

(1987) 02 BOM CK 0013
In the Bombay High Court

Shailesh Prabhudas Mehta and others	APPELLANT
Vs	
Calico Dyeing and Printing Mills Ltd	RESPONDENT

Date of Decision : 27-02-1987

Acts Referred:

Companies Act, 1956 — Section 108, 109, 111, 111(2), 119

Citation : (1990) 67 CompCas 533

Hon'ble Judges : S.N. Variava, J

Bench : Single Bench

Advocate : S.U. Kamdar, for the Appellant; J.I. Mehta, for the Respondent

Judgement

S.N. Variava, J.—This petition is for rectification of the Register of members of the respondent - company by deleting the names of the Prabhudas V. Mehta and substituting in its place and stead the names of the petitioners herein in respect of 100 shares of Rs. 100 each in the respondent-company being distinctive numbers 9101 to 9200. The said Prabhudas V. Mehta died intestate on August 26, 1974. Prior to his death, the said deceased P. V. Mehta was holding the abovementioned shares and was working as an employee of the respondent - company. There were certain disputes between the said P. V. Mehta, and the directors of the respondent-company and efforts were made by the director to purchase the shares held by him. Some negotiations had taken place, but they could not be completed in view of the sudden death of P. V. Mehta. It appears that subsequent to the death of P.V.Mehta, the petitioner also entered into negotiations for sale of shares in favour of the directors of the company and those negotiations were carried on for several years. On May 28, 1977, a letter has been addressed by the petitioner for transmission of the abovementioned shares in favour of the petitioners as the heirs and legal representatives of the deceased. This letter is at exhibit "A" to the petition. As no reply was received to this letter, a reminder was also sent on June 27, 1977, which is at exhibit "B" to the petition. On July 9, 1977 an advocate's notice has also been addressed to the respondent -company in this behalf. Thereafter, it seems that as a result of negotiations, nothing further was done until June 23, 1984, when the respondent-

company wrote a letter, exhibit "D", asking the petitioners to approach a the respondent-company after obtaining a succession certificate. On September 23, 1984, letters of administration/heirship certificates were issued in favour of the petitioners by the Second Joint Senior Judge, Senior Division, Rajkot, inter alia, in respect of these 100 shares and even though the petitioners addressed two letters dated August 31, 1984 and September 16, 1984 (exhibits "E" and "F" to the petition), it was only on November 21, 1984, that the petitioners forwarded to the company the heirship certificate along with a notice exercising right of election to become a member of the company and complying with all the requisitions of the respondent as laid down in the company's letter dated September 19, 1984. Therefore, as admitted by Mr. Kamdar, learned counsel for the petitioners, it was only on November 21, 1984, that a requisition complete in all respects was made to the respondent -company for substituting the names of the petitioners in the records of the company in place and stead of the deceased. On December 29, 1984, a reminder was sent by the petitioners and even before two months were over, this petition was filed on January 14, 1985, u/s 155 of the Companies Act. This petition was initially filed, inter alia, on the grounds that there is unreasonable delay in granting transfer of shares and that the respondent -company was trying to close down its business and dispose of substantially all its properties. The company filed an affidavit on April 6, 1985, pointing out that the company had decided to refuse the transfer of shares in the names of the petitioners in exercise of powers conferred under the articles of association and, thereafter, the respondent company on April 9, 1985, passed a resolution refusing to register the transfer which resolution has been annexed to the affidavit of the respondent-company dated April 17, 1985. The resolution seeks to reject the said transmission without assigning any reasons. In the meantime, the petitioners had on April 10, 1985, filed an affidavit in rejoinder in which it was alleged that the refusal of the company was not supported by any resolution of the board of directors and that the company had exercised the power fide and arbitrarily and that the alleged non-communications was bad in law.

2. On the basis of the above affidavits, the petition came up for hearing and was dismissed by this court on April 17, 1985, on the ground that the petitioner had an alternate remedy u/s 111 of the Companies Act, and, therefore, the petition was not maintainable. As against this order, the petitioners went in appeal, being Appeal No. 388 of 1985, which appeal was finally disposed of by the appellate court on December 2, 1985, by which order the said company petition had been remanded to this court for disposal. However, by the said order, liberty was reserved to parties to file affidavits, one dated January 29, 1986, and the second dated February 18, 1986, and the petitioners have filed an affidavits, one dated January 29, 1986, and the petitioners have filed an affidavits dated February 27, 1986. It is under these circumstances that the petition has come up for hearing today.

3. Mr. Kamdar had urged a very interesting point of law. His first submission had

been that the time limit provided under article 26 of the article of association of the respondent - company as read with section 111(2) of the Companies Act, was the maximum time permitted and that if the power to decline to register is not exercised within the stipulated period, that is the period of two months , then that power is lost. Mr. Kamdar has also submitted on merits that an exercise of power of refusal to transmit shares after a period of time is itself an indication of mala fide exercise of power and that a power given under the articles of association to refuse registration of shares can be exercised only in cases where the directors can be said to have acted in the interest of the company.

4. The first contention of Mr. Kamdar is based on articles 26 and 34 of the articles of association of the respondent-company and section 111 of the Companies Act, 1956, which provides as follows :

"26. Subject to the provision of section 111 of the Act, the directors may , in their absolute discretion and without assigning any reason therefore ,decline to register any transfer of any share, whether or not it is a fully paid share. If the directors decline to register a transfer of any shares, they shall, within two months after the date on which the transfer was lodged with the company, send to the transferee and the transferor notice of the refusal."

"34. Any person becoming entitled to a share in consequences of the death or insolvency of member may, upon such evidence as to the title being produced as may from time to time be required by the directors, and subject as hereinafter provided, elect, either to be registered himself as holder of the share (or to make such transfer of the share) as the deceased or insolvent member could have made. The directors shall, in either case, have the same right to decline or suspend registration as they would have had, if the deceased or insolvent member had transferred the share before his death or insolvency."

"Section 111 of the Companies Act, 1956, read as follows :

Power to refuse registration and appeal against refusal.- (1) Nothing in sections 108,109, and 119 shall; prejudice any power of the company under its articles to refuse to register of. or the transmission by operation of law of the right to, any shares or interest of a member, in , or debentures of the company.

(2) If a company refuses whether in pursuance of any power under its articles or otherwise, to register any such transfer or transmission of right, it shall, within two months from the date on which the instruments 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 transferee and the transferor or to the person giving intimation of such transmission, as the case may be.

If default is made in complying with this sub-section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(3) The transferor or transferee, or the person who gave intimation of the

transmission by operation of law, a the case may be ; may where the company is a public company or private company which is subsidiary of a public company, appeal to the Central Government against any refusal of the company to register or transmission, or against any failure on his part, within the period referred to in sub-section (2), either to register the transfer or transmissions or to send notice of its refusal to register the same.

(4) An appeal to the Central Government under sub-section (3) shall be made-

(a) in case the appeal is against the refusal referred to register a transfer or transmission within two months of the receipt by him of the notice of refusal ; and

(b) in case the appeal is against the failure referred to in sub-section (3) within in two months from the expiry of the period preferred to the sub-section (2).

(4A) Every appeal under sub-section (3) shall be made by a petition in writing and shall be accompanied by such fee not exceeding fifty rupees as may be prescribed by the Central Government.

(5) The Central Government shall, after causing reasonable notice to be given to the company and also be to the transferor and the transferred or as the case may require to the person giving intimation of the transmission by operation of law and and the previous owned, if any, and giving them a reasonable opportunity to make their representations, if any in writing, by order, direct either that the transfer or transmission shall be registered by the company or that it need not be registered by it ; and in the former case , the company shall give effect to the decision within ten days of the receipt of the order.

(5A) Before making an order under sub-section (5) on an appeal against any refusal of the company to register any transfer or transmission, the Central Government may require the company to disclose to it the reasons for such refusal, and on the failure or refusal of the company to disclose such reasons, that Government may, notwithstanding anything contained in the articles of the company, presume that the disclosure, if made would be unfavorable to the company.

(6) The Central Government may, in its order aforesaid, give such incidental and consequential directions as to the payment of costs or otherwise as it thinks fit.

(7) All proceedings in appeals under sub-section (3) or in relation thereto shall be confidential, and no suit, prosecution or other legal proceedings shall lie in respect of any allegation made in such proceedings, whether orally or otherwise.

(8) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interests of a member in, or debentures of, the company, is transmitted by a sale thereof held by a court or other public authority, the provisions of sub-sections (3)to (7) shall apply as if the company were a public company :

Provided that the Central Government may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member of members of the company specified in the order require the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefore or such other sum as the Central Government may determine to be a reasonable compensation for the right in all the circumstances of the case.

(9) If default is made in giving effect to the order of the Central Government within the period specified in sub-section (5) or to a direction of that Government gave under the provision to sub-section (8), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for every day after the first during which the default continues."

5. It is the submission of Mr. Kamdar that under article 34, on the death of the deceased, the petitioners are the persons entitled to shares in consequence of the death and that in this respect the directors of the respondent-company have the same rights to decline or suspend registration as if the deceased had transferred shares before his death which is in the manner laid down under article 26. Under article 26 as well as u/s 111(2) of the Companies Act, there is a duty cast on the respondent-company to send to the transferee, as well as transferor, notice of refusal. According to Mr. Kamdar, this necessarily implies that there must be first a refusal has to be a compulsorily sent within a period of two months, it automatically follows that the right of refusal must be exercised within this period of two months. According to Mr. Kamdar, if the directors have not exercised this right of refusal within the prescribed period of two months by passing an appropriate resolution, then the said right is lost for ever as the period of two months is the outer limit available to the directors. Further, according to Mr. Kamdar, on this right being lost, the transferee gets an absolute and unrestricted right to have the share register rectified by having his name entered therein. Mr. Kamdar submits that on November 21, 1984, a requisition complete in all respects was sent to the respondent-company and it was only by their purported resolution dated April 9, 1985, that the directors have sought to refuse and in the submission of Mr. Kamdar, therefore, the right of the directors to refuse was lost within the period of two months after November 21, 1984, and the refusal and/or the resolution passed on April 9, 1985, is of no effect and void as against the petitioners who now have an absolute right vested in them to have the shares transferred in their names. Mr. Kamdar in support of his contention has relied on an English decision in the case of *Swaledale Cleaners Ltd., In re* [1968] 1 ALL ER 1132, wherein Lord Justice Pennycuik, whilst considering whether by reason of delay the power of veto is lost, has held as follows (at page 1136) :

"(i)....the period of two months mentioned in clause 19 of Table A under the Act of 1929, and specified in section 78 of the Act of 1948, may, I think, safely be

taken as the outside limit after which there is unnecessary delay.

(ii) The power of veto is a restriction on the right of alienation and as such must, I think, be exercised at the proper time is the occasion on which the transfers are placed before the board for confirmation if and it seems to me only if they are so placed without unnecessary delay. If there is unnecessary delay in placing the transfers before the board, the power of veto must, I think, be regarded as lost, so that the right of transfer becomes unrestricted. It cannot be the law that the board of a company can improperly delay considering a transfer and then when driven to do so, as for instance here, by the launching of a motion, exercise the power of veto....."

6. This case came to be considered by the Court of Appeal as reported in *Swaledale Cleaners Ltd., In re* [1968] 3 ALL ER 619. It may be stated that the Court of Appeal, whilst dismissing the appeal, has watered down the broad proposition laid by Lord Justice Pennycuik by stating as follows (at page 622):

"As to unreasonable delay, I take the view of the judge (and it seems to me merely, if I may say so, common sense), that, as there is an obligation on directors who refuse to register a transfer to inform the persons who are aggrieved within two months of such a refusal, the Act of 1948 quite clearly indicates that a reasonable time, other things being equal, within which directors must make up their minds either to accept the transfer or to refuse it must be the two months within which they have to make an answer. Therefore, it does seem to me that waiting for four months without any decision at all was an unreasonable delay. One has, however, to go one step further than that ; one has to say that unreasonable delay has destroyed the right so that when, in December, 1967, the new board purported to refuse, they were no longer in a position to exercise that discretion which, if they had acted promptly, undoubtedly would have been theirs, to consider and, if they thought fit in the interests of the company, to refuse registration of the transfers" .

This case was u/s 78 of the English Companies Act which provides as under :

(1) if a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company , send to the transferee notice of the refusal."

7. It is to be noted that section 78, unlike section 111 of our Act, does not provide for any penalty nor for any appeal.

8. Mr. Kamdar, relying upon authorities, states that these clearly support his contention that once the period laid down under article 26 and section 111 of the Companies Act expires, the right of veto is lost and that it was not open to the respondent- company to pass any resolution as purported to be done on April 9, 1985, as by that time an absolute right to have the share transferred in the names of the petitioners had already accrued in their favour. Mr. Kamdar has also referred to the case of *Vidyasagar Cotton Mills Ltd. v. Mt. Nazmunnessa Begum*

[1964] 34 Comp Cas 704, wherein it is, inter alia, laid down as follows (at page 711) :

"Mr. Sen next contended that there has been no default or unnecessary delay within the meaning of section 155(1)(b) and, consequently, the court has no jurisdiction to pass the order of rectification u/s 155. On the point of unnecessary delay, the practice is well stated in Buckley on the Companies Acts, 12th edition, page 290, thus : 'A transfer to which no objection can be made ought to be confirmed by the directors at the first meeting at which in the ordinary course of business it can be confirmed, and thereupon registered. If not so confirmed, there is "unnecessary delay"..... The section thus covers all cases of improper refusal or neglect. It has even held that default on the part of the company is not essential and that if upon deciding the question of legal title it appears that the right name is not registered, there is jurisdiction to rectify (see Buckley on the Companies Acts. 12th edition page 263: Ex Parte Word [1868] LR 3 Exch 180 and Diamond Rock Boring Co., In re [1877] LR 2 QBD 463. In the case last cited, the dispute was between two rival claimants and the company did not oppose, whereas in the case before us the company opposes the rectification....."

9. However, this authority deals with the powers of the court u/s 155 of the Companies Act and does not lay down what Mr. Kamdar is urging, Mr. Kamdar then cited the case of State of Orissa V. Indian Chemical Products Ltd. [1958] 28 Comp Cas 500 where, inter alia, it is laid down that the attitude of the company in refusing to register was not bona fide. However, that is on the facts of that particular case and does not avail Mr. Kamdar much as far as this particular case is concerned.

10. Mr. Mehta, on the other hand, has argued that no such implication as urged by Mr. Kamdar can be presumed. Mr. Mehta argues that if the Legislature intended that on the expiry of a period of two months, the right of refusal was to come to an end and/or that an absolute right was to be created in favour of a transferee, then the Legislature would have so categorically provided. Mr. Mehta submits that when the Legislature wants to provide for a deeming provision, the Legislature always so provides According to Mr. Mehta neither under article 26 nor u/s 111(2) of the Companies Act was there any provision regarding a vesting or right in favour of the transferee on the expiry of a period of two months or a restriction on the right of refusal of the company According to Mr. Mehta what section 111 of the Companies Act provided was that on a refusal. intimation of such refusal should be sent to the transferee and the transferor and that if there was a failure on the part of the company to send such an intimation, then a penalty would be levied as laid down under subclause (2). According to Mr. Mehta, if an absolute right was to be created in favour of a transferee on the expiry of two months, then there is no reason why a penalty should be levied on the company. Mr. Mehta also drew my attention to the case of Amraoti Electric Supply Co. V. R. S. Chandak [1954] 24 Comp Cas 465 here a Division Bench of the Nagpur High Court has, inter alia, provided as follows (at page 471) :

"It was, however, contended that as a default was made in intimating the refusal to register the transfer in excess of the period specified in sub-section (4) of section 34 of the Indian Companies Act, the company was bound to register the transfer. In this connection, it may be noted that the application for registering the transfer was returned by the company within one month of the date of its presentation. This was tantamount to an intimation of the refusal to register the transfer of the shares. It is also clear from sub-section (5) that a breach of sub-section (4) only entails a penalty and does not entitle the transferee to an automatic rectification of the register".

11. Mr. Mehta further submits that section 111 also provides for a right of appeal to the Central Government and that the matters in respect of which appeals are provided for are, inter alia, a failure to send a notice of refusal. According to Mr. Mehta if on a failure to send a notice within the time stipulated an absolute right vested in the transferee, then the question of the transferee having to file an appeal before the Central Government and the Central Government thereafter deciding whether or not a transfer should be registered in favour of the transferee would not arise at all. These arguments of Mr. Mehta have a lot of substance. It is to be noted that section 111 of the Companies Act does not specifically provide for the vesting of any right in favour of a transferee or of the right of refusal of the company coming to an end at the expiry of the period of refusal of the company coming to an end at the expiry of the period stipulated therein. In fact, all that section 111(2) provides is that in the event of a company refusing to register any transfer or transmission. It must within two months send notice of intimation of its refusal to the transferor or transferee. Sub-section (2) further provides that if such notice is not sent then every officer of the company who is in default shall be punishable with fine as stipulated therein. Thus this section merely deals with a right to receive a notice and the consequence of non-sending of a notice is a penalty. Further under sub-section (3) one of the matters on which an appeal can be filed to the Central Government is non-sending of a notice and Mr. Kamdar does not dispute that the appeal which may be filed may be only in respect of non-sending of a notice and even in that case, the Central Government under sub-section (5) will have the power to decide whether or not the transfer or transmission should be registered. If as Mr. Kamdar submitted an absolute right vested in a transferee, then the question of the Central Government having power to decide in an appeal of the sort mentioned hereinabove would not arise because in that case automatically, the transferee would have a right to insist that his name be registered, Realising this difficulty, Mr. Kamdar modified his arguments to say that it is the right to refuse without assigning any reason that would be lost u/s 111 but that even, after the period of two months, if there was any valid ground for refusal. e. g., the transfer forms not being properly stamped, then in that event, the company could refuse. Thus, even according to Mr. Kamdar, no absolute right would vest in the transferee and the company could under certain circumstances act even beyond the period of two months. But this argument is not acceptable as section 111 does not

make any such distinction and says that only in cases where the company is exercising its right to refuse without assigning reasons. notice of refusal shall be given within two months and/or that in other cases notice can be sent later. Thus, it is clear that what was intended u/s 111 was to provide for a notice of refusal to be sent and that the failure thereof only entailed penalty. This view is also supported by the observation of the Division Bench of the Nagpur High Court in the case of Amraoti Electric Supply Co. V. R. S Chandak [1954] 24 Comp Cas 465. Mr. Kamdar, however contended that these observation were made on the facts of that articular case. What Mr. Kamdar, however, overlooks is that the observation were made in answer to a similar argument as in this lated period, the right of refusal is lost, Under the circumstances, the arguments of Mr. Kamdar that on the expiry of a period of two months. the right of veto is lost and that the petitioners are as a matter of right entitled to have the shares transferred to their names and to have the register rectified accordingly cannot be accepted and is rejected.

12. The second submission of Mr. Kamdar was that in any case, reasons given by the respondent-company for refusing to register the transmission and transfer shares were such that it cannot be said that the directors had acted in the interst of the company. According to Mr. Kamdar, the exercise of the power of refusal to transmit shares after such a long period was itself a clear indication of mala fide exercise of power on the part of the directors of the company and that in all such cases where the director purport to give reasons, the court can and should test the reasons and see whether the refusal was in the interest of the company or whether it was motivated out of personal interst of the directors of the company Mr. Kamdar has, for this purpose, relied on the case of Bajaj Auto Ltd, V. N. K. Firodia [1971] 41 Comp Cas 1 wherein it has been laid down that where a company purports to give reasons, it was open to the court to consider whether the reasons were legitimate and/or genuine and whether the directors had acted in the interst of the company. Mr. Kamdar also relied upon this authority to show that the reasons given in that case were not considered to be legitimate by the Supreme Court and he submits that in the present case also reasons of a similar nature are given and that they should also be rejected on the reasonings given by the Supreme Court. It may only be mentioned at this stage that the proposition that the Court must consider the reasons and test them is accepted. However, whether the reasons given are to be accepted or not has to be tested on the facts of each particular case. Mr. Kamdar also relied on the case of LIC V. Escorts Ltd. [1986] 59 Comp Case 548 wherein in paragraph 83, the earlier judgment of Bajaj Auto Ltd. [1971] 41 Comp Cas 1 is cited with approval and it is laid down as follows (at page 617) :

". . . . The nature and extent of the power of the company to refuse to register the transfer of shares has been explained by this court in Bajaj Auto Ltd. V. N> K> Firodia [1971] 41 Comp Cas 1 . It was said that even if the article of the company provided that the directors might at their absolute and uncontrolled discretion decline to register any transfer of shares, such discretion does not

mean a bare affirmation or negation of a proposal. Discretion implies just and proper consideration of the proposal, in the facts and circumstances of the case., In the exercise of that discretion. the directors will act for the paramount interest of the company and for the general interest of the shareholders because the directors are in a fiduciary position both towards the company and towards every shareholder. The directors are, therefore, required to act bona fide and not arbitrarily and not for any collateral motive. "Where the articles permitted the directors but will assume that they acted reasonably and bona fide. Where the directors gave reasons, the court would consider whether the reasons were legitimate and whether the directors proceeded on a right or wrong principle. If the articles permitted the directors not to disclose the reasons, they could be interrogated and asked to disclose the reasons. If they failed to disclose that reason, adverse presumption could be drawn against them.

13. Mr. Mehta. on the other hand, had submitted that unless it is shown that, the power of refusal was exercised oppressively oppressively, capriciously, or corruptly or in some ways mala fide or for any collateral purpose, the court cannot overrule the decision of the directors and substitute its own judgment to that of the directors. Mr. Mehta has in this behalf relied upon the case of Harinagar Sugar Mills Ltd. V, Shyam Sunder Jhunhunwala [1961] 31 Comp Cas 387 and the case of Balwant Transport Co. Ltd. V. Y, H. Deshpande, AIR 1956 Nag 20, In support of this contention, Mr. Mehta also points out that in fact no allegations of mala fides are made in the petition at all, and for that reason also the court should not interfere.

14. In the present case, the reasons are to be found in the affidavits dated April 6, 1985, January 29, 1986, and February 18, 1986, Briefly summarised, the reasons given by the company in these affidavits are that at an earlier stage, there had been in fact negotiations between the deceased-shareholder and the company for the purposes of enabling the company to buy over the shares of the deceased shareholder and that at one stage it had been agreed that the directors would buy over these shares for adequate compensation, and therefore, it was alleged by the company that this petition had been filed merely with a view to pressurise the directors of the company into paying the petitioners a much higher compensation for the said shares. According to Mr. Kamdar, this statement clearly shows that the real reason for refusing the transfer they are not willing to transfer the shares in the names of the petitioners. I do not think that from the statement made by the company any such intention can be presumed. The other reason which has been stated in the affidavit is that the deceased shareholder was in fact one of the directors of the company and an employee of the company. However, for a few years prior to his death, the deceased had behaved in a manner prejudicial to the interest of the company and had attempted to hamper the working of the company Mr. Kamdar points out, and to my mind rightly, that while such an allegation is made, no particulars or details of this allegation have been given till date even though the deceased died in 1974, However, I do not agree with Mr. Kamdar that this itself shows mala fides on the

part of the company. Another reason given is that the deceased had an interest along with other directors of the company in Calico Industrial Engineers. Sonex Machine Tools, Rajkot Sonex and Jacobi and Power Tools and Equipment Company, Rajkot, and that in respect of all these concerns also disputes and differences had arisen between the deceased and the other directors and that even during the lifetime of the deceased petitioner No. 1 had taken an active part in all these disputes and had always taken a very obstinate stand, It is also mentioned that even in 1976, the first petitioner had approached one B. M. Kothari and had requested him to act as mediator and that the said Mr. Kothari had agreed to act as a mediator. However, it was the first petitioner who refused to co-operate, and therefore, mediation could not take place. In this regard, the report of the mediator was shown to me which clearly shows that it was the first petitioner who had refused to permit the mediation to proceed and it was under those circumstances that the mediator declined to act any further. Mr. Kamdar submits that these reasons are no grounds for refusing transmission, However, I cannot agree with Mr. Kamdar on this. It is very clear that between the deceased and the other directors of the company there were disputes and that even now amongst the petitioners and the various concerns mentioned hereinabove there are disputes which have resulted. I am told, in at least two suits being filed in Rajkot courts and also certain other proceedings. The company has also set out in the affidavit dated February 18, 1986, certain facts which had come to their knowledge regarding enquiries which were being made by the deceased and the petitioners according to the company, with mala fide intention. According to the company, the inimical attitude of the petitioners can also be seen from the fact that in the letter dated May 23, 1977, which they addressed to the company and which is at exhibit "A" to the petition, wherein the petitioners purportedly asked for variation of shares, they make allegations of mismanagement and not auditing of accounts and threaten action and even go to the extent of addressing this letter dated June, 27, 1977, which is at exhibit "B" to the petition wherein the petitioners asked that the meeting be adjourned, again a threat is given and the letter is addressed to the Register of Companies. According to the company it is very clear that the petitioners had animosity toward the company and its directors and that the petitioners were, therefore, undesirable persons and it was not in the interest of the company to register a transfer in their favour. In view of the fact that there are a number of disputes pending and counter allegations between the company and its associate concerns and the petitioners merely on affidavits and without evidence, it cannot be said that the decision of the directors to refuse transmission of shares in favour of the petitioners is not bona fide and/or that it is for an ulterior motive and that it is not in the interest of the company, Further, in the absence of any such allegation in the petition, the petitioners cannot be permitted to now urge any such mala fides. Mr. Kamdar, however, submits that in the petition it is mentioned that the company is trying to close down and dispose of all its properties including the shares in question and the shares are not transferred in the names of the petitioner as awkward questions may be asked by a shareholders, In this behalf,

Mr. Kamdar has drawn my attention to the suits filed against the company in this court, one for specific performance of an agreement to sell the assets of the company and another for specific performance of an agreement to sell all the shares in the company. Mr. Mehta objects on the ground that no reference has been made to any such suit and that Mr. Kamdar is not entitled to rely upon any such proceedings, but even then merely by perusing these proceedings and from the fact that such suits have in fact been filed, mala fides cannot be imputed, It is possible that in a separate suit or any other proceeding which the petitioners may adopt, after evidence and proper investigation, the petitioners may be able to sustain the plea of mala fides and, therefore, while I reject this petition I make it clear that it shall in no way effect the petitioners' right to file a suit or adopt such other proceedings as they may be advised.

15. The petition accordingly stands dismissed. There will, however, be no order as to costs.