

**IN THE SUPREME COURT OF PAKISTAN**  
( Appellate Jurisdiction )

Present.

Mr. Justice Nasir-ul-Mulk, HCJ.  
Mr. Justice Amir Hani Muslim  
Mr. Justice Ejaz Afzal Khan

**CIVIL APPEALS NO.616 AND 617 OF 2006**

(On appeal against the judgment dated 16.2.2006  
passed by the Lahore High Court, Lahore in ICA  
No.12/2005 and the order dated 27.2.2006 passed in  
CM No.69/2006 in ICA No.12/2005)

Mian Javed Amir and others (in both cases)      ...      Appellants

**Versus**

United Foam Industries (Pvt) Ltd, Lahore (CA.616/06)  
Sh. Combined Industries (Pvt) Ltd and others (CA.617/06)

...      Respondent(s)

For the Appellants    :      Mr. Aitzaz Ahsan, Sr. ASC  
(in both cases)              Mr. Uzair Karamat Bhandari, ASC  
   Mr. M. S. Khattak, AOR

For Respondents (1-10):      Mr. Raza Karim, Sr. ASC  
(in CA.616/06) and              Mr. Omar Alvi, ASC  
Respdt.2-11 in CA.617/06)

For Respondent No.12:      Mr. Hamid Khan, Sr.ASC.  
(in CA.616/06 and  
Respondent No.1 in CA.617/06)

Date of hearings      :      10, 15-16 & 18-6-2015.

**JUDGMENT**

**AMIR HANI MUSLIM, J.** These Appeals by leave of the  
Court are directed against the common judgment dated 16.2.2006, passed  
by the Lahore High Court, Lahore, whereby ICAs No.11-L & 12-L/2005  
filed by the Respondents were allowed and judgments of the learned Single  
Judge/Company Judge dated 7.6.2005, in C.O.No.3/2005, were set aside.  
The Appellant filed CMs.No.68 & 69 of 2006 for recalling the order dated  
16.2.2006 which was dismissed vide impugned order dated 27.2.2006.

2. Brief facts of the case are that Respondent No.1 United Foam Industries (Pvt) (herein after referred to as 'the Company')] was incorporated on 12.3.1976 under the Companies Act 1913 and presently operating under the Companies Ordinance 1984. The Company was a joint venture of Appellant No.1 and Respondent No.2 and the Appellants were shareholders to the extent of 38%. The dispute arose between the parties with regard to the alleged transfer of shares by the Respondents. The Appellants challenged the said transfer of shares before the Company Judge under Section 305 and 152 of the Companies Ordinance, 1984 praying for winding up of the Company and also for the rectification of register of shareholders on the ground that the Respondents had manipulated the record and made bogus entries in the register to show that Appellants had sold out to them their shares. By filing written statements the Respondents denied the allegations leveled against them by the Appellants and also leveled counter allegations. On 7.6.2005 the learned Company Judge referred the matter to the SECP for appointment of a reputable Inspector within 14 days to investigate into the allegations levelled by the parties against each other, with direction to file report within two months.

3. The Respondents M/s Sheikh Combined Industries (Pvt) Ltd and United Foam Industries (Pvt) Ltd, challenged the order dated 7.6.2006 by filing separate ICAs which were allowed, holding that the Civil Court would be the appropriate forum for adjudication of the controversy between the parties. Being aggrieved of the said order, the Appellants filed CMs No.68 & 69 of 2006, which, too, were dismissed vide order dated 27.2.2006. The said orders were challenged by the Appellants in Civil

Petitions No.475-L & 480-L of 2006, wherein leave to Appeal was granted to consider the following questions : -

- i. *Whether the learned Division Bench having concurred with the finding of the learned Company Judge with regard to the existence of serious disputes qua the management and running of the company was justified in law to interfere with the direction for appointment of an Inspector to investigate in terms of the observations made by the learned Company Judge in para-9 and 10 of the order passed by him?*
- ii. *Whether the order passed by the learned Company Judge for appointment of Inspector to investigate into the affairs of the Company was beyond the parameters of Section 265 of the Companies Ordinance?*
- iii. *Whether the transfer of shares recorded by Company in its register of share holders in the absence of share certificate pertaining to those shares is not unlawful?*
- iv. *Whether the order of the learned Company Judge could be interfered with on the sole ground that the civil suits between the parties were pending decision?*
- v. *Whether a civil court is a proper remedy to investigate the allegations/counter allegations or the circumstances and the mandate of law warrant a more pro-active remedy under the special law i.e. Inspector having the requisite expertise to investigate in terms of Section 265 of the Companies Ordinance?*
- vi. *Whether the learned Company Judge instead of referring the matter for investigation by an Inspector to be appointed by the Security Exchange Commission of Pakistan could decide the same himself in terms of Section 152 read with Section 305 of the Companies Ordinance?*

4. The learned Counsel for the Appellants had contended that Civil Suit is not the appropriate remedy in the present case as the remedy has been provided in the special statute i.e. Companies Ordinance 1984. He

referred to sections 263 and 265 of the Companies Ordinance 1984, which provide for appointment of an Inspector and confer powers on him to investigate into the affairs of the Company. The learned Counsel, in support of his contention, has relied upon the case reported in the case of Light Metal and Rubber Industries (Pvt) Ltd. Vs. Serfraz Quadri (2011 CLD 1485).

5. He next contended that the Appellant is in possession of the original share certificates, without which shares cannot be transferred under Section 76 of the Ordinance. In support of his contention he has relied upon the case reported as Mst. Maqsooda Begum Vs. Maulvi Abdul Had (PLD 1968 Lahore 903).

6. He further contended that the scope of Section 265 of the Ordinance is very wide, as has been held in the case of Mian Miraj Din vs. Brothers Steel Mills (1996 CLC 516). He submitted that the matters which fall within the domain of the Companies Ordinance, a special procedure has been provided which debars the jurisdiction of the Civil Court.

7. The learned Counsel for the Appellants, Mr. Aitzaz Ahsan Sr. ASC submits that there exists a serious dispute between major shareholders of the Company. According to him, under Section 265 of the Companies Ordinance, 1984, the Court can itself appoint an Inspector for investigation. The Appellant alleges that he is owner of 38% shares in the Respondent-Company, out of which 23% shares have purportedly been transferred. The learned Counsel contended that these questions are required to be investigated by the Inspector.

8. He has further contended that three separate Civil Suits have been filed; one prior to the petition for winding up of the Company and for determination of shareholding whereas two were filed subsequent to the Petition, claiming damages. He referred to the case of Khaqan Industries vs. Islamic Republic of Pakistan (1979 SCMR 62) wherein it was held that pendency of civil litigation is no bar to initiate proceedings before the Company Judge under the Companies Ordinance. He also referred to Section 314 of the Ordinance, which authorizes the Company Judge to pass any order it deems just. He further referred to Section 281, which provides that an inquiry or investigation shall not affect the winding up proceedings. He, therefore, contends that the power to hold inquiry or investigation exists independent of any proceedings provided for winding up.

9. The learned Counsel further contended that in the case of Mian Miraj Din (1996 CLC 516), the Court investigated into the internal disputes in Ittefaq Group regarding breach of trust and misappropriation of funds and the findings of the High Court were upheld by this Court in Brothers Steel Ltd. and others vs. Mian Miraj Din (PLD 1995 SC 320). He also relied upon the case of Attock Refinery Ltd. Vs. Executive Director Enforcement and Monitoring Division, SECP (PLD 2010 SC 946). He also referred to Section 152 of the Ordinance, which permits a party to file an application for rectification of register of shareholders.

10. He contended that in the case of Lahore Race Club through Secretary vs. Raja Khushbakhat-ur-Rehman (PLD 2008 SC 707), it was held that no Civil Suit between the parties shall affect the jurisdiction of the Company Court. He contended that the Civil Suits pending between the parties have no nexus with the present Appeal. The learned Counsel

referred to Section 76 of the Ordinance, which provides that shares shall not be transferred unless the Transfer Deed is properly executed and the scripts are transferred. Therefore, the transfer of shares recorded in the register in absence of share script was not lawful.

11. On the other hand, the learned Counsel Mr. Hamid Khan has contended that the findings in regard to ownership of shareholding can only be recorded by a Civil Court of competent jurisdiction. He relied upon the case reported as Lahore Race Club through Secretary (PLD 2008 SC 707). The learned Counsel submitted that out of 38% disputed shareholding, 15% shareholding was initially sold and the remaining 23% was sold to his client in 2001. The Appellants, therefore, filed Civil Appeal No. 616 of 2006) under Sections 152 and 305. In the prayer, it has been stated that transfer of shares, increase in share capital and allotment of shares shall be declared illegal. It was further prayed that register of shareholders shall be rectified and the Company should be wound up. He submitted that the Inspector appointed under Section 265 does not have the authority to rectify the register of shareholders or order winding up. Therefore, the reliefs claimed under the prayer do not fall within the powers of Inspector under Section 265. He contended that the Inspector does not have the powers to decide the disputes between shareholders regarding the ownership/title of shares. He submitted that the Company Judge has passed an order which does not fall within the ambit of Section 265.

12. He next contended that the dispute of the nature cannot be resolved in summary manner and requires adjudication by the Civil Court, after recording of comprehensive evidence. He submitted that the Civil Court is the appropriate forum to decide the dispute of ownership of

shareholdings between two major shareholders, after proper investigation and recording of evidence. He has relied upon the cases reported as Muhammad Aslam Javed vs. Malik Ijaz Ahmed and another (2003 YLR 2150), Muhammad Ahmed vs. Associate Engineering Concern (Pvt) Ltd (1998 CLC 426), Lahore Race Club through Secretary (PLD 2008 SC 707), Messrs Ammonia Supplies Corporation Ltd vs. Messrs Modern Plastic Containers Pvt Ltd. (AIR 1998 S.C. 3153) and Messrs Ammonia Supplies Corporation Ltd. Vs. Messrs Modern Plastic Containers Pvt. Ltd (AIR 1994 Dehli 51).

13. Mr. Raza Kazim, the learned Counsel for the Respondent No.1 has submitted that the main issue before the court is the allegation by the Appellant that the Respondent has committed fraud/forgery. He contended that if it is held that these shares were legally sold, then the Appellants have no *locus standi* as they were ceased to be the members of the Respondent Company. And in case it is determined that fraud/forgery has been committed by the Respondents, the register of shareholders shall be rectified. He has submitted that in order to settle this issue, some evidence is required to be recorded. To determine the allegation of fraud, the most important material is the examination of signatures by the handwriting expert, and this cannot be undertaken by an Inspector. He submitted that the recording of statements and cross-examination should be done in the High Court under the Companies Ordinance, as it does not involve an enormous record to be looked into. He submitted that the point in issue is very limited and can be undertaken by the Company Judge.

14. He next contended that there is no restriction on the Company Judge to try this matter and record evidence under Section 9 of Companies

Ordinance. He contended that the concept of summary procedure relates to time that the case should be decided expeditiously, within 90 days. In support of his contention, he relied upon the case reported in Messrs Platinum Insurance Company Ltd. Karachi Vs. Daewoo Corporation Sheikhpura through Director Admn and Finance (PLD 1999 SC 1), wherein it was held that summary procedure adopted must be fair and just and it does not debar a Court from recording evidence.

15. We have heard the learned Counsel for the parties at length and have perused the record. The Appellant filed proceedings before the learned Company Judge under the provisions of Sections 152 read with Section 305 of the Ordinance for winding up of the Company and for rectification of register of shareholders. The learned Company Judge referred the matter to the Security and Exchange Commission for appointing an Inspector to investigate into the affairs of the company and report within two months. The Respondents challenged the order of the learned Company Judge in I.C.A before a Division Bench, which set aside the orders of the Company Judge and directed the parties to approach the Civil Court for resolution of their dispute.

16. The question which arises from these proceedings is whether a Court having jurisdiction under the Ordinance can undertake the exercise of recording oral/documentary evidence and decide disputed questions of fact in an Application under Section 152 of the Ordinance, in view of the restriction contained under Section 9(3) of the Ordinance. Section 9(3) of the Ordinance provides that “*in the exercise of its jurisdiction as aforesaid, the Court shall, in all matters before it, follow the summary procedure.*” In



our opinion, this Section does not abridge or curtail the power of the Court to record oral evidence or receive documentary evidence in the proceedings before it to determine the issues relating to a “Company” or its members covered under the Companies Ordinance, 1984.

17. Section 9 of the Code of Civil Procedure provides:-

*“9. Courts to try all civil suits unless barred. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”*

Since the Ordinance was promulgated with an intent to amend the law relating to companies and certain other associations for the purpose of healthy growth of the corporate enterprises, protection of investors and creditors, promotion of investment and development of economy and matters arising out of or connected therewith, therefore, all matters relating to companies irrespective of the fact whether factual controversy is involved or not are required to be tried by a Court having jurisdiction under the Ordinance of 1984. Mere insertion of the term “summary procedure” does not debar the Company Judge from receiving evidence in cases where factual controversy is involved. The Court having jurisdiction under this Ordinance can receive evidence in cases it thinks appropriate in the circumstances of the case.

18. In order to gather the true intent of the legislature and the purpose of the Ordinance, it would be advantageous to reproduce Section 152 of the Ordinance:-

*“Power to Court to rectify register (1) If—*

*(a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register*

*of members or register of debenture-holders of a company; or*

*(b) default is made or unnecessary delay takes place in entering on the register of members or register of debenture-holders the fact of the person having become or ceased to be a member or debenture-holder;*

*the person aggrieved, or any member of debenture-holder of the company, or the company, may apply to the Court for rectification of the register.*

*(2) The Court may either refuse the application or may order rectification of the register on payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.*

*(3) On any application under sub-section (1) the Court may 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, whether the question arises between members or debenture-holders or alleged members or debenture-holders, or between members or alleged members, or debenture-holders or alleged debenture-holders, on the one hand and the company on the other hand; and generally may decide any question which it is necessary or expedient to decide for rectification of the register.*

*(4) An appeal from a decision on an application under sub-section (1), or on an issue raised in any such application and tried separately, shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908):*

*(a) if the decision is that of a civil court subordinate to a High Court, to the High Court; and*

*(b) if the decision is that of a Company Bench consisting of a single Judge, to a Bench consisting of two or more Judges of the High Court”*

19. In order to carryout the purposes of the above Section and the Ordinance itself and to determine the factual controversy between the parties, a Court having jurisdiction under the Ordinance has ample power to record evidence in cases it deems fit. The object of Section 152 of the Ordinance, which relates to factual controversy, cannot be achieved without entering into in-depth investigation and recording of evidence. Therefore, we hold that there is no legal bar for a Company Court to enter into factual inquiry, framing of issues for determination and recording of oral as well as documentary evidence in coming to the just conclusion of the case.

20. The learned Company Judge has also erred in law while directing the S.E.C.P to appoint an Inspector who shall submit a report as to whether a case under Section 305 is made out or not. Suffice it to observe that the power to appoint an Inspector under Sections 263 and 265, vests with the Commission on an application by a member of the company or the Registrar of the Commission. The areas in which the Inspector was directed to investigate falls within the jurisdiction of the Company Court and can be investigated and looked into by a Company Judge itself.

21. The dictionary meaning of the term “Summary Proceedings” referred to in Section 9 of the Ordinance of 1984, is “*to be disposed of promptly in simple manner out of regular course of the common law*”. This term by itself does not impose any restriction on the forum from recording evidence to reach a final conclusion. Section 9 of the Ordinance of 1984 does not exclude the jurisdiction of the Court to decide the controversial facts.

22. We, for the aforesaid reasons, are of the considered view that a Court having jurisdiction under the Ordinance of 1984 can record oral as well as documentary evidence in any dispute brought before it for adjudication and the learned Division Bench of the High Court fell in error in holding that the Civil Court would be the appropriate forum for resolving the controversy between the parties.

23. The above are the reasons of our short order of even date, which is reproduced hereunder:-

*“For reasons to be recorded later, the appeals  
are partly allowed in the terms that while*

*setting aside the impugned judgment of the Division Bench of the Lahore High Court, the order of the Company Judge is modified to the extent that the exercise of rectification of register of shareholders as well as the issue of winding up shall be examined and decided by the Judge himself instead of referring the same to the Inspector”*

CJ

J

J

Islamabad the,  
16<sup>th</sup> June, 2015.

**APPROVED FOR REPORTING.**

Sohail/\*\*