

SUPREME COURT OF INDIA

(1) Dankha Devi Agarwal (Dead) Through Lrs; (2) Tara Properties Private Limited

and Others

Vs

(1) Tara Properties Pvt. Limited and Others; (2) Bhagirath Agarwal and Others

Appeal (Civil) 1015 of 2000 With Civil Appeal No. 6535 of 2004

(B. P. Singh and Altamas Kabir, JJ)

17.08.2006

JUDGMENT

ALTAMAS KABIR, J.

Dankha Devi Agarwal (since deceased) is the appellant in Civil Appeal No.1015/2000. She was the mother of Bhagirath Agarwal (respondent No.2 in the appeal) and Smt. Leela Agarwal (respondent No.3) is the wife of the respondent No.2.

Tara Properties Private Limited and three others are the appellants in Civil Appeal No.6535/2004. It may be mentioned that the appellant in this appeal is the respondent No.1 in the earlier appeal and respondent No.1 in this appeal is also the respondent No.2. in the earlier appeal and the other parties are common.

Since the two appeals arise out of the same set of facts between the same parties, they have been taken up together for hearing and disposal and are being disposed of by this common judgment. Tara Properties Private Limited (hereinafter referred to as 'the Company') was incorporated on 28th December, 1962, as a family company with Tara Chand Agarwal (since deceased), Dankha Devi Agarwal, his wife (since deceased), their elder son, Bhagirath Agarwal and younger son Chandra Prakash Agarwal. Each of them was allotted 10 shares each in the newly-formed company. On 2nd March, 1963 Dankha Devi Agarwal granted a lease of the land at 13, Camac Street, Calcutta, to the

Company and in lieu of premium of Rs.3 lakhs, 3000 shares of the Company were allotted in favour of Dankha Devi Agarwal. By virtue of such allotment, Dankha Devi Agarwal came to hold 3010 shares and the rest continued to hold 10 shares each. All the share holders were indicated as the first Directors of the Company. On account of transfer of shares by Dankha Devi Agarwal during her life time, the share holding pattern as on 28th June, 1977, was as follows:-

Dankha Devi - 1660 shares

Tara Chand Agarwalla- 10 shares

Bhagirath Agarwal- 10 shares

Chandra Prakash Agarwal- 10 shares Smt. Lila Agarwalal wife of

Bhagirath Agarwal- 200 shares

Smt. Rekha Agarwal wife of Chandra Prakash Agarwal- 300 shares

Rajesh S/o Bhagirath Agarwal- 200 shares

Vandana D/o Chandra Prakash Agarwal - 300 shares

Anita D/o Bhagirath Agarwal - 350 shares

The aforesaid share-holding will indicate that the company was a family company.

As will appear from the materials on record, Tara Chand Agarwal moved to New Delhi in 1978 along with his wife and younger son leaving the family company in the sole charge of his elder son Bhagirath Agarwal. Subsequently, the family returned to Calcutta and from a public notice issued by the Calcutta Municipal Corporation on 25th September, 1989, in the Calcutta Edition of the Daily Statesman, it came to light that the tax liability of the company in so far as the property leased to the company was concerned was to the tune of Rs.23,06,748/- which was outstanding. On coming to learn of the said outstanding dues, a meeting of the Directors of the company was convened by Tara Chand Agarwal where the agenda was for production of relevant records by Bhagirath Agarwal for the inspection of the other Directors. However, as the records were not produced by Bhagirath Agarwal on the plea that the same had been misplaced, Tara Chand Agarwal caused an investigation to be made by a Chartered Accountant from whose report it transpired that on or about 17th May, 1983 out of the share holding of 1660 shares held by Dankha Devi Agarwal, 1150 shares were purported to have been transferred by her to Bhagirath Agarwal and a further 500 shares were

purported to have been transferred in favour of his wife. By the said process, Bhagirath Agarwal and his wife increased their share holding from 10 to 1410 and from 200 to 700 respectively while reducing the share holding of late Dankha Devi Agarwal from 1660 shares to only 10 shares. On discovery of the aforesaid facts and other irregularities alleged to have been committed by Bhagirath Agarwal, the Board of Directors decided to issue a balance of 1960 equity shares out of the authorized share capital which had remained unsubscribed at the meeting of the Board of Directors held on 20th October, 1989. The Company decided to allot 1500 shares out of the said 1960 equity shares to Tara Chand Agarwal and to allot the remaining 450 shares to his younger son, Chandra Prakash Agarwal.

On 24th October, 1989, a special notice was given for calling an extra-ordinary general meeting. A copy of the said notice was duly served on Bhagirath Agarwal, and a copy was also sent to the Registrar of Companies. Despite receipt of notice, Bhagirath Agarwal did not attend the meeting and the Board of Directors took a Resolution to remove both Bhagirath Agarwal and Smt. Leela Agarwal from the Directorship of the company. The decision of the Board of Directors was conveyed to the Registrar of Companies and the requisite forms were also deposited with him.

Simultaneously, with the notice for holding the extra- ordinary general meeting of the company, Dankha Devi Agarwal also filed a suit, being No.874 of 1989, in the Ordinary Original Civil Jurisdiction of the Calcutta High Court for a declaration that the purported transfer of 1650 shares in the name of the plaintiff to Bhagirath Agarwal and his wife were null and void and without any effect and for a further declaration that Dankha Devi Agarwal was the sole and absolute owner of 1660 shares in the defendant-company. She also claimed a decree against the said Bhagirath Agarwal, to deliver up and cancel the relevant shares in connection with the transfer of the said 1650 shares in favour of Bhagirath Agarwal and his wife who were made defendant Nos. 2 and 3 in the suit. On 6th November, 1989 itself, an ad interim order of injunction was passed in the suit restraining the defendant Nos. 2 and 3 from transferring or otherwise dealing with the shares in question and also from exercising any voting right or from receiving dividends in respect of the said 1650 shares.

Bhagirath Agarwal filed a Company Petition No.290/1990 on 18th June, 1990, before the Calcutta High Court against the company, Tara Chand Agarwal, Smt. Dankha Devi Agarwal, Chandra Prakash Agarwal and others inter alia under Sections 397 and 399 of the Companies Act. The same was admitted and an order of status quo was passed by the learned Single Judge on 18th June, 1990 and an additional interim order was also passed to the effect that no Board meeting or any General Meeting were to be held. The matter was duly contested and ultimately on 20th March, 1992 the Company Application was disposed of by the learned Single Judge with a direction for settlement of all the family assets in three equal shares of Tara Chand Agarwal and Dankha Devi Agarwal, Bhagirath Agarwal and Chandra Prakash Agarwal. The said order was, however, stayed by the Division Bench on 15th July, 1993 in an appeal filed by Bhagirath Agarwal. Subsequently, in March 1995, Tara Chand Agarwal died. Subsequent to his death, on or about 28th July, 1995, the suit filed by Dankha Devi Agarwal was sought to be withdrawn, purportedly without the knowledge of Smt. Dankha Devi Agarwal.

On 2nd September, 1998 upon discovering that her suit had been dismissed as withdrawn, Smt.

Dankha Devi Agarwal made an application for recalling of the orders dated 20th June, 1995 and 28th July, 1995 on the ground that she had not withdrawn her suit and that the application for withdrawal was based on her forged signatures obtained by Shri Bhagirath Agarwal. The said application was contested by Shri Bhagirath Agarwal and was ultimately dismissed by the learned Single Judge on 4th August, 1999. An appeal preferred from the said order dated 4th August, 1999, was dismissed by the Division Bench on 13th September, 1999. In the first of the two appeals being heard by us, this Court granted leave to appeal to Smt Dankha Devi Agarwal against the aforesaid order of the Division Bench of the High Court dated 13th September, 1999. While the said appeal was pending in this Court, Smt. Dankha Devi Agarwal died in January, 2001.

Simultaneously with the aforesaid proceedings Shri Bhagirath Agarwal also filed an application for setting aside the resolution adopted by the Board of Directors of the Company removing him and his wife from the Directorship of the Company. On 6th August, 2001, the said application was allowed by the learned Single Judge and the removal of the said respondents from the Board of Directors and the allotment of 1960 shares to Tara Chand Agarwal and Chandra Prakash Agarwal were struck down. Further, the appointment of the respondents 1 to 5 as Directors of the Company in the Board meeting of 5th September, 1998, was upheld.

Aggrieved by the said Judgment and Order of the learned Single Judge, the appellant filed an appeal, being APOT No. 594 of 2001, and filed an application therein for appointment of Receiver and other reliefs, On 6th August, 2003, the Division Bench dismissed the appeal leaving the interim application, being ACO No. 19 of 2002, undecided. Civil Appeal No. 6535 of 2004 is directed against the said judgment and order of the Division Bench of the Calcutta High Court.

Appearing for the appellant, Mr. Vijay Hansaria sought to highlight the case of the appellant that Bhagirath Agarwal had forged the signatures of Smt. Dankha Devi Agarwal to illegally and wrongfully transfer 1650 shares belonging to Smt. Dankha Devi Agarwal to himself and his wife in a bid to wrest control of the management and affairs of the respondent- Company, which had been founded by Shri Tara Chand Agarwal. Mr. Hansaria, also highlighted subsequent facts involving the withdrawal of the suit filed by Smt. Dankha Devi Agarwal questioning the transfer of the aforesaid shares in the name of Shri Bhagirath Agarwal and his wife. He emphasized that even for the purpose of withdrawing the suit the signature of Smt. Dankha Devi Agarwal had been forged and the advocate appearing on her behalf in the said application was changed and another advocate was appointed. The changed advocate appeared before the Court on a day when the matter was not listed and upon mentioning, the application was treated to be listed on that day's list and was allowed to be withdrawn.

Mr. Hansaria submitted that despite the unusual facts brought to notice of the learned Single Judge and the fraud perpetuated in withdrawal of the application for restoration of the suit, the learned Single Judge dismissed the application for revival of the suit and even the appeal filed by Smt. Dankha Devi Agarwal against the said order of the learned Single Judge was dismissed by the Division Bench at the ad- interim stage leaving her deprived of her assets.

Mr. Hansaria submitted that the second of the two appeals before us, is an off-shoot of the facts

relating to the first appeal and a decision therein will be dependent on the out-come of the first of the said two appeals.

Mr. Hansaria submitted that under unavoidable circumstances Shri Tara Chand Agarwal had moved to Delhi along with his wife, Smt. Dankha Devi Agarwal and second son, Shri Chandra Prakash Agarwal, leaving the family business in the care of their elder son, Shri Bhagirath Agarwal but on coming to learn of the manner in which the affairs of the company were being managed by Shri Bhagirath Agarwal, Smt. Dankha Devi Agarwal, his own mother, was compelled to file a suit to undo the fraudulent activities of Shri Bhagirath Agarwal. Mr. Hansaria submitted further that the learned Single Judge of the Calcutta High Court decided Smt. Dankha Devi Agarwal's application for restoration of her suit in a completely injudicious manner and based his decision on a comparison of Smt. Dankha Devi Agarwal's signatures on the different documents in the case without taking into consideration the passage of time and the age of Smt. Dankha Devi Agarwal.

The defence set up by Shri Bhagirath Agarwal is one of denial of all the allegations made on behalf of the appellant. In fact, it is his specific case that Dankha Devi had no role to play in the events subsequent to the transfer of 1650 shares by her in his and his wife's favour. It was contended that the transfers had been effected by Dankha Devi Agarwal in favour of her elder son on her own volition as far back as in 1983-84 and returns were filed before the Registrar of Companies on 15th June, 1984 where such transfer of shares was recorded. Nothing was done in respect of the transfer of the said shares till 6th November, 1989, when Smt. Dankha Devi Agarwal allegedly filed the suit for cancellation of the transfer documents relating to the said 1650 shares. An interim order was passed in the suit restraining Shri Bhagirath Agarwal and the group represented by him from disposing of the said shares or exercising their right to vote on the basis thereof. It was urged that the subsequent steps taken for withdrawal of the suit after the death of her husband was also at the instance of Smt. Dankha Devi Agarwal who obviously did not wish to pursue the matter further. It was submitted that only upon being satisfied that Smt. Dankha Devi Agarwal did not wish to proceed with the suit was an order passed therein permitting her to withdraw the suit. Appearing for Shri Bhagirath Agarwal, Mr.R.F. Nariman, learned senior counsel, pointed out that an extra-ordinary general meeting had been convened on 5th September, 1998, as per the orders passed by the Calcutta High Court in which Smt. Dankha Devi Agarwal was brought in a wheel-chair. According to the report of the Chairman of the meeting appointed by the High Court, she had been completely reduced to a vegetable existence and did not respond to any question or realize what was happening around her. The Chairman expressed the opinion that although Dankha Devi Agarwal was in the meeting room, she did not have the slightest notion of what was going on there and she did not cast her vote in the meeting.

Mr. Nariman further contended that the Special Leave Petitions which have been filed did not contain the left thumb impression of Dankha Devi Agarwal, as has been made out, and that the same was forged for the purpose of presenting the Special Leave Petitions. It was further contended that after the death of Dankha Devi Agarwal, Shri Chandra Prakash Agarwal has substituted his name and the name of his wife as appellants in place of Dankha Devi Agarwala and it was, therefore, quite clear that the entire matter had been engineered by Shri Chandra Prakash Agarwal to prevent Shri Bhagirath Agarwal and his group from enjoying the benefits of the profits and income from the business of the company which comprised of house properties as well as two tea gardens.

Regarding the allotment of 1960 shares by Shri Tara Chand Agarwal in his own favour and in favour of Shri Chandra Prakash Agarwal, Mr. Nariman submitted that it had been rightly decided by the learned Company Judge that the removal of Shri Bhagirath Agarwal and his wife from the Board of Directors of the company was unlawful as was the allotment of the said 1960 shares. Both the decisions said to have been adopted by the Board of Directors at the meeting held on 22nd November, 1989 were struck down and the appointment of the respondent Nos. 1 to 5 as Directors of the company at the Board meeting held on 5th September, 1998, was upheld.

From the facts as disclosed, it is quite clear that there were differences within the family with Shri Tara Chand Agarwal and his younger son, Shri Chandra Prakash Agarwal, on one side and his elder son, Shri Bhagirath Agarwal on the other, and that Smt. Dankha Devi Agarwal was merely used as a front for the parties to further their individual gains. As has been revealed from the materials on record, the transfer of the 1650 shares of Smt. Dankha Devi Agarwal in favour of Shri Bhagirath Agarwal and his wife was effected some time in 1983-84 at a time when Shri Tara Chand Agarwal and Smt. Dankha Devi Agarwal along with the family of Chandra Prakash Agarwal had shifted to Delhi. It was after Shri Tara Chand Agarwal and others returned to Calcutta in 1985 that a Board Meeting of the Company was convened by Tara Chand Agarwal on 26th May, 1989, when Shri Bhagirath Agarwal was requested to produce the minute book of the Board's meetings. It was thereafter that CS No.874/1989 was filed by Smt. Dankha Devi Agarwal against the respondents in the Calcutta High Court inter alia praying for a declaration that she was the sole and absolute owner of 1660 shares and that the transfer of 1650 shares in favour of respondents Nos. 2 and 3 be declared null and void.

Be that as it may, there are certain unusual circumstances in which the aforesaid suit filed by Smt. Dankha Devi Agarwal was withdrawn as also the manner in which the application filed by her for recalling the order of dismissal of the suit was dismissed by the learned Single Judge. The manner in which Smt. Anjali Agarwal, who was Shri Bhagirath Agarwal's Advocate, assumed charge of the proceedings on behalf of Smt. Dankha Devi Agarwal in the suit filed by her against Bhagirath Agarwal, generates an impression that all was not above board. The withdrawal of the suit soon after Smt. Anjali Agarwal took over the proceedings heightens the said suspicion. Added to the above circumstances, is the fact that the suit was mentioned by the learned counsel briefed by Smt. Anjali Agarwal for the purpose of withdrawal thereof on a day when the same was not even listed for the said purpose.

The developments after the filing of the application by Smt. Dankha Devi Agarwal for a declaration that the purported transfer of 1650 shares in favour of Bhagirath Agarwal and his wife was null and void, leading to the withdrawal of the suit, has not been properly dealt with either by the learned Single Judge or the Division Bench which merely followed the order of the learned Single Judge. Both the Single Judge and the Division Bench appear to have been influenced by the affidavit said to have been sworn by Shri Chandra Prakash Agarwal on 24th July, 1995, wherein it had been stated that Smt. Dankha Devi Agarwal was unable to hear, speak, read or write and that she was leading a vegetable existence and her mind had gone completely blank. The events, as disclosed leave a lingering doubt as to whether Smt. Dankha Devi Agarwal had really instructed her Advocate on Record to give a change in favour of Smt. Anjali Agarwal, who, as indicated hereinabove, was the advocate of Shri Bhagirath Agarwal against whom the suit had been filed, particularly when it was

to his interest that the suit stood withdrawn.

In such circumstances, we allow the appeal and set aside the order passed by the Division Bench of the High Court dated 13th September, 1999, dismissing the appeal against the order dated 4th August, 1999, passed by the learned Single Judge dismissing the application filed by Smt. Dankha Devi Agarwal for recalling the orders passed by the learned Single Judge dated 20th June, 1995 and 28th July, 1995. We also set aside the said order of the learned Single Judge dated 4th August, 1999 and direct the aforesaid application to be re- heard and decided afresh after taking into consideration the manner in which the change was obtained by Smt. Anjali Agarwal and the mentioning of the matter ex-parte for non- prosecution of the suit on a date when the matter was not listed for such purpose.

As far as Civil Appeal No.6535/2004 is concerned, it has not been seriously argued on behalf of the appellant that the learned Single Judge had erred in holding that the removal of Shri Bhagirath Agarwal and his wife from the Board of Directors of the company was illegal, on the ground that the meetings of the company held on 26th October, 1989 and 21st November, 1989 were without due compliance with the provisions of Section 286 of the Companies Act. Similar is the case as far as the issuance and allotment of 1960 shares in favour of Shri Tara Chand Agarwal and Shri Chandra Prakash Agarwal is concerned. The Division Bench has affirmed the view of the learned Single Judge that the story of notice having been given to Shri Bhagirath Agarwal of the meeting where his directorship was in question, and his staying away from such meeting, was difficult to accept. The decision of the Single Bench or the Division Bench has not been seriously contested on behalf of the appellant. In the facts of the case, it is difficult to take a view which is different from that taken both by the Single Judge and the Division Bench of the High Court. The aforesaid appeal, therefore, fails and is dismissed. Consequently, we are not convinced that any order is required to be passed as prayed for in the application filed on behalf of Shri Bhagirath Agarwal under Section 340, Code of Criminal Procedure being I.A.No. 10/2006 and the same is also dismissed.

Let a copy of this order in so far as it relates to Civil Appeal No.1015/2000 be communicated to the High Court.