

(1957) 09 BOM CK 0001

In the Bombay High Court

Case No : Civil Application No's. 353 and 354 of 1957

Sadashiv Shankar Dandige

APPELLANT

Vs

The Gandhi Sewa Samaj Ltd. and Another

RESPONDENT

Date of Decision : 07-09-1957

Acts Referred:

Companies Act, 1956 — Section 111, 155, 155(1), 155(3), 28

Citation : AIR 1958 Bom 247 : (1958) 60 BOMLR 97

Hon'ble Judges : Kotval, J

Bench : Single Bench

Advocate : A.S. Bobde, for the Appellant; S.W. Dhabe. Advocate, for the Respondent

Judgement

1. These are petitions at the instance of two persons, Sadashiv Shankar Dandige and Chintaman Jagannath Kathikar, praying for a summary order directing the opponent Company to register the transfer of shares of the Company in their favour u/s 155 of the Indian Companies Act, 1956 (1 of 1956).

2. The Gandhi Sewa Samaj, Limited, is a public limited company. They have an authorized capital of 10000 shares of Rs. 10/- each, of which 1304 shares have been subscribed. By two deeds of transfer, two shareholders of the Company, namely, Mr. M.P. Jog and Mr. K.B. Tandaiyya, transferred their hundred shares each, respectively to the petitioner S. S. Dandige on 24-5-56 and to the petitioner C.J. Kathikar on 13-6-1956. Both the transfers were refused by the Company who, in the first instance merely informed the petitioners that they declined to register the transfer of the shares in their names. No reasons were assigned.

3. Both the petitioners then moved the Central Government in appeal u/s 111 of the Indian Companies Act and by an order passed on 13-11-56 the Central Government ordered the respondent Company to effect registration in their book of the 100 shares transferred to each of the petitioners. Nevertheless it appears the shares were not transferred and ultimately the petitioners have had to move

this Court u/s 155 of the Indian Companies Act.

4. The petitioners have also alleged that after the order of the Central Government dated 13-11-58, they forwarded the share scrips with the transfer deeds and the transfer fees to the opponent Company by registered post, but acceptance of the registered cover was refused. Both the petitioners also alleged that subsequently they went personally to the office of the Company and requested the Company to transfer the shares in their names.

5. The opponent Company did not deny that the registered letter reached their office but the position they have taken up is that they were unable to accept delivery of a sealed envelope and asked that they should be given open delivery which the postal authorities refused to do and therefore they were unable to accept the registered letter. They denied that the petitioners or any of them had come to the office of the Company subsequently to ask for registration of the transfers in their names.

6. As regards the two petitioners, the Company in their reply to the petition disclosed the reasons why they did not wish to register the transfer of shares in the name of either petitioner. They alleged against the petitioner S.S. Dandige that

"he was a known litigious and quarrelsome (sic) and would discredit and obstruct the management and create friction amongst the share-holders and act against the interests of the Company."

In paragraph 6 they alleged that the Board of Directors were convinced that the entry of the petitioner will not be in the interest of the Company as his relations were absolutely strained and he was likely to work against the interests of the Company. Similar allegations were made against the petitioner C.J. Kathikar in paragraphs 6 and 7 of the Company's reply.

7. Before I deal with the various allegations of fact it is necessary to consider two points raised on behalf of the petitioners. The first point raised is that in view of the order of the Central Government u/s 111 of the Companies Act, the Company had no right to dispute the right to transfer and that they were bound by the order passed u/s 111. Mr. Bobde on behalf of the petitioners urged that Section 155(b) refers to a case where a default is made or unnecessary delay takes place in entering on the register the fact of a person having become or ceased to become a member, and he urged that this must be read in conjunction with Section 111 which prescribes the forum where the question could be decided; and therefore if once the proper forum, that is to say, the Central Government, to whom an appeal lies, has come to a decision that the petitioners were entitled to be registered as members of the Company, then it was merely a case of the Company making default or occasioning unnecessary delay in entering on the register the fact of their having become members within the meaning of Section 155(1)(b). That sub-section therefore indicates that no fresh inquiry need be made and the order u/s 111 is final and binding.

8. In my opinion, this contention overlooks the powers of the Court u/s 155, Sub-section (3), which are of the widest amplitude, particularly Clause (b) of Sub-section (3) which gives the Court the power in the following words:

"generally may decide any question which it is necessary or expedient to decide in connection with the application for rectification".

I am unable to hold that Section 155 is not dependent upon Section 111. On the contrary it appears to me that Section 155 is the controlling section and gives the Court an overriding power notwithstanding any previous order of the Central Government. It would be meaningless to give the court a general power to decide any question including any question relating to the title of a person as is given by Section 155(3) and then indirectly cut off that power by giving the Central Government the same power to decide the same question in appeal first. The contention, in my opinion, fails.

9. The second contention, however, is more important. It was urged that the Company having regard to their powers under the Act as also under their Articles of Association, could not refuse to register the transfer of the shares in favour of the petitioners.

10. u/s 82 of the Companies Act the share of other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company. The section therefore clearly provides that shares in a company shall be capable of being transferred in the manner provided by the articles of the company, and it is well settled that unless the articles otherwise provide a share-holder has a free right to transfer his shares to whom he chooses. See in this respect Palmer's Company Law, 19th edition, page 108. It is not necessary to seek in the articles for a power to transfer for the Act gives that. It is only necessary to look to the articles to ascertain the mode of transfer and the restrictions upon it. Thus a member has a right to transfer his shares to another member unless this right is clearly taken away by the articles; and Palmer goes on to stress that

"so absolute, prima facie, is the right that a transfer by a share-holder, if out and out, is valid though made to a pauper and with an avowed object of escaping liability".

11. I then turn to the Articles to see if any such power justifying restriction of the right of transfer exists. On behalf of the Company reference was made to Article 9 from which it was sought to derive the Company's power to refuse to transfer. Article 9 runs as follows:

"The shares shall be under the control of the Directors who may allot or otherwise dispose of the same to such persons, on such terms and conditions and at such times as they think fit and full power to give to any person, the right to call for the allotment of any shares either at par or at a premium, for such time and for such considerations as the directors may see fit".

Now, in the first place, the Article appears under a chapter or under a heading entitled "Capital". By its very terms it seems to me that it applies to the first allotment or disposal of the shares after the Company was formed, and though it speaks of the shares being under the control of the directors, the subsequent portions of the Article clearly indicate that it is the right of allotment or disposal of the shares at the inception of the Company that was alone dealt, with by Article 9 and not the transmission or transfer of shares. Otherwise, the words "and full power to give to any person the right to call for the allotment of any shares either at par or at a premium, for such time and for such considerations as the director may see fit" would be inapplicable. In fact, these words can. only be used in the context of a new issue of capital and not in the context of a transfer of capital already issued.

12. But the Company has dealt with the subject of transfer and transmission of shares in Articles 38 to 43 as the heading of the part containing those articles would show, and one would expect that if a power to refuse registration of shares was reserved by the Company, such power would find place among those Articles, but none of these articles were referred to-at Bar or deal with the subject.

13. In the absence of any express provision in the Articles themselves, no doubt Regulation 21 of Table A would apply by virtue of section 28, but Regulation 21 merely refers to the transfer of shares not being fully paid up" shares-and to no other shares and it is admitted here that the shares in the present case were fully paid up shares and therefore Regulation 21 would be out of place.

14. In fact, Article 40 of the Company's Articles gives an almost identical power as is contained in Regulation 21. But Article 40 also refers merely to shares which are not fully paid up and therefore will not apply in the present case.

15. Curiously enough, therefore, it does appear that the Articles of this Company reserved no power to the Company" or their directors to refuse the registration of shares except in the case of shares which are not fully paid up.

16. If then there was no power in the Company to refuse to register the shares I do not see how the Company can urge grounds in justification of their refusal. I hold therefore that the Company not having the power to refuse registration of the shares in respect of which the petitioners had applied to be registered as members, the Company cannot now urge any grounds in justification of their refusal.

17. But then it was urged by Mr. Dhabe on behalf of the Company that the Company in the present case had never accepted the position that there was 3 transfer of shares at all and that at least the petitioners were bound to show that a valid transfer had taken place before the question of the power of the Company to refuse transfer can arise.

18. The two transfer deeds have been filed by the respective petitioners and they

are duly attested; and on the face of those transfer deeds there appears nothing to indicate that they were either bogus or not genuine or were obtained by fraud. The Company never disputed the fact of transfer except for the first time in their written statement in answer to the present petitions. Even before the Central Government they were asked to appear and substantiate their allegations that the transfer deeds were invalid and not bona fide transactions, but they failed to appear before that tribunal. In view of all this, I accept the petitioners' affidavits that the transfers were effected in their favour.

19. Apart from this it seems to me that if the bare denial by the Company of a transfer, which on the face of it is proper, were to be held sufficient to oust the jurisdiction of this Court to make an order u/s 155 that provision of law would in most cases be rendered nugatory and its exercise made dependent upon the caprice of the Company. The jurisdiction is of a summary nature and therefore obviously a detailed investigation cannot be entered into. Now if in such circumstances, if the fact of transfer is denied by the Company the Courts will have to investigate the matter and the objection will be raised that that cannot be done in a summary proceeding. Thus the provision will be rendered otiose in most cases. This could not be the intention of the legislature.

20. In the present case, moreover, the Company's pleadings do not clearly deny the fact of execution of the transfer deeds. The relevant pleading of the Company in this behalf is contained in paragraphs 5 and 6 of their replies in each case. No doubt, there is the general denial that the allegations in paragraph 5 of the petition are denied. In paragraph 5 the petitioners recited that they had taken the transfer for cash consideration. But there is no more specific plea than that. The only specific plea was that it was denied that

"any cash consideration was passed for the same and that too to the extent of Rs. one thousand. In fact the value of the shares was very much low at that time and there was no real buyer for these shares in the market".

The Company further pleaded that the relations between the petitioner and the Managing Partner of the Managing Agency (opponent No. 2 in the petition) being strained, "N.A. 2 (Managing Partner of the Managing Agency) became suspicious of the whole transaction and was convinced that the transaction was bogus and the applicant wanted to make an entry into the Company only to create trouble and hinder the smooth working of the Company. The N.A. No. 2 therefore made enquiries and learnt that the applicant had in fact paid no cash of one thousand as alleged".

In paragraph 6 there is the general allegation that the transfer itself is not bona fide. No particulars as to why the opponent Company considers it not bona fide have been stated.

21. Now, it was argued that the Company having denied paragraph 5 of the petition and the fact of transfer, the basic facts upon which a petition u/s 155 alone can be founded are in dispute. It was urged that unless in the first place a

valid transfer was admitted or proved beyond doubt the question of the power of the Company cannot arise; and that since the facts were in dispute this Court in the exercise of its summary jurisdiction ought not to pass any order but relegate the parties to their remedy in a civil Court.

22. I have already said that prima facie there is nothing on the face of the transfer deeds to show that they were not genuine or bogus or not bona fide. It was urged that even the signature of the transferor is not proved. The Company had in their possession the signatures of the transferors M. P. Jog & K. B. Tandaiyya to whom the shares were originally allotted, but they did not allege that the signatures of the transferors did not tally with the signatures in their possession, nor did they allege that the transferors' signatures upon the transfer deeds were forgeries. There is no specific denial of the execution of the transfer deeds.

23. On behalf of the Company Mr. Dhabe relied upon a number of cases. They were Mohd. Azam Gori v. Mohd Salahuddin AIR 1953 Hyd 15, Devakumar Mishra Vs. Rupak Ltd., and Sm. Savitadevi Jhunjhunwala v. Karinagar Sugar Mills Ltd. AIR 1955 NUC (Bom) 4833 a case decided by Mr. Justice Coyajee. The Hyderabad case referred to above was a case where the Company had from the inception disputed as a forgery, the signature of the transferor upon the transfer deed presented to it, and the Court held in those circumstances that they were not concerned to enquire whether it was a genuine signature or not. This, as I have already emphasized, is the very circumstance which was not pleaded by the Company in the present case. Only the consideration was disputed. In Devakumar v. Rupak Ltd. (B) (cit. sup.) the dispute which was before the Court was whether certain resolutions of the Company were valid and intra vires and whether there could be a valid transfer of shares in pursuance of such resolutions and the Court held that such issues arising between the parties could not be properly decided in a summary proceeding. In Sm. Savitadevi Jhunjhunwala v. Harinagar Sugar Mills Ltd. (C). (cit. sup.) though the reported decision was not placed before me there appears to have been a controversy under several heads raised before the Court and the Court remarked that a regular investigation would have to be held and therefore it directed the parties to proceed in a regular manner by way of a suit. In my opinion, these were cases where the controversy raised regarding the transfers was a type which involved detailed investigation whereas in the present case, except the plea regarding want of consideration and the plea that the transfer took place at a date 8 days earlier than the date shown upon the face of the document, there was substantially no other plea properly raised on behalf of the Company which needs investigation.

24. Regarding the want of consideration, I am unable to see how that is a concern of the Company, because even assuming that the shares were transferred without consideration e.g. as a gift, they would still be validly transferred. As to the other objection that the transfers took place on or about 17-5-1956 whereas the transfer documents show that they were executed on

24-5-56 and 13-6-56, the plea, even if true, cannot result in vitiating the transfers nor can it justify the refusal on the part of the Company to register the transfers because it is well known that transactions do take place earlier and then the formal documents of transfer are executed, at a later date. Nothing turns upon this point.

25. Another objection raised by the Company is on the basis of Article 39 of the Articles of the Company. The objection in substance is that the transfer deeds were not lodged in compliance with Article 39 and therefore the Company was not bound to transfer and so no question of their power to transfer can arise. Article 39 requires that

"every instrument of transfer shall be deposited with the Company and no transfer shall be registered until such instrument shall be so deposited, together with the certificate of the shares to be transferred, and together with any other evidence the managing agents may require to prove the title of the transferor or his right to transfer the shares....."

Now, the objection seems to be that the petitioners did not deposit the instruments of transfers with the Company, but, on their own showing, sent them by registered post. The objection, in the first place, even assuming that it is a valid objection, appears to me to be far too technical in order to justify on that ground the refusal by the Company to register the transfers of the share. After all, these provisions are meant to ensure that the Company receives the shares safely so that they may be enabled to proceed with the transfer promptly; and if it is shown that the shares were sent to them instead of being directly deposited with the Company, I think that that would be sufficient compliance with the requirements of Article 39.

26. But, quite apart from this, section 51 of the Companies Act expressly provides that a document may be served on a Company or an officer thereof by sending it to the Company or officer at the registered office of the company by post under a certificate of posting, or by registered post, or by leaving it at its registered office. In the face of this clear provision of the Act itself, I do not see how Article 39 which limits the mode of sending to only one of the three modes prescribed in the section can be justified. In my opinion, the petitioners were well within their rights to send the shares by registered post as they admittedly did.

27. The plea of the Company that they suspected that there might be nothing in the envelopes and that therefore they were justified in asking the postal authorities to give them open delivery in the presence of the senders is, in my opinion, frivolous. There was no material before the Company on which they could have reasonably suspected that the envelopes contained nothing. This was nothing but an objection raised for the sake of raising an objection and is certainly not indicative of bona fides on the part of the Company, especially when one considers the strained relationship between the petitioners and the principal persons in charge of the management of the Company.

28. The only other objection which remains to be dealt with is that the transferors not being parties to these proceedings, the proceedings must fail. There does not appear to be any provision of law which makes it essential that the transferor should be a party to a proceeding in which the transferee requires a company to accept a transfer deed and register the shares in his name. In fact, the normal procedure in this behalf is to give notice to the transferor and if no reply is received objecting to the transfer, to accept the transfer as genuine. But, of course, in the present case that occasion never arose because of the wrongful refusal of the Company to accept the registered envelope sent by the petitioners. In any event, I do not see how the transferors could have helped to resolve the dispute between the parties in the present proceedings. I do not think the transferors were necessary parties. There is no substance in this objection.

29. But, as I have shown, all these pleas raised by the Company, even assuming that they had been decided in favour of the Company, cannot avail them for the principal reason that they never had any power to refuse to register the transfer of the shares in favour of the petitioners at any time. As I have said, unless such a power can be spelt out from the Articles, the right of a person to have registered, the shares transferred to him, is statutorily given to him. That right does not appear to have been taken away, nor has any restriction of that right been conferred upon the Company by the Articles. Therefore, irrespective of the pleas raised by the Company, I am of opinion that they had no power to refuse to register the transfer of the shares in the present case.

30. In the result, therefore, I allow the two petitions and order the opponent Company to effect the registration in their books, of the transfer of the hundred shares each in the names of the petitioners in terms of the transfer deeds dated 24-5-1956 and 33-6-1956 and to give notice to the Registrar u/s 156 of the Act. The Company shall pay the costs of these proceedings to the petitioners.

31. Petitions allowed.