

(1964) 06 CAL CK 0015
In the Calcutta High Court
Case No : Company Petition No. 14 of 1964

Sm. Hemlata Saha

APPELLANT

Vs

Stadmed Private Ltd. and Others

RESPONDENT

Date of Decision : 05-06-1964

Acts Referred:

Companies Act, 1956 — Section 108, 155, 155(1), 36

Citation : AIR 1965 Cal 436 : 68 CWN 1007 : (1970) 1 ILR (Cal) 245

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This is an application for rectification of the share register of Stadmed Private Ltd. (hereinafter referred to as the company) by recording the name of the petitioner in respect of 324 shares in the company out of 1940 shares registered in the names of the petitioner and the respondents 2 to 6, for payment of Rs. 5000/- as damages to petitioner and for costs.

2. The company was registered under the Indian Companies Act, 1913, on October 31, 1945. One Gour Gopal Saha was one of the founder directors of the company which was formed to take over as a going concern the assets and business of the Standard Medical Research Institute. The said Gour Gopal Saha held 1940 shares in the company of Rs. 100/- each. He died on November 3, 1959, leaving as his heirs and legal representatives his widow who is the respondent No. 2, his mother who is the petitioner and his three sons and a daughter who are the respondents Nos. 3, 4, 5 and 6. After the death of Gour Gopal, the share register of the company was rectified on November 29, 1962, by striking out the name of Gour Gopal Saha as the holder of the said 1940 shares and inserting the names of his said heirs and legal representatives as the holders of the said shares jointly. This rectification was done on the basis of an application dated January 21, 1960, by the respondent No. 2 for self and as mother and natural guardian of the said minor sons and daughter and also by

the petitioner. The name of the respondent No. 2 has been recorded first and that of the petitioner last as the joint holders. It is alleged in the petition that the name of the respondent No. 2 has been recorded first in order to enable her to exercise voting rights in respect of the entire lot of shares by reason of the provisions in Article 63 of the Articles of the Association of the Company. It is further alleged that by reason of such registration, the petitioner is not entitled to vote at any meeting of the company or to take part in the affairs of the company. Such registration, it is further alleged, amounted to an omission of the name of the petitioner from the share register of the company. The respondent No. 2 has been appointed a director of the company and is taking part in the management of the company's affairs. It is also alleged that the respondent No. 2 in collusion and conspiracy with the other directors of the company is misappropriating large sums of money from the funds of the company and has given jobs to various relations and friends at high salaries. It is to be noted however, that no particulars have been given of the alleged charge of misappropriation. But the charges of misappropriation and nepotism, even if true, have no bearing at all on the determination of the issues involved in this application

3. On April 24, 1963, the petitioner's solicitors wrote to the company stating that their client's name appeared in the Register of Members and requesting the company to send to their client the share scrips for 324 shares. On May 7, 1963, the company's solicitors wrote to the petitioner's solicitor that the petitioner was registered as a joint holder of shares which previously stood in the name of Gour Gopal Saha. It was pointed out further, that as there has been no division of shares amongst the joint holders, no separate share scrips have been issued in favour of the heirs and unless such division was made by all the joint holders, the company could not issue share scrips to any particular joint holder. It was also pointed out that without the consent of all the joint holders, the company could not divide the shares and issue separate share certificates to the joint holders. The petitioner was requested to call upon the joint holders to agree to a division of the shares and on receipt of consent of all the joint holders, it was pointed out, the company would not have any objection to issue separate share scrips in respect of the shares, to which the petitioner might be entitled.

4. On May 17, 1963, the petitioner's solicitor wrote to the respondent No. 2 for self and as guardian of the minor sons and daughter pointing out that the share register of the Company was rectified by substituting the names of the heirs of Gour Gopal, including that of the petitioner and also pointing out to her that the company's solicitors had written to say that share scrips in the name of the petitioner could not be issued as the holding was joint. The respondent No. 2 was called upon to agree to a partition, amongst others, of the said 1940 shares and to agree to allotment of 324 shares in the name of the petitioner. On May 27, 1963 the solicitors of the respondent No. 2 wrote to the petitioner's solicitors that their client had no objection to the division of the shares and allotment to the petitioner of the shares to which she might be entitled on such division,

subject to payment by the petitioner of her share of Income Tax paid in respect of the said shares. This letter was answered by the petitioner's solicitors on June 12, 1963, by which they requested that an account of the income tax alleged to have been paid in respect of the shares might be sent to them. On June 27, 1963, the solicitors for the respondent No. 2 informed the petitioner's solicitor that 1/6th share of income tax, wealth tax and estate duty paid in respect of the shares amounted to Rs. 16,317.11 nP. including Rs. 1890.23 nP. for interest. Particulars of this payment were asked for by the petitioner's solicitor and these particulars were furnished by the solicitors for the respondent No. 1 by their letter of July 8, 1963(sic)

5. It is clear that the petitioner's solicitors realised that registration of the petitioner in respect of 324 shares could not be done unless there was allotment in severalty of a particular lot of shares to her and accordingly the petitioner's solicitor proceeded to take steps for division and such allotment. The respondent No. 2 however, contended that the petitioner, if she wanted allotment in severalty, must pay all the charges, taxes and duties which had been paid on account of the 324 shares. It is clear however, that the respondent No. 2 agreed that the petitioner was entitled to 1/6th of the shares which stood in the name of Gour Gopal and was prepared to division of the same, but she insisted on payment of the taxes and charges which had been paid in respect of the said 324 shares. It is in these circumstances that the implication for rectification has been made.

6. It was argued by Mr. Ghose, on behalf of the petitioner that admittedly she was entitled to 324 shares and the company was bound to recognise this right and register her name as the holder of the said shares. It was further argued that her title to the said 324 shares was not disputed but the respondent No. 2 was pressing her money claim and was refusing to agree to a division of the shares. It was urged that the only objection to division of the shares is non-payment of the alleged claim of the respondent No. 2 of Rs. 16,317.11 nP That being so, it was submitted, the petitioner was entitled to an order for rectification.

7. Mr. Ghose next argued that his client's claim fell u/s 155(1)(b) of the Companies Act, 1956. He argued that default was made in entering in the Register of Members the name of his client, who had become a member of the company. It is to be noted however, that what the petitioner asked the company to do was to record a transfer of 324 shares from the joint holding of 1940 shares, which stood in her name as the joint holder along with the respondents other than the company. u/s 108 however, a company cannot entertain an application for transfer of shares unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and the transferee has been lodged with the company. In this case admittedly there was no such instrument of transfer and therefore there was no application before the company for registration of the name of the petitioner. The company is prohibited from registering a transfer unless it has received the instrument of transfer as

required by Section 108. I shall revert to this question later in this judgment.

8. Mr. Ghose next contended that the powers of the court u/s 155 are wide enough to decide the question of title and direct rectification of the Share Register. Undoubtedly the court has the power to decide any question of title in an application u/s 155. But in this case there is no dispute with regard to the title. It is conceded by the respondent No. 2 that the petitioner is entitled to 1/6th of the shares left by the deceased holder. But in order to give relief to the petitioner the question that has to be decided is not a question of title, but a question of allotment in severalty to the petitioner of 1/6th of the shares which stood in the name of the deceased holder. In order to do that, this application has to be converted into an action for partial partition of the estate of the deceased holder and thereafter a decree should be passed allotting a particular lot of 324 shares to the petitioner. There is sanction in Hindu Law for a partial partition, but this can only be done amicably by agreement of the parties. Serious disputes have been raised regarding the claim of the petitioner to the allotment in severalty of the 324 shares unless she paid the taxes and duties, which are alleged to have been paid in respect of the said shares. Can those questions of the claim of the company and the other respondents arising out of payments alleged to have been made in respect of the shares of a deceased holder be gone into in this application? It seems to me that this Court, in dealing with an application u/s 155, cannot go into the question of allotment of shares in severalty when various claims have been advanced by the other joint holders and a claim has been advanced by the petitioner herself to partition of the entire estate comprising various other properties, to which matter I will refer later in this judgment. Such a question should be gone into in a properly constituted suit. An allotment in severalty of the shares claimed by the petitioner can only be done in an action for partition, unless the parties agree to amicable partition. The company cannot take upon itself the obligation to divide and allot the shares among the several joint holders and indeed, under the Companies Act, 1956, it has no power to do so. Mr. Ghose contended that "all that is necessary is insertion of the name of his client as the holder of 324 shares. To hold that the company can, at the request of one joint holder of shares, insert his or her name as the separate holder of a particular lot of those shares, would be to introduce entirely unwholesome principles which may be capable of causing serious mischief and prejudice. If it is recognised that the company has the power to make an allotment in severalty of a lot of shares held jointly, it will amount to recognition of a power in the company to alter its Register of Members at any time and at the request of any joint holder of shares. Such a power the company does not possess and it is for the purpose of avoiding the serious mischief that may be caused to members of a company, by giving to the company the power to alter its Register of Members at the request of one party that the mandatory provisions of Section 108 have been introduced.

9. In support of his argument Mr. Ghose relied upon the decision in *Burns v. Siemens Brother Dynamo Works Ltd.* (1919) 1 Chn 225. This was a case in which

two persons were joint holders of shares. In this case also the Articles provided that the first named holder was to be entitled to vote and the second named holder could neither vote nor be appointed proxy for a poll. It was held in an action brought by the joint holders against the company that in order to enable the joint holders effectually to exercise their voting power in all circumstances, they were entitled to have their holdings split into two joint holdings with their names in different orders and that the register of the company must be altered accordingly. It is to be noticed however, that this was not an application u/s 52 of the Companies (Consolidation) Act, 1908, which provided for rectification of share register. The remedy was sought for in a regular suit which was tried as a witness action. Again it is to be noticed that in this case both the joint holders agreed that their holding should be split into two joint holdings in order to enable either of them to exercise voting rights and be appointed proxy. Then again in this very action an order was made in an interlocutory application by Astbury, J. by which the company was directed to transfer half the shares standing in the joint names, in the name of one of the joint holders and the other half in the name of the other joint holder. The order made on the interlocutory application went up in appeal and the Court of Appeal reversed the decision of Astbury, J. and held that the matter was one which could not be dealt with on an interlocutory application and the order was set aside. This decision of the Court of appeal is reported in *Siemens Brothers and Co. Ltd. v. Burns* (1918) 2 Ch 324. The above decision does not help Mr. Ghose's client at all, on the other hand it is entirely against the contentions made by Mr. Ghose. In the first place the joint holders had agreed to the transfer of the holdings in their names in a particular order, in the second place the order was made in a regularly constituted suit which was tried on evidence and in the third place the order made directing rectification in an interlocutory application was reversed by the Court of Appeal which held that the rectification could be directed only in the suit to be tried on evidence. No doubt Mr. Ghose's client has got a right to file a suit against the company and ask for rectification of the share register of the company in such suit. But such an order cannot be asked for in an application u/s 155 of the Act

10. Mr. Ghose next referred to the decision in *Reese River Silver Mining Co. Ltd. v. Joseph Mackrill Smith* (1869) 4 HL 64. In this case a person who was induced, to take share in a company by fraud and misrepresentation brought an action against the company for removal of his name from the list of members. It was held that he was entitled to have his name removed from the register of members although between the date of his filing the suit and the decree of the Court upon, it, an order was made for winding up of the company. On such winding up the share holder's name was placed on the list of contributors and the House of Lords held that he was entitled to have his name removed from the list. This case has no application at all to the instant case now before me. The only point decided was that a person who was induced by fraud to take shares in a company was entitled to have his name removed, even though before he obtained the decree, an order was made for winding up of the company. The

question of share holder's right to rectification arose only incidentally, and the rectification that was directed was merely an incidence of the right declared in his favour by the decree, namely, that by reason of the fraud he was entitled to have his name removed from the Register of Members of the company

11. Mr. Ghose next referred to a decision of this Court in Ramesh Chandra Mitter v. Jogini Mohan Chatterjee ILR 47 Cal 901: (AIR 1920 Cal 789). In this case a share holder applied u/s 38 of the Indian Companies Act 1913, for removal of his name from the share register of the Company. It was held that the powers of the Court were unlimited u/s 38, to determine questions necessary for decision in an application for rectification But it was held also that in a simple case where immediate rectification was essential, it might be desirable to apply u/s 38; but if the case was complicated, an action should be brought. This decision upholds the principle that the Court in dealing with an application for rectification should not go into complicated questions which might arise, but should deal only with simple cases that could be disposed of conveniently in an application for rectification. This case in my view goes against the contentions of Mr. Ghose.

12. Mr. R. Chowdhury appearing for the respondent No. 2 firstly argued that the petitioner had made out no grounds for rectification of the share register. He submitted that the case as made out by the petitioner in paragraphs 7, 8 and 9 of the petition and also paragraph 4 of the affidavit in reply affirmed by the petitioner on March 20, 1964, was that she was aggrieved only by the order in which the names of the joint holders were registered in the share register of the company. In other words, she was aggrieved because the name of the respondent No. 2 appears in the share register and that of the petitioner appears last. The only grievance of the petitioner which forms the grounds of this application, is that, by reason of registration of the names of the joint holders in the particular order, the petitioner has been deprived of the right to vote at the meeting of the company. Mr. Chowdhury further submitted that the petitioner had applied for registration of the shares on the death of her son GOUR Gopal, she had acted upon such registration and has also taken the benefit thereof as she has stated in paragraph 14 of her petition that the dividend on the shares which were collected by the respondent No. 2 had been paid to her solicitor in full. Mr. Chowdhury next contended that in paragraph 6 of the petition, the petitioner has admitted and accepted the position that the names of the heirs and representatives of Gour Gopal had been mutated in the Register of Members after striking out the name of the previous holder, namely, Gour Gopal. The petitioner has nowhere complained in the petition that the rectification of the share register done on the death of Gour Gopal was improper or unlawful or that such rectification is otherwise bad in law. Mr. Chowdhury contended that on the grounds as made out in the petition, the petitioner has no right to ask for rectification of the share register again.

13. Mr. Chowdhury next referred to Article 11 of the Articles of Association of the Company and submitted that the rights of members are controlled by the

conditions in the Articles and as the petitioner is admittedly a member of the company, she is bound by the provisions in the Articles. Under Article 11(e), a person whose name stands first in the Register of Members, as one of the Joint holders, shall be entitled to the notice of the company's meeting and also to vote at any general meeting of the company. A similar provision has been made by Article 63. Mr. Chowdhury submitted that as a member, the petitioner was bound by the Articles of the company, and merely because her name did not appear first among the joint holders, she could not claim rectification in respect of a separate lot of 324 shares. It was further argued that by reason of the provisions in the Articles, the company could not remove the grievance made out in the petition, by rectifying the share register in order to enable a joint holder to exercise his or her voting rights.

14. Mr. Chowdhury next submitted that his client had stated in paragraph 6 of the affidavit-in-opposition affirmed by her on March 2, 1964, that the petitioner was a party to the application for mutation of the names of the joint holders on the death of Gour Gopal. For the first time in paragraphs 4 and 5 of the affidavit in reply affirmed by the petitioner on March 20, 1964, she alleged that she had no knowledge of the application for mutation of the names of the heirs and legal representatives of Gour Gopal and that she did not authorise Sushil Kumar Roy to put thumb impression on the application on her behalf. This allegation, Mr. Chowdhury submitted, was entirely inconsistent with the allegations in the petition that the shares were duly registered in the names of the heirs and that on the basis of such registration, and by reason thereof, she was paid the dividend due on 324 shares. In my opinion Mr. Chowdhury's contentions are sound. A member is bound by the Articles of the company; the petitioner became a member according to the case made out by her in the petition and she has received her share of the dividend. The company cannot, acting contrary to the Articles of Association, and in violation thereof, rectify its share register in order to enable a joint holder to exercise voting rights, by registering such member as holder of a separate block of shares, to which she claims to be entitled.

15. Mr. Chowdhury next contended that there has been no default u/s 155(1)(b) of the Act. The obligation of the company to register a transfer arises only when an instrument of transfer duly executed as required by Section 108, has been lodged with the company. Admittedly the petitioner has not delivered to the company a transfer deed duly executed as required by Section 108. And that being so, the company has not committed any default in refusing to register the petitioner as a member in respect of 324 shares. Mr. Chowdhury submitted that for that reason, namely, because the company has committed no default, this application u/s 155 is not maintainable. A company cannot rectify its share register by recording a transfer unless an instrument of transfer has been furnished by the transferee as required by Section 108. Further, until such an instrument of transfer has been furnished a company owes no duty or obligation to the transferee. Mr. Chowdhury submitted that the only ground on which this application has been pressed being default by the company u/s 155(1)(b), the

application must fail(sic)

16. In my opinion Mr. Chowdhury's commotion is sound. The company cannot be compelled or called upon to rectify its share register until and unless an applicant complies with the requirement of Section 108. An incorporated company is a creature of statute. Its rights, obligations and duties are defined and controlled by the statute and its Articles. The rights of members of the company and also of persons who claim to have become members are also controlled by the statute. A company can be brought to book, only if it has committed a default or an act of omission in respect of a duty imposed upon it by the statute or its Articles. If therefore, an instrument of transfer is not lodged by a transferee of shares strictly in compliance with Section 108, it cannot be said that the company has any obligation to register the transferee, or that by reason of refusal to register the company has committed a default as contemplated by Section 155(1)?

17. An application u/s 155 can be made by a party when the company has acted in violation of the terms and conditions laid down in that section. The applicant must satisfy the Court that the company has committed a breach of duty or a default as contemplated by that section. Unless therefore, there is evidence of a breach of duty or default, an application u/s 155 cannot be sustained

18. The petitioner's right to apply u/s 155(1)(b) would arise only if there has been default on the part of the company in registering her name as a member in the Share Register of the company. But in this case, it cannot be said that the company has committed a default because the petitioner did not lodge with the company, an instrument of transfer, without which the company has been forbidden by law to register a transfer. It cannot be said therefore, that the company is guilty of a default, which entitles the petitioner to move this court u/s 155. Default implies an obligation to perform a duty and in this case it cannot be said that the company's duty to register the petitioner ever arose, because there was no instrument of transfer before it, upon which it could act and without which law forbids it to record a transfer. In this case, as no such instrument of transfer has been delivered by or on behalf of the petitioner to the company, the company has not committed a default u/s 155(1)(b) of the Act. In that view of the matter this application u/s 153 is not maintainable.

19. Mr. S. Sen appearing for the company supported Mr. Chowdhury and adopted his arguments. He referred to Buckley, 13th Ed. page 260 in support of the proposition that joint holders can in an action obtain an order for rectification of the share register, by altering in any way consistent with the constitution of the company, the order in which such joint holders are registered in respect of the joint holding. Mr. Sen argued that the only method by which the order of registration could be altered in respect of the joint holding was a suit to be filed for that purpose and not an application for rectification u/s 155. It seems to me that Mr. Sen is right in his submissions.

20. Mr. Sen next contended that the application must fail on another ground,

namely, that the rectification of the share register on the grounds claimed by the petitioner, involves questions into which this Court cannot go in an application u/s 133. Mr. Sen contended that the petitioner is claiming to be one of the heirs of the deceased Gour Gopal, add as such heir, she claims a partition of the entire estate of her deceased son. The shares which are the subject matter of tin's application arc only part of the estate of the deceased. There are other properties to which the petitioner claims to be entitled on a partition. Mr. Sen referred to the letter from the petitioner's solicitor dated May 17, 1963, which is annexed to the petition, in which it was claimed that unless the parties agreed to a mutual partition and allotment of 324 shares to the petitioner, the petitioner would claim a partition of the entire estate of Gour Gopal. Mr. Sen next referred to another letter from the petitioner's solicitor dated August 26, 1963, which is also annexed to the petition, in which it was contended that premises No. 84 Chowringhee Road formed part of the estate of Gour Gopal as this was purchased by him in the benami name of his wife. Besides the above property, there was a piece of land at Paikpara being premises No. 61, Paikpara Road, and also at Digha, all of which were claimed to form part of the estate of Gour Gopal. In the last paragraph of that letter, it was claimed that unless there was agreement for amicable partition of the estate left by Gour Gopal, which included all the properties mentioned above, and also cash and jewelleryes and the shares, a suit would bo filed for partition. Mr. Sen contended that the letters in which partition lias been claimed of the entire estate of Gour Gopal, have been annexed to the petition, and the petitioner was relying upon those letters for the purpose of this application. The shares are not, according to the petitioner, the only assets of the deceased to which she is entitled. There are other substantial and valuable properties which according to the petitioner form part of the estate and on a partition of which she would be entitled to a share.

21. It is to be noticed however, that the petitioner is registered along with the respondents Nos. 2, 3, 4, 5 and 6, as the joint holder of the shares. This is admitted by the petitioner's solicitors in their letters dated April 24, 1963, and May 17, 1963, which are annexed to the petition. The petitioner also realised that a partition and division of the shares and also allotment of the same in severally, should be made before the company could be called upon to rectify the share register on the basis of the petitioner's claim.

22. Mr. Sen contended that in the circumstances mentioned above, it could not be said that on a partition of the estate, whether amicably or through the intervention of Court, the petitioner would be allotted 324 shares, in respect of which she claims allotment to her in severally for the purpose of registration of the same in her name. It may as well be, that on a partition, none of the shares ot the company would be allotted to the petitioner, but some other properties might be allotted to her. Mr. Sen contended that even if it was conceded that the petitioner was entitled to 1/6th of the estate of he deceased Gour Gopal, she was not entitled at present, having regard to her claim for partition of the entire estate, to separate allotment of 324 shares. Such allotment, if at all, could be

done only upon a partition of the entire estate either amicably among the parties or by a suit being filed for partition of the estate. It seems to me, Mr. Sen's contentions are sound. Having regard to the claim made by the petitioner for a partition of the entire estate, it cannot be said that she is entitled to allotment of 324 shares. And in any event, this Court in an application u/s 155, cannot go into the question of partition of the estate of Gour Gopal nor can this present application be treated as a suit for partition of the estate and no order can be made for separate allotment to the petitioner of the 324 shares in respect of which she claims rectification of the company's share register.

23. Mr. Chose had argued that the company was bound to register his client's name in respect of the said 324 shares, as she was entitled to the same. But assuming that the company is bound to recognise the petitioner's claim to 324 shares, has the company the power to make a division of the shares among several joint holders and also to, make an allotment of a specified number of shares to one of the joint holders, and thereafter register such a joint holder as the holder of the shares to be allotted in severalty? Then again, is the company bound to recognise the petitioner's claim to 324 shares to which she claims to be entitled, as one of the heirs and legal representatives of the deceased holder? It seems to me that without a proper adjudication, the company is not bound to recognise the claim of one of the joint holders to a particular lot of shares. The company cannot take upon itself, the duty of adjudicating upon the rights of several persons who claim to be entitled to the shares which were registered in the name of the deceased member, and which after the death of the member, were registered in the names of the heirs of the deceased member, as joint holders. Further even assuming that the company is bound to recognise the ratio of the division among the heirs, namely, 1/6th each, the company is not bound, nor does it owe a duty to make a division and allotment in severally of a particular lot of shares to the petitioner to enable her to have her name registered as a member of the company.

24. The larger question of the partition of the entire estate of Gour Gopal has been raised by the petitioner herself. Various Immovable properties are claimed by her to form part of the estate of her deceased son and she claims to be entitled to the shares on partition. These are questions into which this Court cannot go in an application for rectification of the share register of the company u/s 155. In my view, such questions can be resolved either by amicable partition among the parties and transfer of the shares to the petitioner by agreement among the heirs of Gour Gopal, or by a suit for partition of the estate of Gour Gopal and allotment to the petitioner of the shares to which she claims to be entitled. To hold otherwise and to go into the question of partition and separate allotment to the petitioner of the shares in respect of which she claims rectification, would amount to an unwarranted enlargement of the scope of Section 155 of the Companies Act, 1956.

25. For the reasons mentioned above this application is misconceived and is

dismissed with costs. This order is made without prejudice to the petitioner's right to file a suit for appropriate relief, if she is advised to do so. Certified for two counsel.