

PUNJAB AND HARYANA HIGH COURT

Soma Vati Devi Chand

Vs

Krishna Sugar Mills Ltd

Civil Original No. 38-D of 1962

(H.R. Khanna, J.)

09.04.1965

ORDER

H.R. Khanna, J.

1. This petition under Section 155 of the Companies Act 1956 has been filed by Shrimati Soma Vati against the Lord Krishna Sugar Mills Limited, Delhi (hereinafter referred to as the Company) and others for rectification of the register of members of the Company by restoring therein the name of the petitioner. Prayer has also been made for payment of dividends payable in respect of the shares in question to the petitioner.

2. The Company is a public limited Company having its registered office at Chand Hotel, Chaudni Chowk, Delhi. The Company has a Sugar Mills at Saharanpur and it is also now carrying on the business of manufacturing textiles. According to the allegations of the petitioner she is a shareholder of the Company owning shares in the share capital of the Company as detailed below;

"(a) 792 Ordinary shares of Rs. 10/- each, fully paid, No. 76359 to 77150; 184 Deferred Shares of Rs. 5/- each, fully paid, No. 12317 to 12500 :

and

(b) 5385 Ordinary Shares of Rs. 10/- each, partly paid, No. 107 L16 to 112500; 3684 Deferred Shares of Rs. 5/- each, partly paid, No. 31317 to 35000."

The shares mentioned at (a) were purchased by the petitioner from Seth Shiv Prasad (deceased) father of respondents 2 to 7 and Seth Bimal Prasad in September 1941, while shares mentioned at (b) were allotted to the petitioner about 2 or 3 years later. The petitioner did not receive any dividend after the acquisition and allotment of the above-mentioned shares, nor did she receive any notice from the Company. The petitioner sent a registered letter dated 18th of November, 1961 to the Company complaining that the management had kept her in the dark about the affairs of the Company. She then received a reply dated 19th of December 1961 that the petitioner was

not the holder of any shares in the Company. It is stated that the petitioner then got the records of the Company in the office of the Registrar of Companies examined and came to know that her shares had been shown as forfeited and sold in the alleged enforcement of lien. According to the petitioner the said forfeiture and sale of her shares and consequent removal of her name from the register of members was dishonest, fraudulent, mail fide, illegal and void as the whole thing had been done surreptitiously and in contravention of the law without giving notice to the petitioner. The removal of the name, it is further stated, was in perpetuation of a scheme of fraud designed by the late Seth Shiv Prasad, the then Managing Director of the Company, in collusion with respondent No. 9. Seth Shiv Prasad was the brother of the petitioner's husband.

3. The petition has been resisted by the respondents. Preliminary objections have been taken that particulars of the fraud have not been given and as such the petition was in violation of the provisions of O. 8, R. 4 of the Civil P.C. Objection has further been taken that the petitioner's name was removed from the register of members in 1947 in respect of some of the shares and in 1948 in respect of the other shares, and as such the petition was barred by time. In any case, according to the respondents, the petition has been tiled after a great delay and involved complicated questions of fact, and as such was not a fit case in which resort could be had to the summary proceedings under S. 155 of the Act. On merits, it is stated, that so far as partly paid up shares were concerned there was an uncalled liability of 95 per cent, on each share. The petitioner refused to carry out her contractual obligations by paying the calls made thereon and allowed those shares to be forfeited, in respect of which a resolution was passed by the Directors of the Company on 9th November, 1947. Those shares, after being forfeited, were taken up by respondent No. 9 who thereafter paid 45 per cent of the call money. So far as fully paid up shares of the petitioner were concerned, it is stated that they were sold on 4th January, 1948 in enforcement of the lien of the Company for its dues. The respondents have denied that the thing was done surreptitiously or in furtherance of a scheme of fraud. The petitioner, it is stated, had full knowledge of all the facts and circumstances in which the shares were forfeited and sold.

4. On 24th January 1964 Gurdev Singh, J. passed an order that the particulars of fraud given by the petitioner were insufficient to amount to an averment of fraud of which notice could be taken. The petitioner was, accordingly directed to furnish the necessary particulars of fraud. It was also directed that inspection of documents in possession of the Company be given to the petitioner's counsel or her son at the registered office of the Company. The petitioner thereafter gave particulars of fraud. Briefly stated, according to these particulars, there were three blocs of share holders of the Company in 1946. One bloc, which had a majority of shares, was represented by Seth Shiv Prasad and his associates, while the other two blocs were represented by Seth Banarsi Dass who was another brother of Seth Shiv Prasad and his wife Shrimati Ham Murti Devi, and the petitioner. Ram Murti Devi applied for winding up of the Company in Lahore High Court. The application was accepted by Teja Singh, J. but on appeal the matter was compromised with Seth Shiv Prasad thereafter with an ulterior motive and without notice to others got passed a special resolution amending the Articles of Association so as to include therein clauses enabling the forfeiture of fully paid up shares. It is further stated that on inspection of the minute book of the

respondent Company the petitioner came to know that her fully paid up shares were sold in enforcement of the lien and her partly paid up shares were allotted to one Mahesh Dass who was a nominee of Seth Shiv Prasad As regards the lien, it is stated, that the same was fraudulently created and enforced On fully paid up shares. The petitioner was kept in dark regarding the forfeiture and sale of her shares. So far as the shares of Banarsi Dass and his wife Ram Murti Dass were concerned, it is stated, the same were got transferred and thus those inconvenient share-olders were got rid of.

5. The Company in reply has denied the allegations made in the particulars. It is stated that a number of notices were sent to the petitioner before the forfeiture and sale of her shares, and a public notice dated 22nd of December 1947 was also published. The petitioner, however, took no action on those notices. According to the respondent the Company did not pay any dividend since its inception from 1938 till 1959. As there was no prospect of payment of dividend in the near future, the petitioner was content to have her shares forfeited. After 1959 when the Company began to show dividend, the petitioner filed the present petition for rectification after a lapse of fourteen years.

6. Following preliminary issue was framed in the Case :

"Whether the petitioner's claim in the petition cannot be adjudicated summarily because of delay and determination of complicated questions of fact ?" The petitioner on the above issue has examined herself and her son as against that, Chaman Lal, Assistant Secretary of the Company, has been produced on behalf of the respondent.

7. Section 155 of the Companies Act deals with the power of Court to rectify the register of members and provides that if the name of any person is without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted there from; or default is made, or delay takes place in making the necessary entry on the register, the person aggrieved, or any member of the Company, may apply to the Court for rectification of the register. This section corresponds to section 38 of the Companies Act, 1913 and Section 116 of the English Companies Act, 1948. Although the power conferred by the section on Courts is very wide, the law seems to be well settled that the remedy provided by the section is summary and can be invoked in non-controversial matters requiring quick decision. The provisions are not meant to be used for deciding disputes necessitating investigation. Where the dispute is of a complicated nature and there is controversy under several heads and a regular investigation is necessary, the section ought not to be allowed to be used and the party concerned should be directed to proceed by way of regular suit. The law in England on the subject has been stated in Halsbury's Laws of England, Third Edition, Volume 6, Page 218 :

"The application may be made by the person aggrieved, or any member of the company, or the company. The application must be made to the court having jurisdiction to wind up the company. It may be by motion or summons or by action commenced by writ. If the court thinks that the case, by reason of its complexity or on the ground that there are matters requiring investigation or otherwise, could more satisfactorily be dealt with by an

action, the court will decline to make an order on a motion, without prejudice to the right of the applicant to institute an action for rectification. An action may, without any direction by the court, be instituted for rectification of the register, a course which should be followed where there is much complexity, or where other relief is required. The Court will not give substantive relief by way of rectification of the register on an interlocutory application in an action, nor will it rectify the register in the absence of third parties whose rights will be affected by the rectification.

The application to rectify must be made promptly."

In *Re, Greater Britain Products Development Corporation, Ltd.*, (1924) 40 ILR 488, it was observed that the remedy provided by a similar provision in the English Law was convenient, but one on which no order would be made if it appeared that there was some question in dispute to call for investigation, The Court further said :

"Where it was clear that there was something to be answered and something to be investigated, the ordinary course, as far back as the Court had been able to trace, had been for the Judge to dismiss the summons or motion, but to leave it open to the party to bring his action."

Shadi Lal J., as he then was, while dealing with an application under Section 38 of Act VII of 1938 for rectification of the register of members after quoting from Lindley and Halsbury's Laws of England, made the following observations in *Jagan Nath v. Gopi Chand*¹:

"A person who claims to have been misled by fraud or false representation into taking shares in a Company should raise the objection at an early period. Having regard to the delay of two years and the complexity of the questions involved, I am of opinion that this is not a fit case for the exercise of my jurisdiction under Section 38. The applicant has got his remedy by a regular suit, in which all the matters which he wants to urge before me can be properly enquired into. I accordingly refuse the application but leave the parties to bear their own costs in this Court."

In *Bhagat Singh v. Piar Bus Service Ltd., Amritsar*², decided by Tek Chand, J., the head-note, which is based upon the body of the judgment, reads as under :

"The object of enacting Section 38 of the Companies Act of 1913, which is analogous to Section 155 of the Companies Act of 1958, was to provide a summary remedy in non-controversial matters or in matters where a quick decision was necessary in order to obviate an irreparable injury to a party. This provision was 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. It no longer admits of controversy that the jurisdiction of a Court in matters of rectification of register under section 38 of the Companies Act, 1913, now under section 155 of the new Act, is unrestricted though the petitioner is not entitled to relief *ex debito justitiae*. This remedy is not available to the litigant as of right without the Court having discretion to refuse it.

Where there is a controversy, and the several allegations made by the petitioners are being

questioned and in order to arrive at a correct conclusion, a regular and detailed investigation is desirable. In such a case the petitioner should be directed to proceed by a regular suit. Where the Company forfeited the shares of a shareholder who was a cashier of the Company, on the ground that a certain amount was due from him to the Company on account of defalcation, but the shareholder denied the defalcation and his liability, the controversy cannot be decided in a summary manner under Section 38."

Similar view has been expressed in the matter of, Delakhat Tea Co. Ltd., AIR 1957 Cal 476. On behalf of the petitioner reference has been made to *People's Insurance Co Ltd. v. C.R.E. Wood and Co., Ltd*³, another case decided by Tek Chand J., wherein the Court exercised its powers for rectification of register of members under Section 155 of the Companies Act. Perusal of this authority, however, makes it clear that the view, which had been expressed in the earlier case, was reiterated and it was only because of the nature of the controversy and the simple facts of the case that the Court directed the rectification of the register of members. Another case to which reference has been made on behalf of the petitioner is *Public Passenger Service Ltd. v. M.A. Khadar*⁴, In that case the Company Court set aside the forfeiture of shares in an application for the rectification of the register of the Company. The judgment makes it clear that the point involved was simple and not complex and was merely of a technical character whether the Company has observed all the formalities while issuing the statutory notice.

8. In the present case, as would appear from the resume of facts given above, there are allegations about a design of fraud on the part of the late Seth Shiv Prasad in consequence of which the petitioner's shares were forfeited and sold in 1947 and 1948. The special resolution allowing forfeiture, which was passed before the forfeiture, has also been assailed on the ground that it was got passed with ulterior motive and without notice to the petitioner. Likewise, there are allegations that the whole thing was done stealthily and the petitioner, it is claimed, was not served with the notices which are stated to have been sent by the respondent, and she remained ignorant about the forfeiture and sale of her shares. The petitioner in the course of her statement made on Commission admits that about 10 or 12 years ago she asked her sons to enquire about her shares and when no information was received she asked her sons about 8 or 9 years ago to file a suit to assert her rights. Question would consequently arise as to when the petitioner actually came to know of the forfeiture and sale of her shares. The Court would also have to decide as to whether the claim of the petitioner in respect of her shares, which were forfeited and sold in 1947 and 1948, is within time, and this question may itself hinge upon the decision on facts. As all these are complicated matters which can only be adjudicated after recording evidence, it would, in my opinion, be not proper to go into them in the summary proceedings under section 155 of the Companies Act. I would, therefore, decide the preliminary issue against the petitioner.

9. As a result of the above I would dismiss the petition and direct the petitioner, if she so deems proper, to establish her claim in a regular suit. The parties, in the circumstances of the case, are left to bear their own costs.

Petition dismissed.

Cases Referred.

129 Ind Cas 770 : AIR 1915 Lah 100 (1)

2AIR 1959 Punj 352

3 AIR 1960 Punj 388

4AIR 1962 Mad 276