

(1962) 10 AHC CK 0008
In the Allahabad High Court
Case No : F.A.F.O. No. 260 of 1958

Ramchandra Gupta

APPELLANT

Vs

The Kanpur Iron Scrap Merchants Association Ltd. and
Another

RESPONDENT

Date of Decision : 23-10-1962

Acts Referred:

Companies Act, 1956 — Section 155

Citation : AIR 1964 All 45

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Advocate : M.N. Shukla, for the Appellant; K.C. Agarwal and S.K. Dongra, for the Respondent

Final Decision : Allowed

Judgement

K.B. Asthana, J.—This is a first appeal from order against an order of the learned District Judge, Kanpur requiring the parties to carry out the terms of a compromise alleged to have been arrived at between the parties in a case in respect of the rectification of register of members u/s 155 of the Indian Companies Act, 1956.

2. The appellant Ram Chandra Gupta had in an auction in execution of a decree against one Sardar Pratap Singh purchased five shares of the respondent company. He then applied u/s 155 of the Act for entering his name on the register of members of the company. This application was opposed by the respondent company mainly on the ground that under the rules of the company a stranger had no right to purchase the shares of the company. There is no further amplification of this plea on the record. Further it appears that the parties tried to amicably settle the matter and Ram Chandra Gupta the appellant seems to have agreed to transfer the shares in the name of a person nominated by the Directors of the company on the condition that the Directors were to pay the price and the profits earned on those shares within a particular period. The

learned Judge before whom the application u/s 155 of the Companies Act was pending has recorded in his proceedings a statement made by the parties in this respect.

For the reason that the Directors of the Company failed to deposit the amount as claimed by the appellant within the time stipulated the appellant resiled from the bargain and insisted on his right for being brought on the register of members of the respondent company. The Directors of the company contested the right of the appellant to be brought on the register of members on the ground that there was no default on their part in carrying out the terms of the arrangement and Ram Chandra Gupta be compelled to sell the shares in accordance with the terms of the compromise. The learned District Judge by his order under appeal has acceded to the prayer of the Directors of the Company and has ordered Ram Chandra Gupta to transfer the shares on the terms mentioned by the learned Judge in his aforesaid order. It is against this order that the present appeal has been filed.

3. Sri M.N. Shukla learned counsel for the appellant has urged before me that the order of the learned Judge is without jurisdiction inasmuch as u/s 155 of the Companies Act, 1956 the learned District Judge as a Company Judge could either order the register of the members to be rectified or, reject the application of the appellant for entering his name on the register of members. He has submitted that the learned Judge in exercise of his powers u/s 155 of the Act had no power to record any compromise and compel a party to carry out the terms of the compromise. The learned counsel for the respondent Sri K.C. Agarwal, on the other hand, contended that the learned District Judge as a Company Judge has all the powers of a Court under C.P.C. and he had every jurisdiction to record a compromise and compel the recalcitrant party to carry out the terms of the compromise. I think the submission of the learned counsel for the respondent is very widely expressed and I cannot give force to that submission.

In the circumstances of this case I am more inclined to agree with the contention of the learned counsel for the appellant. I doubt the propriety if not the legality of the learned District Judge's attitude while sitting as a Company Judge in involving himself in bargains and counter-bargains between the Directors of the Company and the person applying before him for the rectification of the register of members. u/s 155 of the Act as I read it, the learned Judge either should refuse to rectify the register or should grant the prayer for rectification of the register. The provisions of that section do not contemplate that he could pass any other kind of order.

4. That being the position even if it be conceded that the learned Judge could give force to a compromise or any arrangement between the parties then that arrangement must be within the scope of that section. I see, therefore, no justification in the order of the learned District Judge to compel the appellant to sell or transfer the shares. Such an order being beyond the scope of Section 155 of the Companies Act, 1956 any compromise to that effect could also not be

recorded even if the District Judge as a Company Judge had such powers to record a compromise. I, therefore, set aside the order of the learned District Judge, allow the appeal and direct that the application of Ram Chandra Gupta appellant u/s 155 of the Indian Companies Act shall be restored to its original number and be disposed of in accordance with law.

5. The appellant shall be entitled to his costs of this appeal from respondent No. 1.