

SUPREME COURT OF INDIA

Jai Mahal Hotels Pvt. Ltd.

Vs.

Rajkumar Devraj & Ors.

C.A.No.7914 of 2015

(Anil R.Dave and Adarsh Kumar Goel,JJ.,)

23.09.2015

JUDGMENT

Adarsh Kumar Goel,J.,

SLP(Civil)No.4384 of 2013

1. Leave granted. The question raised in these appeals relates to the scope of power under Section 111 of the Companies Act, 1956, to direct rectification in the share register of a company. The question has to be examined in the context of correctness of the view taken in the impugned order passed by the High Court directing rectification at the instance of Respondent No.1-Rajkumar Devraj and Respondent No.2-Rajkumari Lalitya Kumari (the “DR Group”), who are the son and daughter respectively of late Maharaja Jagat Singh (“LMJS”).

2. LMJS held shares in M/s. Jai Mahal Hotels Pvt. Ltd., M/s. Ram Bagh Palace Hotels Pvt. Ltd., M/s Sawai Madhopur Lodge Pvt. Ltd. and M/s. S.M.S. Investment Corporation Pvt. Ltd. He died on 05th February, 1997 leaving behind a Will dated 23rd June, 1996 in favour of his mother Gayatri Devi (“GD”). Succession certificate dated 19th February, 2009 was issued by the District Judge, Jaipur jointly in favour of GD and DR Group. GD executed transfer deed dated 27th April, 2009 in favour of DR Group. She also executed Will dated 10th May, 2009 in favour of DR Group. She died on 29th September, 2009. Vide letter dated 15th July, 2009, DR Group claimed transmission and transfer of shares in their favour on the basis of succession certificate dated 19th February, 2009 issued by the District and Sessions Judge, Jaipur (Civil), transfer deed dated 27th April, 2009 executed by their grand mother Gayitri Devi (“GD”) along with revalidation of the letter issued by the Registrar of Companies.

3. The application having not been accepted by the Company, the DR Group filed appeals before the Company Law Board (“CLB”), New Delhi. Urvashi Devi, grand daughter of husband of GD from another wife (“UD Group”) filed application for impleadment stating that the succession certificate was a nullity. She accepted validity of Will dated 23rd June,

1996 executed in favour of GD by LMJS but contested the succession certificate. It was her further case that DR Group had no right of succession in view of Will dated 23rd June, 1996 and they were also not heirs of GD as LMJS was adopted in another family. Further stand was that since at the instance of GD, proceedings were stayed, succession certificate could not be granted even at her instance. Stay granted by the High Court was in a petition seeking consolidation of a probate case and succession certificate. Section 370 of Succession Act was also invoked. It was also submitted that the settlement which was the basis of succession certificate was not genuine. Her Will dated 10th May, 2009 was also contested. Urvashi Devi, Prithvi Raj and Jai Singh also sought transfer of shares in their favour claiming as heirs of GD. It was submitted that GD could not enter into any settlement contrary to the Will dated 23rd June, 1996. Further contention was that she died intestate on 29th September, 2009 and that DG has been disinherited by LMJS in his Will dated 23rd June, 1996.

4. Suit No.32 of 2010 was also filed by the UD Group before the District Judge, Jaipur, raising the dispute of succession to the estate of GD. In the said suit, CMA No.20 of 2010 was filed under Order XXXIX Rules 1 and 2 CPC, for temporary injunction. The application was dismissed by detailed order dated 28th July, 2011. In the said application, all the issues raised by the UD Group were examined prima facie, including validity of succession certificate dated 19th February, 2009. The Court on considering the rival submissions held :
“In such condition seeing the said entire facts and circumstances and the documents submitted no prima facie case is made out by the applicants for stopping the implementation of the order dated 19.02.2009 passed in S.A. No.134 of 1998 by the Learned District Judge, Jaipur till the disposal of the suit.”

5. The CLB dismissed the appeals filed by the DR Group vide order dated 16th March, 2011. The Board framed following questions for consideration :

“(i) Whether order dated 19.02.2009 in Succession Case No.134/98 is a nullity?

(ii) Whether a Will exists?

(iii) Whether the alleged Will dated 23.06.1996 is required to be proved or disprove?

(iv) Whether the probate proceedings in Case No.32/2006 could be dismissed/disposed of on the basis of a settlement between the private parties?

(v) Whether probate proceedings exist as on date?

(vi) Whether construction of the Will is required?

(vii) Whether bar of Section 370 of the Indian Succession Act operates in the facts and circumstances of this case?

(viii) Whether Sections 373, 381, 383 and other provisions of the Indian Succession Act are applicable in the facts and circumstances of this case?

(ix) Whether Late Maharaj Jagat Singh was adopted?

(x) Who really are the legal representatives for the shares held in the sole name of the deceased?"

6. To decide the above questions, following issues were framed :

“(i) Whether these petitions involve disputed and complicated questions of law and facts regarding entitlement to the estate of late Maharaj Jagat Singh?

(ii) If these petitions involve complicated questions of law and facts, whether these are maintainable before the CLB? To be precise, whether the CLB has jurisdiction in this matter or it is ousted on account of the competent court i.e. Civil Court having jurisdiction in this matter.

(iii) In case, the CLB exercising its discretion proceeds to decide the entitlement to shareholding attracting the provisions of sub-section (7) of Section 111, is the CLB competent to decide whether the alleged Will is proved or disproved? And as well as other questions enumerated in para 51 above.

(iv) Further, can the CLB ignore that in view of the stay order of the High Court the order dated 19.02.2009 in Case No.134/98 on which issuing of Succession Certificate is based and Succession Certificate is the basis for the petitioners in C.P. Nos.13 to 16 to claim transmission of shares, is a nullity, is it ab initio void in law, is it without jurisdiction, is it a merely nullity, it is not necessary for anybody who objects to that order, to apply to set it aside, he can only rely on its invalidity when it is set up against him, although he has not taken steps to set it aside, such order cannot give rise to any right whatever not even to a right to appeal, it can give rise to no rights and impose no obligations, the same can be ignored as nullity, that is, non-existent in the eye of law and it is not necessary to set it aside?

(v) Whether the order dated 19.02.2009 is unenforceable due to the bar of Section 370 of the Indian Succession Act, 1925 for granting Succession Certificate in the presence of the Will?

(vi) Can in view of Section 381 of the Succession Act, the Succession Certificate granted jointly in the name of the Rajmata and two grand children be operative after the demise of the Rajmata?

(vii) Can the probate proceedings in case No.327/06 be dismissed on the basis of a settlement between private parties?

(viii) Can probate proceedings decide entitlement?
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(ix) Whether the CLB shall proceed to decide whether in the face of the alleged Will disinheriting Devraj & Lalitya, Late Rajmata can directly or indirectly still make them entitle to the estate of Late Maharaj Jagat Singh?

(x) Whether in the presence of the alleged Will disinheriting Devraj & Lalitya, the estate of Late Maharaj Jagat Singh devolve upon Rajkumari Urvashi, Maharaj Prithviraj Singh, Maharaj Jai Singh and Maharaja Bhawani Singh whose case is based on adoption of Late Maharaj Jagat Singh?

(xi) Whether the CLB can decide these questions in a summary jurisdiction is the main issue to be considered in this matter?"

7. It was held that the Board could not decide the complexity of facts and law which had arisen and such questions could be decided before the Civil Court and not before the CLB. In this view of the matter, the matter was not gone into on merits. The concluding part of the order is as follows :

“67. Having carefully considered the facts of the present case and the nature of the allegations made by the parties as mentioned above and applying the ratio of the decisions mentioned above, I am of the view that such disputed and complicated questions of law and facts cannot be decided by the CLB in the summary jurisdiction under Section 111 of the Act. Such questions which are involved in the present case can be decided before the Civil Court on the basis of the oral and documentary evidence adduced by the parties in support of their respective cases. The CLB is not the forum to adjudicate on these complicated questions of law and facts. The issue “whether the application is not maintainable on account of its involving complicated questions of title” it is not necessary to decide the other issues raised in the case.”

8. DR Group moved the High Court of Delhi under Section 10F of the Companies Act. UD Group also filed appeals before the High Court. The High Court allowed the appeals of DR Group and dismissed the appeal filed by the UD Group. The operative part of the order passed by the High Court is as follows :

“38. Having considered carefully, the facts of the present case and the nature of the allegations made by the respondents, it is clear that the alleged disputes raised by the respondent group in so far as the rectification issue is concerned are all illusory. Admittedly these shares were in the name of Jagat Singh who had bequeathed them to his mother Maharani Gayatri Devi and she in terms of a settlement arrived at between her grandchildren followed by her Will had bequeathed the said share holding thereafter in favour of her grandchildren i.e. the petitioner group. The respondents who were the cousins of Jagat Singh are not even claiming as legal heirs of Jagat Singh but only in their capacity of his legal representatives; these allegations do not in any manner affect the title of the shareholding of Jagat Singh. There is no

involvement of any fraud or forgery. Petition under Section 111 of the Companies Act was well maintainable.

39. The CLB returning a finding opposite has committed an illegality which is liable to be set aside. It is accordingly set aside. The order dated 16.3.2011 is set aside; the member register of the companies be rectified in the name of the petitioner group and the petitioners i.e. Dev Raj and Lalitya Kumari be substituted in lieu of Jagat Singh.

40. As noted Supra, the appeals filed by the respondent group are infructuous; they have supported the order of the CLB, their prayer in the appeal that the shares register be rectified in their favour as necessarily to be dismissed as even as per their own statement, they do not have any document to support their submission that they are entitled to the rectification of the member register qua these shares of Jagat Singh in their favour.”

9. Thus, the High Court held that the succession certificate dated 19th February, 2009 issued by the competent court had to be taken as conclusive evidence under Section 381 of the Indian Succession Act. The plea that the succession certificate dated 19th February, 2009 was in violation of stay order dated 20th August, 2008 was rejected. It was observed that stay order was passed at the instance of GD herself whose statement itself was the basis of the order dated 19th February, 2009. Writ Petition No.7524 of 2008 wherein order dated 20th August, 2008 was passed itself was got disposed of as infructuous on 18th January, 2011 in view of order dated 19th February, 2009. UD Group was in no manner connected with those proceedings. As regards Suit filed by UD Group challenging order dated 19th February, 2009, interim application for stay of order dated 19th February, 2009 was dismissed on 28th July, 2011. The Court had refused to grant any interim injunction in favour of UD Group and other plaintiffs. As regards disinheritance of DR Group in Will dated 23rd June, 1996, it was observed that the reason for disinheriting as mentioned therein was not against the DR Group but only against the estranged wife of the testator. The GD who was the legatee herself bequeathed her rights in favour of the DR Group by duly signing the transfer deeds and communicating the same to the Board of Directors. She also executed Will dated 10th May, 2009. Mere fact that the same had been challenged was no bar to the claim of the DR Group.

10. We have heard S/Shri H.P. Rawal, Sanjiv Sen, learned senior counsel for the Companies, Shri Vikas Singh, learned senior counsel for the UD Group and Shri C.A. Sundaram, learned senior counsel for the DR Group and perused the records.

11. Contention raised on behalf of the appellants mainly is that jurisdiction under Section 111 of the Companies Act is summary in nature and complicated questions of title cannot be adjudicated upon in the said jurisdiction. Reliance has also been placed on *Ammonia Supplies Corpn. (P) Ltd. vs. Modern Plastic Containers (P) Ltd.*¹, *Standard Chartered Bank vs. Andhra Bank Financial Services Ltd.*², *Luxmi Tea Company Limited vs. Pradip Kumar Sarkar*³ and *Bajaj Auto Ltd. vs. N.K. Firodia*⁴. Further submission is that succession certificate was void on account of interim order passed by the High Court dated 20th August,

2008. Reliance has been placed on *Mulraj vs. Murti Raghonathji Maharaj*⁵, *Manohar Lal vs. Ugrasen*⁶, *Ajudh Raj vs. Moti*⁷ and *Chiranjila Shrilal Goenka vs. Jasjit Singh*⁸.

12. It was also submitted that DR Group could not inherit the rights of LMJS in view of the language of the Will dated 23rd June, 1996 and also on the ground that the Will executed by GD was under challenge. In absence of the said Will, DR Group could not acquire any rights as UD Group was entitled to inherit the estate of GD.

13. Per contra, Shri Sundaram supported the view taken by the High Court. His submission is that there is no real dispute. The succession certificate in favour of DR Group has to be acted upon especially when in the suit filed by the UD Group, interim order has been declined and it has been found that there was no prima facie case in challenge to the said certificate. Pendency of suit without there being any interim order in favour of the UD Group in respect of succession to the estate of the GD was of no consequence. The scope of power under Section 111(7) of the Companies Act included jurisdiction to decide a question of title. Apart from succession certificate and the Will, GD had executed transfer deed and communicated the same to the Board of Directors. In the face of her statement in proceedings for succession certificate followed by transfer deed, no dispute whatsoever, remained as to the rights of DR Group to have the shares transferred in their favour. The Board of Directors was dominated by the UD Group who abused its position to deprive DR Group of their rights. The CLB failed to appreciate the scope of its jurisdiction as well as the scope of controversy between the parties. The High Court rightly allowed their appeal. Apart from relying upon the judgment in *Ammonia* (supra), reliance was also placed on judgment of Calcutta High Court by Ruma Pal, J. (as she then was) in *Nupur Mitra vs. Basubani Pvt. Ltd.*⁹.

14. We have given due consideration to the rival submissions. The main question for consideration is whether there is any real dispute between the parties about the entitlement of DR Group to have the shares transferred in their favour and whether the exercise of jurisdiction by the High Court is beyond the scope of Section 111 of the Companies Act.

15. We are of the opinion that there is no real dispute between the parties as held by the High Court. DR Group has furnished the succession certificate as well as the transfer deed executed by GD in their favour. The same had to be acted upon. Moreover, the civil court in interim application moved by the UD Group held that the UD Group had no prima facie case. The said order was required to be acted upon subject to any further order that may be passed in any pending proceedings between the parties. There is no conflicting order of any court or authority. There is thus, no complicated question of title. Moreover, there is no bar to adjudication for purposes of transfer of shares unless the court finds otherwise. The stay order obtained by GD herself could not debar her from making a statement to settle the matter. The judgments relied upon by the appellants have no application to such a fact situation.

16. In *Ammonia* (supra), the scope of jurisdiction of the Company Court to deal with an issue of rectification in the Register of Members maintained by the Company was

considered. *Following Public Passenger Service Ltd. vs. M.A. Khadar*¹⁰, it was held that jurisdiction under Section 155 was summary in nature. If for reasons of complexity or otherwise, the matter could be more conveniently decided in a suit, the Court may relegate the parties to such remedy. Subject to the said limitation, jurisdiction to deal with such matter is exclusively with the Company Court. It was observed :

“31.It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court under Section 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court. Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right the civil court would have jurisdiction.”

17. Thus, there is a thin line in appreciating the scope of jurisdiction of the Company Court/Company Law Board. The jurisdiction is exclusive if the matter truly relates to rectification but if the issue is alien to rectification, such matter may not be within the exclusive jurisdiction of the Company Court/Company Law Board.

18. In *Standard Chartered Bank (supra)*, scope of Section 111(7) was considered. It was observed that jurisdiction being summary in nature, a seriously disputed question of title could be left to be decided by the civil court. It was observed :

“29The nature of proceedings under Section 111 are slightly different from a title suit, although, sub-section (7) of Section 111 gives to the Tribunal the jurisdiction 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 also the general jurisdiction to decide any question which it is necessary or expedient to decide in connection with such an application. It has been held in *Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd.* that the jurisdiction exercised by the Company Court under Section 155 of the Companies Act, 1956 (corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988) was somewhat summary in nature and that if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed question of title.”

19. In *Luxmi Tea Company Limited and Bajaj Auto Ltd. (supra)*, it was observed that a company did not have any discretion in rectifying its register except to require the procedure being followed.

20. In the present case, as already observed, there is no real dispute between the parties. The DR Group followed the due procedure. It had the succession certificate in its favour apart from the transfer deed from GD, who admittedly inherited rights from LMJS. Will in favour of GD is beyond any dispute. Thus, the DR Group derived rights from the GD by documents executed by her in her lifetime and conveyed to the Company. Even if the Will of GD is not taken into account, for purposes of issue of rectification, the documents executed by GD clearly entitled the DR Group to have the rectification made.

21. The decisions in *Mulraj, Manohar Lal, Ajudh Raj and Chiranjilal Shrilal Goenka* (supra) are of no relevance to a situation where the beneficiary of the interim order itself opts to proceed with the matter in respect of which stay is granted by higher Court. In the present case, GD having settled the matter and having herself sought rectification, the interim order granted at her instance could be no bar against the DR Group. The decisions sought are thus, of no relevance to such a situation.

22. We sum up our conclusions as follows :

“(i) LMJS executed will in favour of his mother – GD which is not in dispute;

(ii) GD and DR jointly obtained succession certificate;

(iii) GD signed the transfer deeds and communicated the same to the Board of Directors; and

(iv) The civil court vide order dated 28th July, 1991 declined to grant temporary injunction finding no prima facie case against the succession certificate.”

23. In above circumstances, even in summary jurisdiction, the CLB had no justification to reject the claim of the DR Group. The High Court rightly reversed the said order.

24. In view of the above, we find no merit in these appeals. The same are dismissed with costs quantified at Rs.5 lakhs in each of the appeals.

¹(1998) 7 SCC 0105

²(2006) 6 SCC 0094

³(1989) Supp. (2) SCC 0656

⁴(1970) 2 SCC 550, 0557

⁵(1967) 3 SCR 0084

⁶(2010) 11 SCC 0557

⁷(1991) 3 SCC 0136

⁸(1993) 2 SCC 0507

⁹(1999) 2 Calcutta Law Times 264

¹⁰AIR 1966 SC 0489