

(2001) 03 KAR CK 0101

In the Karnataka High Court

Case No : Regular Second Appeal No. 319 of 1985

S.A. Padmanabha Rao

APPELLANT

Vs

Union Theatres (P.) Ltd.

RESPONDENT

Date of Decision : 19-03-2001

Acts Referred:

Companies Act, 1956 — Section 82

Citation : (2001) 4 KCCR 2236

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : H. Kantharaju, T. Papanna and K. Nageshwarappa, for the Appellant; Jayaram and Jayaram, for the Respondent

Final Decision : Dismissed

Judgement

Rangavittalachar, J.—This is a plaintiff's second appeal. The plaintiff herein filed a suit for mandatory injunction directing the defendant-company. Union Theatres (P.) Ltd. to transfer the share held by the late A. Bheemappa Naik into their names and effect necessary changes in the registers of the company.

2. The facts leading to the filing of the suit are, Vijaya Bank had filed a suit against Asiatic Films Corpn. in O.S. No. 43 of 1961 for recovery of certain money. The said suit came to be decreed. Execution proceedings were initiated by the bank against one Bheemappa Naik, the shareholder of Asiatic Film's Corpn. by bringing to sale his share of the value of Rs. 5,000. In the court's sale, the appellant/plaintiffs were the auction purchasers, i.e., jointly purchased the shares for Rs. 6,000. A "sale certificate" was issued completing the transfer. Later they applied to the defendant-company for transferring the share of Bheemappa Naik to their name and accordingly register in the company registers. Since respondents/defendants refused to do so relying on article 7 of their articles of association, they filed the present suit.

3. The suit was contested. The respondent/defendant contended that by clause 7

of the articles of association, there is a prohibition on transfer of shares from shareholders to non-shareholders. Since the plaintiffs were not shareholders of the defendant-company, the share of Bheemappa Naik cannot be transferred, therefore it prayed for dismissal of the suit.

4. The learned trial judge after trial decreed the suit. By relying on the decision of the Calcutta High Court in Mahadeo Lal Agarwala and Another Vs. The New Darjeeling Union Tea Co. Ltd. and Others, , be held that restrictions in the articles of association regarding transfer of shares have no application to court auction sales and the company therefore was bound to transfer.

Aggrieved by the said judgment and decree, the respondents/defendant appealed to the Civil Judge, Chitradurga. The learned appellate judge has reversed the judgment and decree of the munsiff and consequently dismissed the suit. He has held that there is a restriction in the articles of association, regarding the transfer of shares. Merely because a share is sold in court auction, it has no effect of effacing the said restriction.

It is this judgment and decree of the appellate court that is under challenge.

5. This second appeal was admitted to consider the following substantial question of law as arising for consideration :

"Whether, the lower appellate court is right, in law, in holding that article 7(1) of the articles of association at exhibit D-1 prohibited transfer of shares to any persons other than the shareholders and, therefore, the plaintiffs, who were not the shareholders, could not be recognised as the shareholders of the respondent-company (private limited), though they had purchased the suit share in court auction?"

Heard Shri Kantharaj, the learned counsel appearing for the appellant and Sri Pradyumna, the learned counsel appearing for the respondent.

6. The facts stated above are not in dispute. It is also not in dispute that the appellants are the auction purchasers of the share of Bheemappa Naik nor is it in dispute that the appellants are not shareholders of the defendant-company Union Theatres Ltd.

7. The defendant-company was incorporated under the Mysore Companies Act No. 18 of 1938, with the object stated in the memorandum of association. The articles of association provide various clauses in the matter of business of the company. Article 7 which is relevant for the present purpose reads as under :

"Article 7.--No transfer of shares shall be made to any person other than the shareholder (member) of the company. Such transfers of shares are to be made only among the existing members of the company. No transfer of any share shall be made or registered without the previous sanction of the directors who may without assigning any reason decline to give any such sanction. A fee not exceeding five rupees may be charged for each transfer approved by the

directors and shall be paid before registration thereof. When a member wishes to transfer his shares he shall intimate the same to the company in writing along with the instrument of transfer accompanied by the share certificate. And on receipt of such notice the company shall cause the matter notified in writing to all the members of the company and shall call for a tender for the same, giving a month's time. And on receipts of the tenders the board shall meet and decide and notify the name of the highest bidder who shall be the transferor of this said shares. And on completion of the formalities of such transfer the transfer will be entered in the books of the company. The transfer notices shall not be revocable except with the sanction of the directors.

The directors may suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless the same is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register the transfer of any shares, they shall, within two months from the date of which the transfer was lodged with the company, send to the transferee and the transferor a notice of the refusal."

By a reading of Article 7(1) extracted above, it is manifest that the transfer of shares is permitted only among the shareholders of the company inter se. Impliedly, there is a prohibition for transfer of shares from one shareholder to a non-shareholder.

But Sri Kantharaj, the learned counsel appearing for the appellant relying on the decision of the Madras High Court in *Soma Veerappa Vs. Muthurasappa Chettiar and Another*, , and that of the Calcutta High Court in *Mahadeo Lal Agarwala's* case (supra), contended that such restrictions apply only when shares are sold by private sales, but will not apply to shares sold by court auction, as the case on hand, and in such an event the company has no option but to transfer and register.

8. In answer to the said contention, Sri Pradyuman contended relying on the decision of the Nagpur High Court in *Abdul Rashid Hafizdin Hohammad v. Commissioner of Sales Tax* AIR 1956 Nag. 25, and that of the Bombay High Court in *Manilal Brijlal v. Gordhan Spg. and Mfg. Co.* AIR 1916 Bom. 147, that merely because a share is sold in court auction that does not make any difference for application of the prohibition contained in Article 7(1).

9. In my view, the appeal deserves to be dismissed for the following reasons:

Shares are movable property and the manner of transfer is provided u/s 82 of the Companies Act, 1956.

"82. Nature of shares - The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of

the company."

10. In execution of decrees by the sale of movable property, different procedures are provided under Order 21 of the Civil Procedure Code. In respect of shares of companies Order 21, Rules 79 and 80 are the relevant rules which read as under :

"Order 21, Rule 79(1)(2) and (3). Delivery of movable property, debts and shares.--(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Rule 80. Transfer of negotiable instruments and shares.--(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:--

A.B. by C.D.; Judge of the court of (or as the case may be), in a suit by E.F. against A.B.

(3) Until the transfer of such negotiable instrument or share, the court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself."

By a reading of the above two orders, it is manifest that the delivery of the shares sold, is made by first prohibiting the judgment-debtor and the company from transferring the share to any other person and if the judgment-debtor does not co-operate in transferring the share to the auction purchaser by signing any documents required by law, then under Rule 80, the judge or any officer

appointed by him may execute such documents, which when done, will have the effect as if the judgment-debtor executed the documents.

What "property" passes under these rules, is only the right, title and interest of judgment-debtor and these rules do not have the effect of either enlarging the right of the judgment-debtor or removing any restriction he was subject to, in the matter of transfer of his title to the property. In other words, if there was already a restriction on the right to transfer, such restriction continues to exist even after the court sale and a court sale does not stand on a higher pedestal than a private sale in this regard; if the judgment-debtor has a restricted right to property, the auction purchaser in the court sale will not get a higher right than the judgment-debtor; this is also the view of the Bombay and Nagpur High Courts.

Before the Bombay High Court, a similar question came up in Manilal Brijlal's case (*supra*). The facts in the said case are, "certain shares of the shareholder of Garden Co. were sold in a court auction in execution of a decree. The auction purchaser of the shares applied to the company to transfer and register his name in the company's registers. The directors refused to transfer and register. The auction purchaser approached the District Judge for relief which was rejected. On appeal to the Bombay High Court, Batchelor Actg. CJ and Shah J., by separate and concurring judgments dismissed the appeal. Batchelor Actg. C.J. held :

"A court sale does not stand on a better footing than a private sale. Where the sale is made by a private individual or by a court, the thing sold and transferred from the seller to the buyer is merely the property in the share plus a limited and not an absolute right to have the transfer registered."

Shah J. held :

"That an auction purchaser of a share purchases the property subject to the same limitation to which the original owner would sell privately. The intervention of the court and the compulsory character of sale cannot prejudice the rights of the company and cannot alter the position of the purchaser in any way on this point. There is nothing in the provisions of the Indian Companies Act and the CPC to support the argument that the company is deprived of its usual powers and relieved of its corresponding obligations to deal with a transfer application when the transfer is sought in virtue of a court sale."

11. In *Balwant Transport Co. Ltd. v. Y.H. Deshpande* AIR 1956 Nag. 20, also a similar question had come up. The facts being the share of one of the shareholders of the appellant's/BTC Co. was sold in court auction in execution of a money decree and it was purchased by the respondent/Deshpande. Deshpande applied to the company for entering his name in the register of shareholders. The company rejected the application relying on the discretion clause to refuse registration. Deshpande approached the District Judge who directed the company to transfer and register.

On appeal to the Nagpur High Court, the Division Bench of the Court through Hidayatulla J., as he then was for the Bench on the scope of Order 21, Rule 79(3) and Order 21, Rule 80 has held :

"All that is sold in a court auction is the right, title and interest of the judgment-debtor. Under Order 21, Rule 79(3) the court is empowered to prohibit the shareholder from making any transfer of his share and under Rule 80, the court is empowered to execute a document for and on behalf of judgment-debtor, and has the effect of execution by a party. On exercise of the power of the court under these two sub-rules the auction purchaser will not automatically become the member of the company and even after that the purchaser has to do something more, viz., apply to the company for transfer, registration and it is at that point of time the company is guided by its articles of association and may accept or reject."

12. The learned Judge has also concurred with the view of Acting Chief Justice Batchelor of the Bombay High Court in Manilal Brijlal's case (supra) that "at a court sale the purchaser does not purchase over and above his share, the absolute right of forcing the directors to register his name". The reasons are unassailable.

In the facts of this case, when the share of Bheemappa Naik was sold, it was already subject to the limitation and restriction of Article 7 of the articles of association and the court sale did not have the effect of removing the said restriction and, therefore, the company was well within its rights to refuse to transfer and register.

13. Now to refer to the arguments of Sri Kantharaj that the Madras and the Calcutta High Courts have taken different view, it has to be stated that the contention is not correct. The decisions in Soma Veerappa's case (supra) and Mahadeo Lal Agarwala's case (supra) referred to by the learned counsel in this regard in no way has differed from the Bombay and Nagpur High Courts as will be presently shown by me.

14. In Soma Veerappa's case (supra), the court has held that-

".....the transfer of interest in the shares from the transferor to the transferee is independent of the requirement of its registration for purposes of Companies Act and that as between the transferor and the transferee, the transfer would be valid even though the transferee may not be able to have the shares transferred registered in his name....." (p. 387)

On the nature of right passing in a court sale under Order 21, Rule 79, it was held that-

"...what passes to the purchaser of shares at a court sale is the beneficial interest in the shares sold, and that interest passes even though the company has discretion to recognised the purchaser as a shareholder or not....." (p. 387)

but the court never held that the judgment-debtor's right gets enlarged in a court auction and the company is bound to transfer and register the name of the auction purchaser even though there is a restriction of transfer of share. The court recognised the power of the company in this regard.

15. In Mahadeo Lal Agarwala's case (supra) that was a case where one of the articles of association of a company, viz., Article 25 provided that "it is only where the transferor and transferee by a letter jointly signed addressed to the company to mutate the name of transferee in the company's register, the share can be mutate"" : Relying on this article, it was contended that in a court auction sale certificate where the Presiding Judge signs the letter for and on behalf of the transferor, Article 25 is not complied with, inasmuch as the transferor has not personally signed the letter. It was held, "such a restriction of Article 25 will not apply to a court sale"; and rightly so, because Order 21, Rule 80, provides for such a procedure. This is not the same thing as to say that "the company is bound to transfer and register the share sold by court auction" or the judgment-debtor's right gets enlarged.

16. The learned trial judge has failed to notice this distinction while he came to the conclusion that the restrictions of Article 7 of the articles of association of the company have no application in cases where shares are sold by court auction and equally was in error in holding that the Calcutta High Court in Mahadeo Lal Agarwala 's case (supra) has taken such a view and thereby decreeing the suit and the appellate court was therefore justified in reversing this decree.

17. Appeal dismissed. No costs.