
(1989) 09 MP CK 0024

In the Madhya Pradesh High Court

Case No : Company Petition No. 3 of 1988

Smt. Kamla Devi Mantri

APPELLANT

Vs

Grasim Industries Ltd. and Another

RESPONDENT

Date of Decision : 12-09-1989

Acts Referred:

Companies Act, 1956 — Section 155, 155(3)

Citation : (1990) 69 CompCas 188 : (1990) 35 MPLJ 61 : (1990) MPLJ 61

Hon'ble Judges : A.G. Qureshi, J

Bench : Single Bench

Advocate : A.K. Chitale, for the Appellant; R.C. Waghmare and S.L. Jain, for the Respondent

Final Decision : Dismissed

Judgement

A.G. Qureshi, J.

Smt. Kamla Devi Mantri, residing at 6/3 Queens Park, Calcutta, has filed this petition u/s 155, read with Section 108 of the Companies Act, 1956, against Grasim Industries Ltd., Birlagram, Nagda (hereinafter referred to as "the company") and Smt. Sarla Devi Somani.

The company is incorporated under the corporate name and style of Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. The authorised share capital of the company is thirty crores and fifty lakhs divided into 2,50,00,000 ordinary shares of Rs. 100 each. The paid-up share capital of the company is Rs, 23,07,00,000 divided into 2,15,90,000 ordinary shares of Rs. 10 each fully paid-up and 1,48,275 preference shares of Rs. 100 each fully paid-up. The aforesaid share capital of the company and the objects with which the company was established, as enumerated in para 5 of the petition, are not in dispute. Articles 44, 45, 46, 47, 50, 51, 54, 55, 56, 58, 59 and 60 as enumerated in para 5(b) are also not in dispute. It is also common ground that respondent No. 2 is the daughter of the petitioner.

The grievance of the petitioner is that respondent No. 2, Smt. Somani, has wrongfully and illegally obtained registration in her name as the second joint holder along with the petitioner as the first named shareholder in respect of the petitioner's 10,774 ordinary shares of Rs. 10 each fully paid-up in the first respondent on the basis of a purported transfer apparently. But, in fact, the petitioner neither intended to transfer the aforesaid shares nor received any consideration for such transfer as the said second respondent has no right, title or interest in the said 10,774 shares. The petition has, therefore, been filed to seek rectification of the register of members of the first respondent by deleting the name of the second respondent therefrom as the joint shareholder in respect of the aforementioned shares thereby retaining the name of the petitioner alone or the said register and the said share certificates.

The circumstances averred in support of the aforesaid reliefs sought by the petitioner are that, on various dates between 1967 and 1982, the petitioner purchased 10,774 ordinary shares in the company for valuable consideration and they were duly registered in her name. The petitioner has always been and still claims to be the sole, exclusive and absolute owner of the said shares and they are and have always been in her exclusive possession. She has also shown the aforesaid shares along with her other property in her wealth-tax and Income Tax returns as her own exclusive property. Similarly, the dividends on the aforesaid shares were also shown in the returns before the tax authorities.

The petitioner is the widow of one Malchand Mantri, who died on or about January 8, 1971. Since then, she has not been keeping good health. She also cannot read or write or even speak properly. In, view of the aforesaid physical condition of the petitioner, she always reposed trust and confidence on her son, G. P. Mantri, and after his death in 1979, on his two sons, namely, Shrikant Mantri and Devendra Mantri, who used to manage and look after her entire financial matters, including the shares in question. Smt. Somani, who often came and stayed with the petitioner at her residence at Calcutta had full access to the valuables, movables and other properties and documents of the petitioner. During her intermittent temporary stays, Smt. Somani offered assistance and advice to the petitioner in the matter of looking after her properties and affairs and, therefore, the petitioner, at the instance of Smt. Somani, signed various documents on different occasions. But she came to know of the real sinister implications and the most prejudicial consequences of signing the documents at the instance of Smt. Somani. Only recently, when, in October, 1987, the petitioner received a proxy form from Pilani Investment and Industries Corporation Ltd. In which company also the petitioner has purchased shares, wherein she found that the name of Srikant Mantri was mentioned as the second joint holder of the said shares. The petitioner was astonished to know that the name of someone else in addition to her name had been put up on the said shares. Therefore, she took steps to find out the details about all her shares, including the shares in question. Respondent No. 2, Smt. Somani, had so managed to see that the record of the shares could not reach the hands of the

petitioner and, therefore, till October, 1987, the petitioner could not know of the aforesaid manipulation of respondent No. 2. In view of the relationship between the petitioner and respondent No. 2, she could not openly agitate against the action of respondent No. 2 in getting the names of others inserted in the share certificates. She, however, persuaded respondent No. 2 to issue necessary letter acknowledging her absence of interest in the said 10,774 shares and evincing absence of any objection to the deletion of her name from the register of members of the respondent company as the second registered holder of the said shares, jointly with the petitioner. However, respondent No. 2 did not yield to the persuasion of the petitioner.

Thereafter, on enquiry, the petitioner came to know that, prompted by greed, respondent No. 2, by taking undue advantage of Clause 69 of the articles of association of the company, had submitted to the company a transfer deed or deeds purportedly containing the petitioner's signatures showing transfer of the said 10,774 shares jointly to the petitioner and respondent No. 2 and on the basis of that, obtained the registration of the name of the second respondent as the second named joint-holder of the said 10,774 shares in the register of members of the first respondent. Therefore, on November 3, 1987, the petitioner wrote a letter to the company expressing her intention to have the register of members of the first respondent rectified by deleting the name of the second respondent as the joint-holder whereupon the company asked the petitioner to execute transfer deeds along with the second respondent, Smt. Somani, to delete the name of Smt. Somani from the share register as joint-holder of the said 10,774 shares, upon which the petitioner informed the company of her inability to obtain the signature of Smt. Somani in the transfer deed and requested the company to do the needful on the basis of her letter dated November 3, 1987. But the company, vide its reply dated December 5, 1987, refused to rectify its share register unless and until the deeds were executed by the second respondent, Smt. Somani, along with the petitioner. The petitioner also sent a letter on November 21, 1987, asking the second respondent to make a suitable declaration acknowledging that she had no right, title or interest in the said shares, but in vain.

According to the petitioner, the insertion of the name of the second respondent as the joint-holder of the said shares in the register of members of the company was and is illegal, invalid, void and inoperative ab initio. She, therefore, seeks a relief for the removal of the name of the second respondent from the shares in question as a joint-holder of the shares because she never executed any transfer deed intending to transfer any of the shares in question in favour of the second respondent as the joint-holder of the shares. The signature of the petitioner has been procured on misrepresentation or fraudulently and/or by undue influence. The petitioner had no occasion to transfer the shares to respondent No. 2 and this fact is evident from the fact that she has not received any consideration for the alleged transfer. Even the signature or signatures of the petitioner on the said transfer deed, even if proved, were procured without her consent, in the

aforementioned circumstances. The transfer is also illegal in view of the violation of Section 82 of the Companies Act, 1956, and the company had no power to approve the said transfer of shares. The transfer of shares is also in violation of Section 108 of the Companies Act, 1956, It has also been averred that the provisions of Section 187C of the Companies Act, 1956, have also not been complied with. A claim for award of damages has been made in view of the illegal action of the respondent. Therefore, the relief of rectification of the records of the first respondent in respect of inserting the name of respondent No. 2 as joint shareholder and also on the share certificates is sought A prayer for injunction against the respondents, pending the petition, has also been made.

The petition has been resisted by respondent No. 2 through her constituted attorney, Shri Balkishan Toshniwal, on the ground that the application is liable to be dismissed, inter alia, on the ground that the petitioner has invoked the summary jurisdiction of the hon"ble court under the provisions of Section 155 of the Companies Act by suppressing material facts from the court. According to respondent No. 2, Smt. Kamla Devi Mantri is the widow of Maichand Mantri who died on January 8, 1971, and she is about 87 years of age and respondent No. 2, Smt. Somani, is the daughter of the petitioner. The petitioner was the owner of various movable and immovable properties, including the shares in question and the shares stood in the sole name of the petitioner. Immediately before December, 1985, she irrevocably decided to transfer the said shares to the joint names of the petitioner and respondent No. 2 so that they can hold the said shares as joint owners during her lifetime and intended that, after her death, respondent No. 2 should be the sole and absolute owner thereof. The petitioner also executed a registered will on December 13, 1988, and her intention pertaining to the shares finds a place in Clause 5 of the aforesaid will wherein she had expressed her desire to bequeath the said 10,774 duly paid-up equity shares in Grasim Industries Ltd., including all bonus shares which might be issued by the said company from time to time to respondent No. 2 herein. A copy of the will has been annexed as annexure-A. In pursuance to the aforesaid decision of the petitioner, she, vide letter dated, December 12, 1985, applied to the respondent-company to have the said shares registered in the joint names of the petitioner and respondent No. 2. Later, by a letter dated December 18, 1985, the petitioner directed the respondent-company that, on her death, respondent No. 2 should be treated as the sole owner and sole holder of all the shares which would be standing in the joint names. By their letter dated January 27, 1986, the respondent company agreed to transmit the said shares into the name of respondent No. 2 on furnishing the death certificate of the petitioner in due course. Since then, respondent No. 2 and the petitioner became joint owners of the shares till the death of the petitioner and, on the death of the petitioner, respondent No. 2 will become the sole, and absolute owner of the said shares. The aforesaid transactions and arrangements, including the execution of the will were advised by a well known and competent firm of solicitors, Khaitan and Company, advocates. The petitioner effected the aforesaid arrangements with full

understanding of the implications and on independent legal advice from her solicitors and income tax- practitioners.

It has been further averred that, since September, 1987, the eldest son of the petitioner, one Hari Prasad Mantri, had been able to isolate the petitioner from her other relations and regular advisers and has been in a position to dominate her will. Other relations and advisers have been denied access to the petitioner. As a result, the petitioner is not in a position to obtain independent legal advice relating to any of her affairs. Thus, taking advantage of the aforesaid relationship, advanced age and failing health of the petitioner, the aforesaid Hari Prasad Mantri has been scheming to upset the arrangements the petitioner had entered into consciously with the help and advice of regular advisers and the instant petition is a part of the said scheme of the said Hari Prasad Mantri. The said Hari Prasad Mantri has also instigated the petitioner to file a suit in the Alipore Court, West Bengal, in respect of a tenancy agreement between the petitioner and the Manipur Tea Co. Pvt. Ltd. He also brought into existence a purported deed of trust dated October 7, 1987. The aforesaid Mantri has also instigated the petitioner to initiate a criminal proceeding u/s 144, Criminal Procedure Code, against Shrikant Mantri and Devendra Kumar Mantri on false and untenable grounds. As such, it is quite apparent that the said Hari Prasad Mantri has prevailed upon the petitioner to file the instant application u/s 155 of the Companies Act with an ulterior motive. The letters written to the company and the instant petition have been filed by the said Hari Prasad Mantri in the name of the petitioner by exercising undue influence on the petitioner. The allegations made in the petition have been emphatically denied by the respondents and they, have also denied violation of any provisions of the Companies Act in recording respondent No. 2 as a joint-holder of the shares along with the petitioner. The other facts have also been pleaded in the reply, mentioning the circumstances under which the petitioner took a decision to transfer the shares in question to respondent No. 2 and how the circumstances changed as a result of the influence of Hari Prasad Mantri. It has, therefore, been pleaded that the petition be dismissed.

Learned counsel for the petitioner, Shri Ghitale, has strenuously argued that the will in question was not executed by the petitioner of her own free will, but the will was executed as a result of fraud and misrepresentation. Similarly, the petitioner never consciously and of her own free will ever made a request to the company to record the name of respondent No. 2 as a joint-holder of the shares. The whole transaction has been effected fraudulently by misrepresentation and exercising undue influence on the petitioner.

On the other hand, learned counsel for the respondents, Shri Waghmare argued that the nature of the allegations made in the petition cannot be a subject-matter of enquiry in this petition. Proceedings u/s 155 of the Companies Act are summary in nature and, therefore, the only course open to the petitioner is to seek relief by filing a civil suit and no relief on the grounds as claimed by the

petitioner can be given to the petitioner in this petition in view of the serious allegations pertaining to fraud, misrepresentation and undue influence.

It is not in dispute before me that this being a case prior to the amendment in the Companies Act, 1956, this court can exercise powers u/s 155 of the Companies Act, as it stood before the amendment. According to Section 155(3) of the Companies Act, the court is empowered to decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register and is also empowered generally to decide any other question which it is necessary or expedient to decide in connection with the application for rectification. However, the object of this provision under the Companies Act is to provide a summary remedy in non-controversial matters or in matters where a quick decision may be necessary to obviate any irreparable injury to the party. In *S. Bhagat Singh v. Piar Bus Service Ltd* [1960] 30 Comp Cas 300 ; AIR 1959 Punj 352, it has been held that the provisions of Section 155 of the Companies Act are not intended for settling controversies under several heads necessitating a regular investigation. When serious disputes are involved, the proper forum for their adjudication is a civil court. The proceedings for rectification of the register of members are of summary nature. Therefore, where a summary remedy may be necessary to obviate an irreparable injury to a party, then Section 155 can be invoked. In *Jayashree Shantaram Vankudre Vs. Rajkamal Kalamandir Private Ltd*, , the Bombay High Court has also taken the same view that the proceedings u/s 155 of the Companies Act are summary in nature and issues of complicated nature arising therein should not be decided in those proceedings. The proper form for adjudication of those disputes is a regular civil court. The Allahabad High Court in the case of *Surendra Kaur v. Singh Engineering Works (P.) Ltd.* (1977] 47 Comp Cas 638, placing reliance on the Supreme Court judgment, *Mahendra Kumar Jain v. Federal Chemical Works Ltd.* [1965] 35 Comp Cas 651, has held that where the petitioner's title was itself seriously disputed and where there are several disputed questions of facts requiring determination, Section 155 could not be applied and the share register could not be rectified and the petitioner was free to pursue the remedies in the civil court. Similarly, the Punjab and Haryana High Court, in the case of *Smt. Puran Devi v. S. Gurnam Singh* [1977] 47 Comp Cas 796, has held that complicated questions of fact involving civil rights of the parties cannot, be decided in a company petition. Section 155 of the Companies Act being for the exercise of summary jurisdiction, the company court would refuse to exercise jurisdiction under this section where complicated facts are involved for determination of the petition. Proceedings u/s 155 are meant for rectification of a mistake or an error of a minor nature. Reliance has been placed on *Public Passenger Service Ltd. v. M. A. Khader* [1966] 3 comp Cas 1 , wherein the Supreme Court has held that where, by reason of complexity or otherwise, the matter can more conveniently be decided in a suit, the court may refuse relief u/s 155 in exercise of its discretionary jurisdiction and relegate the parties to a civil suit.

In the instant case, the will executed by the petitioner has been challenged by her on the basis of fraud, misrepresentation and indirectly, the petitioner has sought relief from this court to ignore a registered will which is executed by the petitioner on the ground of fraud, misrepresentation and undue influence. Similarly, the letters alleged to have been written by the petitioner to the company seeking inclusion of the name of respondent No. 2 as a joint holder of the shares along with the petitioner is also challenged on the basis of undue influence, fraud and misrepresentation. These are issues which can very well be decided in a civil court where detailed evidence can be led by the parties pertaining to the relationship between the petitioner and respondent No. 2 and the circumstances under which the will was executed and the letters were sent to the company in respect of inclusion of the name of respondent No. 2 in the shares as a joint holder and also intimation to the company that in the event of the death of the petitioner, respondent No. 2 shall be the sole owner of the shares. This question cannot be decided on the basis of affidavits and in summary proceedings before this court.

Therefore, in view of the aforementioned decisions of different High Courts with which I respectfully agree, it is not a fit case wherein, invoking the jurisdiction of this court u/s 155 of the Companies Act, the petition may be admitted for adjudication. This petition filed by the petitioner is, therefore, dismissed with no order as to costs.