shares from the petitioner-Company in favour of respondent 2 to 9 was sanctioned on the basis of transfer deed duly executed by the transferor and which was accompanied by one share-scrip relating to these shares. Similarly, it was contended that the shares were. Similarly, it was contended that the shares were transferred in favour of respondents 10 to 13 on the basis of transfer deeds handed over to the respondent-Company through Pt. Ram Roop Sharma who was one of the Directors of the petitioner-Company and also of the respondent-Company. It was also stated that respondents 2 to 9 had transferred these shares in the names of "other persons" (i.e., respondents 10 to 13) on 16-10-1955, and the respondent-Company had sanctioned the transfer on 31-3-1956. Finally, the respondent-Company maintained that the name of the petitioner-Company could not be restored in the register of members of the respondent-Company with respect to these 780 shares.

(10) The second set of respondents, Nos. 2 to 6 and 8, in their written statement raised a preliminary objection that they were no longer the holders of these shares as they had been transferred to "other persons" about the end of 1955 and their names were no longer on the register of members of the respondent-Company on the date on which the application under S. 155 of the Act was made. It was also contended that it was not a fit case for summary trial under S. 155, and that the petitioner should be relegated to a civil suit. These respondents, on merits, pleaded, that the names of respondents 2 to 9 were entered in the register of members on the basis of regularly executed transfer deeds, and that the transfers were duly sanctioned by the Company.

They also maintained that they had obtained transfer deeds along with share-Scripps signed by the petitioner-Company as transferor of shares and had paid consideration to the Company. They also said that they were not concerned to see whether any resolution for the sale of shares had been passed by the petitioner-Company or not as that was a matter which related to the internal management of the company and the answering respondents, being outsiders, had no concern. They also said that the transfer in favour of respondents 10 to 13 was not collusive but for consideration and therefore a good title was conferred on respondents 10 to 13. They also averred that the transfer in favour of respondents 10 to 13 had taken place long before the petitioner was filed by the petitioner.

(11) Before taking up the plea of respondents 7 and 9, I may deal with the position taken up by respondents 10 to 13 in their written statement. They

maintained that they had purchased the shares in question from the previous holders thereof in good faith and for consideration and that they were not concerned about the existence or validity of the resolution passed by the petitioner-Company, as they were justified in presuming that everything was lawfully done. The petitioner-Company had, they said, sold the shares for consideration to the other respondents who in turn had transferred them for consideration to them.

(12) Respondents 7 and 9 filed a separate written statement and stated in the first paragraph that at the instance of Shri Ram Roop Sharma, who was formerly Director-in-charge of the petitioner-Company, and was still a Director of the respondent-Company, they had signed two blank forms of Vakalatnama but as no written statement had been filed on their behalf, they wanted leave to cancel their former Vakalatnama in favour of Shri B. R. Tuli who was representing respondents 2 to 6 and 8. These respondents denied that they had ever purchased 100 and 80 shares respectively of the respondent-Company as alleged. They said that these shares were shown in their names benami by the then management of the petitioner-Company consisting of Messrs. Sardul Singh Caveeshar, Ram Roop Sharma and B. N. Bhardwaj, who were Directors of the petitioner-Company and also of the respondent-Company. The answering respondents were the employees and the management obtained their signatures on several blank transfer forms. These two respondents denied ever being the owners of the said shares. They also denied having ever sold them. They disclaimed having anything to do with the alleged purchase or sale of those shares and disclaimed ownership of the same and finally stated that they did not contest the Official Liquidator's claim.

(13) The petitioner-Company filed separate replications to the four written statements. The stand previously taken by the petitioner-Company was reiterated in the replications and it was added that the relevant scrip of 780 shares from the respondent-Company still stood unsplit in the name of the petitioner-Company, that the names of respondents 2 to 9 were entered in the register of members collusively, and that the alleged transfer of shares in favour of the other respondents, viz., 10 to 13 was also not genuine but merely fictitious, and that the change of names in the register also took place on some date subsequent to the filing of the petition. The whole transaction was a sham one. The petitioner asserted that the resolution of the Company, dated 2-9-1952, was invalid and ultra vires and of no effect. The transaction was colorable, collusive and mala fide. They also averred that the question of changing hands of such a big block of share capital which is nearly 63 per cent of the entire paid up capital of the respondent-Company, never came up before the Board of Directors of that Company in any of their meeting. It was denied that any consideration passed between the petitioner-Company and respondents 2 to 9 or between the latter and respondents 10 to 13. They also maintained that the statutory conditions contained in S. 34(3) of the Indian Companies Act, 1913, had not been complied with.

(14) On the pleadings of the parties, the following issues were framed:

1. Whether the petition is not maintainable? (Onus disputed).
2. Whether sale in favour of respondents Nos. 2 to 9 was valid and for consideration?

(Onus objected to).

3. Whether the resolution of 2-9-1952 confirming sale is in contravention of S. 91-B of the Indian Companies Act, 1913?
4. Whether respondents 10 to 13 are bona fide transferees for consideration of the shares in question? (Onus objected to).
5. Relief.

(15) Though some oral evidence has been led in this case by the parties, respondents Nos. 2 to 6 and 8 and respondents Nos. 10, 11 and 13, however, have not chosen to appear as their witnesses to support their respective written statements despite several opportunities having been given to them. Shri H. S. Gujral who represents respondents Nos. 10 to 13 obtained several adjournments for producing his clients in the witness-box but ultimately did not do so on the ground that Lachmi Chand Jain respondent No. 10 and Khushi Ram respondent No. 12 owing to illness could not attend the Court. On 21-1-1959, Shri Gujral filed an application in this Court praying that his aforementioned clients may be examined "on open commissioner or by interrogatories as their witnesses." By my order dated 23-1-1959, I allowed this request. I appointed Miss Surjit Kaur Taunque Advocate as Commissioner and directed her to execute the commission within a month. These respondents did not deposit her fee and traveling expenses as directed and their counsel Shri Gujral stated that they could not part with the money and the commission, therefore, could not issue and the evidence of respondents 10 and 12 was closed.

(16) The only respondents who appeared as their own witnesses besides Goswami Manohar Lal, respondent No. 11 were respondents 7 and 9 and they supported the petition. S. Sardul Singh Caveeshar, who is an important witness in the case, was examined on commission in the District Jail, Delhi as he was undergoing a term of imprisonment.

(17) Issue No. 1. On behalf of the respondent it was contended that the petition was not maintainable as proceedings under S. 155 of the Companies Act, 1956, providing a summary remedy in non-controversial matters were not suitable in this case. Reference was made at the Bar to three decisions of this Court.

1. Dewan Singh Hira Singh v. Minerva Films Ltd. AIR 1959 Punj 106;
2. Benarsi Das Saraf v. Dalmia Dadri Cement Ltd., AIR 1959 Punj 232; and
3. S. Bhagat Singh v. Piar Bus Service Ltd., Amritsar, AIR 1959 Punj 352.

(18) In the above noted decisions I had held that when serious disputes were involved, proper forum for their adjudication was a civil Court. I had expressed the view that the summary remedy under S. 155 of the Companies Act, 1956, was not available to the litigant as of right without the Court having discretion to refuse it. I had also expressed the view that if the case be one of difficulty and complication it should more appropriately be decided at a regular trial, and that this provision was not intended for settling controversies under several heads necessitating a regular investigation. Having regard to the nature of the controversy and comparatively simpler facts of this case, it is a case which can be suitably disposed of by this Court under S. 155 of the Act. In determining whether judicial discretion be exercised by the Court for purposes of directing or refusing rectification of register of members, depends on the facts of each particular case. I do not find any similarity between the comparatively simple matters in controversy in this case and the cases decided by me and cited above so as to persuade me to follow the same course as was done in those cases. I do not find this to be a case in which I should have abstained from proceeding under S. 155 of the Act. The contention of the respondents as to the non-maintainability of these proceedings is devoid of force and this issue is, therefore, decided against them.

(19) Issue No. 2. Issues Nos. 2 and 4 are pivotal. Under issue No. 2 the question to be decided is whether the sale in favour of respondents Nos. 2 to 9 was valid and for consideration. The case of respondents Nos. 2 to 6 and 8 is that the petitioner-Company had sold the shares in question with due formalities and for consideration to them. On the other hand, respondents Nos. 7 and 9 maintained that they had never purchased 100 and 80 shares respectively from the petitioner-Company as they never had the means to do so. According to them the shares were shown in their names benami by the management of the petitioner-Company consisting of S. Sardul Singh Caveeshar, Pt. Ram Roop Sharma and Bhardwaj, who were the Directors of the petitioner-Company as well as of respondent No. 1 Company. They said that they had nothing to do with the alleged purchase or sale of the shares and claimed on ownership in them, and did not contest the claim of the official liquidator. These two respondents have appeared as P. Ws. 4 and 5 and have adhered to the position taken by them in their written statement. I may at this stage briefly give a summary of the evidence having a bearing on the second issue.

(20) (After discussion of evidence His Lordship proceeded:) The Official Liquidator had filed an application on 29-3-1957, praying that Shri Ram Roop Sharma who was a party to the bogus transfer of 780 shares belonging to the petitioner-Company be ordered to produce the share scrip aforesaid and the transfer deeds in Court, and that he should be ordered to personally appear and make a reply. I ordered accordingly and in pursuance of that order Shri Ram Roop Sharma appeared on 5-4-1957, and stated that he had taken transfer deeds alleged to have been executed in favour of respondents 2 to 9 from Shri Bhardwaj, Managing Director of respondent No. 1 Company, for being deposited

in this Court and also one share scrip relating to 780 shares standing in the name of the People's Insurance Company. He stated that the eight transfer deeds and the share scrip No. 000033 in the name of the People's Insurance Company for 780 shares were not required by Shri B. R. Tuli counsel for the respondent-Company and they were, therefore, returned by him to Shri B. N. Bhardwaj. He further said that he did not obtain any receipt from Shri Bhardwaj as he did not consider that to be necessary and he did not ask Shri Bhardwaj for the return of his own receipt which I have now marked as "I". The eight transfer deeds were important documents and are deliberately not being produced in this Court. Under the circumstances there is ample justification for presuming that if produced, they would not have supported the respondents' contention that the shares had been validly transferred by the Company. I cannot help feeling that Pt. Ram Roop Sharma is himself responsible for not placing the eight transfer deeds and share scrip No. 000033 on the record which he did not return to Shri B. N. Bhardwaj. Had he done so, he would have taken his receipt which he gave and which has been marked by me as "I".

(21) I cannot help observing that in this case in which grave allegations have been made by the Official Liquidator against the respondents, it was their bounden duty to give evidence supporting their defence, particularly when the circumstances relating to the passing of consideration etc., were within their personal knowledge. Non-appearance of the respondents as witnesses in this case is a circumstance discrediting the truth of their contention. The presumption against them cannot be avoided. In this case it has been amply shown from evidence on the record that the pleas of the respondents were false to their knowledge. I cannot accept the statement of S. Sardul Singh Caveeshar that he had sold 780 shares to respondents Nos. 10 to 13 for Rs. 19,500/- and that he took this amount in cash. He also stated that he did not remember if anybody had given him cheque also and even did not remember if he had passed any receipt.

(22) S. Sardul Singh Caveeshar from his own statement stands thoroughly discredited. In this case it is amply borne out that the People's Insurance Company has been a victim of fraud perpetrated on it by its Managing Director and Chairman, S. Sardul Singh Caveeshar, and the other Directors who have been acting as his henchmen. This is a case in which those whose duty it was to serve and save the Company, themselves took to spoliation. They were the shepherds whose duty it was to keep watch over their fold, but instead they became a menace to their very charge. These 780 share really belonged to the Company but S. Sardul Singh while occupying the posting of the Managing Director and Chairman of the concern, dealt with its valuable assets as if they were his personal property and the other Directors blindly and unquestioningly towed his line without ever entering a dissent or making a protest. I am reminded of the old saying, *quis custodiet ipsos custodes* (who shall guard the guardians themselves.)

(23) So far as the legal position is concerned, it admits of no doubt that a forged or fraudulent transfer does not defeat the title of the true owner and the person defrauded has a right to require the Company to restore his name to the register. The true owner can obtain rectification of the register of members by striking out the name of the third person and restoring his own. As against the real owner a forged or fraudulent transfer is a nullity and the person so deprived of his shares can compel the Company if it has removed his name from the register, to reinstate him as the holder of shares, vide *Barton v. North Staffordshire Rly. Co.* (1888) 38 Ch. D. 458 at p. 466. In *Barton v. London and North Western Rly. Co.* (1888) 38 Ch. D. 144 at p. 146, Cotton, L. J., said-

"* * * for it is well established that persons, whose stock is transferred out of their names in consequence of a forged deed of transfer, may go against the Company whose duty it is to keep the register of stockholders and say: "It was your duty to keep this stock in our names until it was effectually transferred by a deed of transfer duly executed by us or by persons who had authority to Act for us, and as you have transferred it without the authority of a good deed of transfer you must replace it." "

Reference may also be made among others, to *Davis v. Bank of England* (1824) 130 ER 357; *In re Bahia and San Francisco Rly. Co.* (1868) 3 Q. B. 584; *Palmer's Company Law*, 20th Edition, page 351 and *Halsbury's Laws of England*, 3rd Edition, Volume 6 page 261.

(24) Where the transaction is colourable or fraudulent it has to be struck down and treated as a nullity. In *re: Discoverers Finance Corporation Ltd.* (1908) 1 Ch. 141 at p. 151.

(25) I entertain no doubt in my mind, that the relief contemplated by S. 155 of the Company's Act, 1956 is eminently suitable on the facts of this case. When the name of a person who is a member of the Company has been struck off, the effect is the same as if his name had never been entered. The striking out of his name from the register thus causes his name to be omitted from it; and against such an omission the section provides a remedy, vide *Madhava Ramachandra Kamath Vs. The Canara, Banking Corporation Limited*, a Banking Company, .

In the words of Giffard, L. J.,--

"It is clear, * * * * that if there is a fraud, or if the transaction is such that it cannot stand, name is on the register "without sufficient cause"."

(In *re Bank of Hindustan, China, and Japan, Ex parte Kintrea* (1869) 5 Ch. A. 95 at p. 99).

(26) There is ample authority for the proposition that a colourable transaction, whereby shares of a genuine owner and transferred in consequence of a fraud or forgery, cannot be allowed to stand. The name of the People's Insurance Company must be restored on the register of members of Messrs. C. R. E. Wood

and Company. Issues Nos. 2 and 4 are, therefore decided in favour of the petitioner-Company and against the respondents.

(27) The only other issue that remains is issue No. 3 "whether the resolution of 2-9-1952, confirming sale is in contravention of S. 19-B of the Indian Companies Act, 1913". In view of my decision on issues Nos. 2 and 4, decision on issue No. 3 is unnecessary. Even if this issue were decided in favour of the respondents and against the petitioner-Company, the petition must necessarily succeed. I do not think, therefore, that any useful purpose will be served by giving a finding on this issue.

(28) The result of the above discussion is that the petition of the Official Liquidator succeeds. I, therefore, order rectification of the register of members of Messrs. C. R. E. Wood and Company, Limited, New Delhi, respondent No. 1, and I direct that the names of the respondents Nos. 10 to 13 be removed from the register of members of Messrs. C. R. E. Wood and Company, Limited, and the name of the People's Insurance Company limited (in liquidation) be restored with effect from the date of the alleged transfer of the 780 shares which stood in the name of the petitioner-Company. I also order respondents Nos. 2 to 9 and respondents Nos. 10 to 13 to refund to the petitioner-Company such dividends, if any, as might have been received by them on these shares. The costs of this petition are assessed at Rs. 500/- which shall be borne by respondents Nos. 1 to 6 and 8 and by respondents Nos. 10 to 13.

(29) Petition allowed.