Supreme Court of India
M/S Ammonia Supplies ... vs M/S Modern Plastic Containers ... on 4 September, 1998
Author: Misra
Bench: G.B.Pattanaik, A.P. Misra

PETITIONER:
M/S AMMONIA SUPPLIES CORPORATION(P)LTD.

Vs.

RESPONDENT:
M/S MODERN PLASTIC CONTAINERS PVT.LTD.& ORS.

DATE OF JUDGMENT: 04/09/1998

BENCH:
G.B.PATTANAIK, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT MISRA, J.

The present appeal arises out of an order dated May 16, 1994 dismissing the appellant- Company appeal by the High Court. The short question raised by the appellant is: "Whether in the proceedings under Section 155 of the Companies Act, the Court has exclusive jurisdiction in respect of all the matters raised therein or have only summary jurisdiction?" According to the appellant, there are conflicting decisions of the various High Courts in India which resulted into reference of Appellant's case to the Full Bench by the Delhi High Court. The Full Bench decided that the jurisdiction is summary in nature, thus rejecting the case of the appellant that the power of the Court under this is exclusive in respect of all the matters raised therein.

In order to appreciate the point it is necessary to refer to certain facts.

M/s Ammonia Supplies Corporation (P) Ltd. (hereinafter referred to as an appellant-Company) went in liquidation and was directed to be wound-up by the Punjab High Court Circuit Bench at Delhi. By Order dated 24th Dec. 1962 the said High Court was pleased to transfer all proceedings to the Court of District Judge, Delhi. It is said Shri Murarilal Bhargava is the sole beneficiary of the said Company. He filed an application for absolute stay of the liquidation proceedings which was

granted on the 1st February, 1978 till further orders. He was authorised to carry on the business of the Company. The stay order was in respect of all the affairs except with regard to the assessment and of income tax payment thereof in respect of which it was directed that the same shall be prosecuted by the official liquidator.

On the 3rd January, 1977 the appellant-Company made investment in the shares of M/s Modern Plastic Containers (P) Ltd. (hereinafter referred to as the respondent-Company) to the extent of 50% shares that is to say 1,265 shares of Rs. 100 each amounting to Rs. 1,26,500/-. Shri O.P. Bhargava S/o Shri M.L.Bhargava married the sister-in-law of one Shri V.K.Bhargaval, one of the Managing Directors of the respondent-Company. On account of this Shri M.L. Bhargava became closer to Shri V.K. Bhargava. It is for this reason appellant-Company invested into the aforesaid shares of the respondent-Company. The dispute pertains about this investment. According to respondent-Company there was no such investment made by the appellant-Company nor any share was transferred by the respondent-Company in favour of the appellant-Company. On the other hand, the bone of contention of the appellant-Company is inspite of payment of the aforesaid amount for shares it was not invested in such shares. The appellant-Company became 50% share holders of the respondent-Company about which there is an acknowledgment by the respondent-Company. Strong reliance is placed on the basis of various documents mainly the Balance Sheet of the appellant-Company dated 31st March, 1977 showing investment in the respondent-Company.Accounts of the appellant-Company were audited which took notice of this investment which was subjected to income tax assessment orders dated 19th May, 1978 and 4th August, 1979. On 18th January, 1983 Shri V.K.Bhargava dies in a car accident, which according to the appellant is the reason of dispute between the appellant-Company and the respondent-Company, being raised by the brothers of the deceased Shri V.K.Bhargava. It is because of this the appellant filed a composite petition on 10th September, 1984 under Sections 397, 398 and 155 of the Companies Act for rectification of the Register of Members and for oppression and mismanagement of the respondent-Company which was admitted on 14th September, 1984. However, it seems that the petition which was filed by the appellant under Sections 397, 398, read with 155, the Court by its order confined the relief under Section 155, that is to say, rectification prayer made therein. In this appeal we are only concerned with this part viz., the jurisdiction of the Court under Section 155 while dealing with any application for the rectification. Further case of the appellant-Company is that Shri V.K.Bhargava informed the appellant that his group of share-holders in the respondent-Company wanted to get rid of Mittal Group of share-holders as the joint functioning was not proceeding well. It is on account of this he desired that the appellant-Company of whom the sole beneficiary is Shri M.L.Bhargava and ultimately Shri O.P. Bhargava-son should have 50% shares by purchasing the shares belonging to Mittal group. On account of this the appellant-Company sent the aforesaid amount to Shri V.K. Bhargava for purchasing the shares in the name of the appellant-Company. Reliance is placed on the basis of various letters, some of which according to the appellant are admission for the appellant-Company being entitled to the shares holding of 50%. According to the facts as recorded by the Company Judge in its order dated 4th March, 1994 refers to the averment in the petition before him, that 1265 shares belonging to Mittal Group were to be transferred in the name of the appellant-Company in the records of the respondent-Company but due to fraudulent intentions the same was not done. The alternative plea was taken that Shri V.K.Bhargava has no fund acquire the said 1,265 shares in

January and February 1977 and it should be hold that said Shri V.K.Bhargava held those shares benami in his name for the benefit of the appellant-Company. In other words, the money was given by the Appellant-Company though the shares were purchased in the name of Shri V.K.Bhargava. It is from the money which was advanced by the appellant-Company the respondent-Company allotted 470 shares, that is to say, 265 and 205 shares to the Respondent Nos. 2 & 3 respectively before the Company Judge to bring the distribution of shares ratio of 50% each. A prayer was made that the Court should declare that 470 shares allotted to the said respondents is null and void and it should be held that the appellant-Company is having share-holding of those 1265 shares. Accordingly, necessary rectification be made in the Register of the members of the respondent-Company. Contesting the case set up by the appellant-Company before the learned Company Judge the respondents vehemently disputed the claim. The contention is as the claim, if at all of the appellant-Company of having advanced the aforesaid amount of Rs. 1.26,500/- to late Shri V.K.Bhargava the recovery of which was hopelessly time barred as the said transaction took place in year 1977 whereas the Company petition was only filed in the year 1984. Hence, the present petition has been filed as a device, as an alternative, to claim to be the member of the respondent-Company as owner of the shares to the extent of Rs. 1,26,500/-. In fact, no such amount was ever paid to the respondent-Company and at no point of time the appellant-Company became entitled to be the share holder of the respondent-Company. The shares of the respondent-Company could only be transferred with the permission of Board of Directors. There was no such permission. In fact in order to become the member or to purchase the shares of the Company a procedure is prescribed under the Companies Act which has to be followed before the shares could be transferred. There is neither any such plea by the appellant-Company nor there is nay such proceeding undertaken for the transfer of shares in favour of the respondent-Company as alleged. Actually, the aforesaid Mittal Group offered to transfer shares to Shri V.K.Bhargava which was duly transferred by the Board of Directors. Hence no question arises of offering any share for sale to the appellant-Company of the shares belonging to the Mittal Group. If there are any transaction of advancement of Rs. 1,26,500/- to Shri V.K.Bhargava, the said transaction is between Shri M.L.Bhargava or by the appellant-Company with Shri V.K.Bhargava which could only be a private transaction between them and the respondent-Company has nothing to do with the same. In fact, shares purchased by Shri V.K.Bhargava from Mittal Group had always been shown in the income tax return of Shri V.K.Bhargava as his personal assets. The respondent-Company further pleaded that the appellant had forged letter dated June 7, 1984 as much as the said letter was never issued by the respondent-Company. Further, there is no entry in the books of accounts for the aforesaid amount. In fact the various documents filed by the appellant-Company apart from the forged letter including 25 other letters are also denied by the respondent-Company. It is also necessary to record certain facts as recorded in the proceedings before the Company Judge. These facts are recorded in the impugned order of the High Court. On 30th April, 1985 the Court directed the parties to file affidavits and minute books. This exercise started for considering the plaint of the appellant-Company for the rectification as aforesaid. Liberty was given to each party to cross-examine the witnesses. The case was listed for cross-examination of the defendant on the 2nd August, 1985 and 5th August, 1985. On the various dates the matter was listed but was adjourned. On 22nd January, 1986 a direction was given that the Registrar of Companies should produce the enquiry report, if any, pertaining to the complaint filed by Shri M.L.Bhargava on 11th February, 1986. On the 14th July 1986 learned counsel for the respondent-Company raised the objection that

since the proceedings under Section 155 of the Companies Act was summery jurisdiction, the various points raised by the appellant-Company adjudication to which requires detailed evidence to be led including the adjudication of the various letters including forged one cannot be gone into in these proceeding put only through civil suit. Hence, the case should be tried by a Civil court. Thus raised the objection about the maintainability of the petition. It is thereafter the learned Single Judge deferred recording further evidence. After extensive arguments and considering various authorities the Company Judge following the Full Bench decision of the Delhi High Court in the very case of the appellant-Company reported in AIR 1994 Delhi. 51 (F.B.) held that it is not a fit case for exercising discretion of the Court for invoking the summary jurisdiction under Section 155 of the companies Act, on the facts and circumstances of this case and if advised, the appellant-Company could seek his remedy by filing regular civil suit after seeking permission of the court under Section 446 (2) of the Companies Act. The petition of the appellant-Company was, therefore, dismissed. On appeal also the Division Bench dismissed the appeal. Hence this special leave petition.

Within the aforesaid matrix of facts the question raised is not something new but is what is being raised time and again in the various High Courts including this Court. The question is, whether the jurisdiction of the court under Section 155 of the Companies Act is summary in nature or it is all encompassing to include all types of disputes to be adjudicated exclusively by the court. Learned senior counsel for the appellant contends that the aforesaid Full Bench of the Delhi High Court holds it to be summary in nature based on the decision of this Court in the case, Public Passenger Service Ltd. Vs. M.A.Khadar and Another (1966 Companies Act (Vol. 36) S.C. Page 1) about which he feebly submitted to be in percuricum. In the alternative contention is both in the full Bench decision of the Delhi High Court and decision of this Court in the case Public Passenger Service Ltd. (Supra), notice was not drawn to the definition of 'Court' as defined under Sec.2 (11) and Sec. 10 of the Companies Act. If that would have been considered a different interpretation would have followed. If that definition is read into Section 155 the 'Court' would only be a company judge and not Civil Court. Further, submission is even if it could be said the jurisdiction of the Court under Section 155 is summary in nature, an applicant cannot be driven to file civil suit only because one raises such dispute for dispute sake to harass an applicant with an object to delay the proceedings. The Court has to examine its sustainability at least prima facie. By merely saying complicated questions of fact and law are involved and there being challenge of any document to be forged, a party should not be driven to file civil suit. Even if such a plea is taken the court should scrutinise the objections to reach to a prima facie finding before drawing conclusion of jurisdiction. The argument is various documents itself prima facie prove the appellant having become shareholder of the respondent-Company and bare perusal of the document shows it not being forged and if that be so, the order directing the appellant to seek permission to file suit on the facts and circumstances of this case is not justified. In support that the court has exclusive jurisdiction reliance is placed in Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others. (1985 (Vol. 58) Companies Cases Page 633) read with Section 2 (II) and Section 10 of the Act. Learned counsel for the appellant contends, these decisions in principle holds, the 'Court' exercising power under the Companies Act have exclusive jurisdiction hence the 'Court' referred to in Section 155 could only be the company judge having exclusive jurisdiction. Hence, no matter under it could be sent for adjudication to the civil court. The learned counsel also referred to the case in Indian Chemical Products Ltd. Vs. State of Orissa and Another (1966 (Vol. 36) Companies cases Page 592) to contend that this jurisdiction is

to be liberally exercised. He also referred to the case in Madhusudan Gordhandas and Co. Vs. Madhu Woollen Industries Pvt. Ltd. (1972 (Vol. 42) Company cases Page 125) that the exercise of discretion has to be within the permissible parameters. Strong reliance is placed on the proviso of Sub-Section(3) of Sec. 38 of the Indian Companies Act, 1913 (hereinafter referred to as '1913 Act') under which the Court exercising power of rectification may direct an issue to be tried by the civil court in which any question of law is raised. This section deals with rectification as Sec. 155 of the Indian Companies Act of 1956 (as amended in the year 1960) (hereinafter referred to as '1960 Act') to which the present case is concerned. Since the proviso to the said Sec. 38 was deleted, it is urged this inevitably indicates that Court need not refer any issue now. As we have said above the interpretation of Sec. 155, viz., the rectification of the register of a company has come umpteen time before various courts and in view of divergence of view full Bench of the Delhi High Court was constituted.

We may also notice that by Companies (Amendment) Act, 1988 S. 155 of the Act has been omitted from the Act. With effect from 31st May, 1991 and now under Sec. 111 the power to rectify the register of members of a company has been vested in the Company Law Board. However, we are not concerned with this amendment.

The remedy provided by S. 155 of the Act is summary in nature, has been the view of various High Courts (See: Soma Vati Devi Chand V. Krishna Sugar Mills Ltd., AIR 1966 Punjab 44; There Dhelakhat Tea Co. Ltd., Air 1957 Calcutta 476; Punjab Distilling Industries Ltd. V. Biermans Paper Coating Mills Ltd. 1973 (43) Company Cases 189 (Delhi) (DB); Public Trustee V. Rajeshwar Tyagi, 1973 (43) Company Cases 371: (AIR 1972 Delhi 302) (DB); Anil Gupta V. Delhi Cloth and General Mills Co. Ltd. 1983 (54) Company Cases 301; Vishnu Dayal Jhunjhunwalla V. union of India, 1989 (66) Company Cases 684 (Allahabad) (DB); Rao Saheb Manilal Gangaram Sindore V. Messrs Western India Theatres Ltd. AIR 1963 Bombay 40.

On the other hand a contrary view has been taken by the Gujarat High Court in Gulabrai Kalidas Naik Vs. Laxmidas Lallubhai Patel, (1978 (48) Company Cases 432) when it is held that Section 155 does not indicate the jurisdiction conferred by the Section is one hedged in with a condition that it can only be exercised when relief can be granted in summary manner, also by Kerala High Court in Mathew Michael Vs. Teedoy Rubbers (Ubdual) Ltd., (1983 (54) Company Cases 88) and Madras High Court in Mrs. E.V.Swaminathan Vs. K.M.M.A. Industries and roadways Pvt. (1993 (76) Company Cases 1). In order to resolve this conflict as aforesaid the Delhi High Court in the case of petitioner company relying on Public Passengers Service Ltd. (Supra) held that the jurisdiction of the Court under Section 155 is summary in nature.

In Public Passengers Service Ltd. (supra), this Court held by reasons of its complexity or otherwise the matter can more conveniently be decided in a suit, the Court may refuse relief under Section 155 and relegate the parties to a suit.

Learned Counsel for the appellant initially made feeble submission as aforesaid to hold that the decision in Public Passenger Service Ltd. (supra) case is in per curiam. We have no hesitation to reject such a submission. This issue was directly there and was considered with respect to the

interpretation of Section 155 and was a case not under 1913 Act but 1960 Act hence by no stretch of imagination it could be said that the said decision is in per curiam. Next submission is neither this case nor the Full Bench of Delhi High Court considered Section 2 (II) and Section 10 of this Act, if it would have been done different inference would have been drawn. The submission is the expression "the Court" used under Section 155 by virtue of definition of the Court as defined under Section 2(II) only means Company court and not Civil court. Similarly Section 10 defines jurisdiction of the Court under this Act to be the High Court having jurisdiction for the company concern except to the extent the jurisdiction has been conferred in District court subordinate with the High Court and where jurisdiction has been conferred on District court the court would mean the District Court Hence the only Court which would have exclusive jurisdiction under Section 155 would be either High Court or the District court, as the case may be, by virtue of Section 2(II) and Section 10. For ready reference Section 2(II) and Section 10 are quoted hereunder :-

...

Section 2(II) : "The Court means -

(a)With respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;

(b)With respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence;" S.10. "Jurisdiction of Courts. -

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(1)The Court having jurisdiction under this Act shall be-

(a)the High Court having jurisdiction in relation to the place at which the registered office of the Company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in

(b)pursuance of sub-section (2);

and

(c)where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district."

He also relied on the case of State of Orissa Vs. Indian Chemical Product Ltd. (AIR 1957 Oeissa Page 203) dealing with rectification under old Section 38 of the Companies Act of 1930.

Now we proceed to examine the submissions for the appellant in the light of various aforesaid decisions referred to by the learned counsel keeping in mind the interpretation of "Court" in the Act.

In the case of Canara Bank (supra) the question of jurisdiction was tested inter set between the Court under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and the Court under the Indian Companies Act:

> "Having regard to the enormity of the securities scam and its ramifications, Parliament thought it was necessary that all matters in respect of claims arising out of transactions in securities entered into between the stated dates in which a person notified was involved, should be brought before and tried by the same forum. That forum had been invested with the jurisdiction to try persons accused of offences relating to transactions in securities entered into between the stated dates. It was also required to give directions to the custodian in regard to property belonging to persons notified which stood attached under the provisions of the Special Court Act. The object of amending the Special Court Act. The object of amending the Special Court Act is to invest the Special Court with the power and authority to decide civil claims arising out of thrnsactions in securities entered into between the stated dates in which a person notified was involved. In these circumstances, it is proper to attribute to the word "Court" in section 9A (1) of the Special Court Act, not the narrower meaning of a court of civil judicature which is part of the ordinary hierarchy of courts, but the broader meaning of a curial body, a body acting judicially to deal with matters and claims arising out of transactions in securities entered into between the stated dates in which a person notified is involved. An interpretation that suppresses the mischief and advances the remedy must plainly be given,".
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> "The word "court" must be read in the context in which it is used in a statute. It is permissible, given the context, to read it as comprehending the courts of civil judicature and courts or tribunals exercising curial or judicial, powers. In the context in which the word "court" is used in section 9A of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 , it is intended to encompass all curial or judicial bodies which have jurisdiction to decide matters or claims, inter alia arising out of transactions in securities entered into between the stated dates, in which a person notified is involved."

The Court held that Company Law Board would not have jurisdiction to decide a petition under Section 111 of the Companies Act, 1956 (as amended in the year 1988) where persons notified under the Special Court Act, 1992 are involved. In other words, all matters pertain to security scam even in respect of matter covered by Section 111, the Special Court would have jurisdiction. This case has no relevance for deciding the controversy in the present case. This decision holds "the word 'court'must be read in the context in which it is used in a statute".

Next reliance was on the case in Sudarsan Chits (I) Ltd. (Supra). This was a case where on a petition by certain creditors, the appellant company was ordered to be wound-up by the Company Judge and an official liquidator was appointed. Pending appeals against this order the Division Bench approved a scheme of arrangement and kept in abeyance the winding up order. During implementation of this scheme an application was filed before the Division Bench for a direction to the provisional liquidator to file claim petition under Section 446 (2) of the Companies Act, 1956. This was rejected on the ground that it had no jurisdiction to entertain such a petition as there was no Winding up proceedings either before the Company Judge or the Division Bench. This Court held:

> "That the winding up order made by the company judge had not been quashed, set aside cancelled revoked or recalled. On the contrary, after directing that the winding up order shall be held in abeyance, the Division Bench directed that the official liquidator shall continue to act as provisional liquidator as provided by s. 450 and that itself was a stage in the winding up proceedings. When winding up order was kept in abeyance, it was in a state of suspended animation. The fact that the Division Bench directed that, pending the implementation of the scheme as sanctioned by the High Court, the winding up order will be kept in abeyance itself without anything more showed that the order was neither cancelled nor recalled not revoked not set aside. It continued to exist but was inoperative.... Therefore, the winding up order was effectively subsisting but inoperative for the time being.... If the winding up order was merely held in abeyance, i.e., it was not operative for the time being, but it had not ceased to exist, the winding up proceedings were in fact pending and the court which made the winding up order would be the court which was winding up the company. It was well-settled that a winding up order once made could be revoked or recalled but till it was revoked or recalled, it continued to subsist. That was the situation in this case. If the winding up order was subsisting. the court which made that order to the court which kept it in abeyance would have jurisdiction to five necessary directions to the provisional liquidator to take recourse to Section 446 (2)."

The question was whether the Division Bench, which was monitoring the scheme after winding up order would have jurisdiction to pass an order for a direction to the official liquidator when the winding-up order was kept in abeyance? The High Court held that it has no jurisdiction. This Court rejected this and held when winding-up order was not set aside, quashed, cancelled or revoked the court which kept in abeyance the winding-up order would have jurisdiction to give necessary directions. In the present case, as aforesaid, the question is the scope and the width of the jurisdiction of 'Court' keeping abeyance the winding-up order would have or not the jurisdiction to direct the applicant to seek his remedy under Section 446 (2).

Before we come back to Section 155, since appellant also submitted the Company Judge should himself decide the relief under Section 446 (2) having exclusive jurisdiction instead of sending it to the civil court. For this it is necessary to refer to the short background of Section 446. Earlier under section 171 of the Indian Companies Act, 1913 there was no similar provision as Section 446 (2). It only provided no suits or proceedings pending could proceed nor fresh suit could be filed without

leave of the Court. This provision was re-enacted with little modifications in section 446 (1). After winding up order a company may have many subsisting claims and in order to recover it, he may have to file suits. It is to avoid this eventuality for a long arduous procedure before the civil Court the jurisdiction of the Company Judge was enlarged even to entertain such petition for recovering the claims of the Company. The purpose of various amendments brought in the Companies Act is to centralise as far as possible all proceedings to the Court created under this act for adjudication of various claims. It is in this background Section 446(2) was brought in, based on the recommendation of Company Law Committee Report through an amendment of the Companies(Amendment) Act, 1969. In this background the Sudarshan Chit (I)Ltd. (supra) holds:

> "Sub-section (2) of S. 446 confers jurisdiction on the court which is winding up the company to entertain and dispose of proceedings set out in cls. (a) to (d). The expression "court which is winding up the company" will comprehend the court before which a winding up petition is pending or which has made an order for winding up of the company and further winding up proceedings are continued under its directions. Undoubtedly, a look at the language of s. 446 (1) and (2) and its setting in Part VII, which deals with winding up proceedings, would clearly show that the jurisdiction of the court to entertain and dispose of proceedings set out in sub-cls. (a) to (d) of sub-s. (2) can be invoked in the court which is winding up the company."

The appellate Bench in this case held since winding-up proceeding in respect of the appellant-Company is no more pending and there is no Court which could be said to be the Court of winding up of the company thus the claim petition on behalf of the company which is not being wound-up is not contemplated under Section 44l (2). This decision and decision in Canara Bank (supra) rejected the restricted meaning given by the High Court of the expression "court which is winding up the company". Hence to this extent there could be no doubt, a Company under liquidation falling under Sec. 446 (2), the Company judge alone would have exclusive jurisdiction to decide matter covered by it. Now reverting to the submission to read definition of 'Court' as defined under Section 2 (11) read with Section 10 with the word 'Court' used under Section 155, whether it would result into any different interpretation to lend support to the submission of learned counsel for the appellant? Submission of learned counsel for the appellant? Submission is the word 'court' under section 155 would only mean Company Judge and he alone would have exclusive jurisdiction while exercising powers under this section, hence any direction to seek leave of the court under Section 446 (2) for filling suit cannot be sustained. First the scope of Section 155 and Section 446 to be understood to be entirely in different fields. Section 155 deals with power of the Court to rectify register of members maintained by a Company. Section 441 deals with commencement of winding-up by the Court. Section 442 deals with the power of the Court to stay or restrain proceedings against the company, at any stage after the petition for winding up is filed but before a winding-up order is made. A creditor or a company may apply to the Court having jurisdiction to wind-up the company to restrain all further proceedings in any suits or proceedings against the Company. Section 143 deals with powers of Court to hear such petition, Section 444 entrusts the Court after the winding up order to communicate the same to the official Liquidator. Section 445 directs that a copy of the winding up order to be filed with the Registrar. Then comes Section 446. Sub-section (1) is after winding up order has been passed or the official liquidator has been

appointed, it puts an embargo on any suit to be instituted or if pending against the company on that date to be proceeded with except with the leave of the Court. Use of the words, no suit...' shall be commenced '.... proceeded with.....' except by leave of the court....." spells out that the jurisdiction of the civil court is not ousted to adjudicate matter between the parties but embargo is to be controlled at the discretion of the Company Judge, depending on the facts of each case. Then comes Section 446 (2) under which the Court is invested with the jurisdiction to entertain or dispose of any suit or proceeding by or against the company. So Section 446 deals with cases of the company under winding up while Section 155 deals with both classes of companies one under winding up and other not under winding-up. Now we proceed to examine the power of the Court to rectify the register of members of a company under Section

155. The question raised for the appellant is that the Court under this Act cannot direct an applicant to seek his remedy by was of suit but the Court under the Act having exclusive jurisdiction should decide itself. In support, strong reliance is placed on the deletion of proviso to Section 38 of the 1913 Act. Section 38 of the old Act is quoted hereunder:

> "38. Power of Court to rectify register. - (1) If-
>
> (a) the name of any person is fraudulently or without sufficient cause entered in or omitted from their Register of members of a company; or in the manner directed by the code of Civil Procedure, 1908 (V of
>
> (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved, or any member 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 and payment by the company of any damages sustained by any party aggrieved, and mayb make such order as to costs as it in its discretion thinks fit. 1908), on the grounds mentioned in section 100 of that Code."

The proviso gave discretion to the Court to direct an issue of law to be tried, if raised. By this deletion, submission is that the Company Court now itself has to decide any question relating to the rectification of the register including the law and not to send one to the civil court. There could be no doubt any question raised within the peripheral field of rectification, it is the Court under Section 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the Court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away merely on account of the deletion of the aforesaid proviso. Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not

falling under it. Thus in other words, the court under it has discretion to find whether the dispute raised are really for rectification or is of such a nature, unless decided first it would not came within the purview of rectification. The word rectification' itself connotes some error which has crept in requiring correction. Error would only means everything as required under the law has been done yet by some mistake the name is either committed or wrongly recorded in the register of the Company. In T.P. Mukherjee's Law Lexicon, fifth revised edn;

ï"The expression rectification of the register used in Sec. 155 is significant and purposeful. 'Rectification' implies the correctness of an error or removal of defects or imperfections. It implies prior existence of error, mistake or defect ..... the register kept by the Company has to be shown to be wrong or defective".

Strounds judicial Dictionary;

"Rectify - Altering the register of a company so as to make it conformable with a lawful transfer" In Venkataramaiya's Law Lexicon, 2nd Edn; "The act to be done under the powers of that Section is the 'rectification of the register, a term which itself implies that the register, either in what is or what is not upon it, is wrong; but the register cannot be wrong unless there has been a failure on the part of the company to comply with the directions in the Act as to the kind of register to be kept: for if the Act has been complied with, the register must be right and not wrong."

In other words, in order to qualify for rectification, every procedure as prescribed under the Companies Act before recording the name in the register of the company has to be stated to have been complied with by the applicant at least that part as required by the Act and assertion of what not complied with under the Act and rule by the person or authority of the respondent company before applicant to claim for the rectification of such register. The Court has to examine on the facts of each case, whether an application is for rectification or something else. So field or peripheral jurisdiction of the Court under it would be what comes under rectification not projected claims under the garb of rectification. So far exercising of power for rectification within its field there could be no doubt the Court as referred under Section 155 read with Section 2(11) and Section 10, it is the Company Court alone which has exclusive jurisdiction. Similarly, under Section 446 the 'Court' refers to the Company judge which has exclusive jurisdiction to decide matters what is covered under it by itself. But this does not mean by interpreting such 'court' having exclusive jurisdiction to include within it what is not covered under it, merely because it is cloaked under the nomenclature rectification does not mean court cannot see the substance after removing the cloak. Question for scrutiny before us is the peripheral field within which court could exercise its jurisdiction for rectification. As aforesaid the very word "rectification" connotes something what ought to have been done but by error not done and what ought not to have been done was done requiring correction. Rectification in other words, is the failure on the part of the company to comply with the directions under the Act. To show this error the burden is on the applicant, and to this extent any matter or dispute between persons raised in such Court it may generally decide any matter which is necessary or expedient to decide in connection with the rectification.

Both under the 1913 Act and 1960 Act a procedure is prescribed for admitting a person as member by purchase or transfer of shares of that company. With reference to 1913 Act under Section 29, a certificate of shares or stock shall be prima facie evidence of the title of the number of the shares or stock therein. Section 30 defines "member" to be one who agrees to become a member of a company and whose name is entered in its register. Section 31 is to keep register of its members. Section 34 deals with transfer of shares and application for the registration of the transfer of shares is to be made either by the transferor or the transferee. Where such application is made by the transferor for registration of his share a registered notice is to be sent to the transferee. Section 34 (3) restricts to register a transfer share until the instrument of transfer duly stamped and executed by the transferor and transferee has been delivered to the company. Thus before the name of any transferee is registered these procedure has to be shown to have been followed, which is an obligation of any such applicant under the Act. This shows an application is to be made either by the transferor or transferee for registering the name of the transferee as members or share holders of the company by placing before the company duly stamped and signed document both by the transferor and transferee. Similarly is the position under Section 155 of Indian Companies Act, 1960 before power is exercised for rectification essential ingredients are to exist. Section 100 gives mandate to a company not to register transfer of shares, unless proper instrument of transfer duly stamped and executed by or on behalf of the transferee has been delivered to the company along with certificates relating to the shares.

All the above indicates the limitation and the peripheral jurisdiction with which court has to act. In spite of its exclusiveness it cannot take within its lap outside this scope of rectification. This is indicated even by Sec. 155 itself:

"Section 155 : Power of Court to rectify register of members

1)If -

a)the name of any person -

i)is without sufficient cause, entered in the register of members of a company, or

ii)after having been entered in the register, is without sufficient cause, omitted therefrom; or

b)default is made, or unnecessary delay takes place, in entering on the register the fact of any person having become, or ceased to be a member;

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

Sub-section (1) (a) of Section 155 refers to a case where the name of any person without sufficient cause entered or omitted in the register of members of a company. The work 'sufficient cause' is to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have

been done under the Act and the Rules but not done. Reading of this sub-clause spells out the limitation under which the court has to exercise its jurisdiction. It cannot be doubted in spite of exclusiveness to decide all matter pertaining to the rectification it has to act within the said four corners and adjudication of such matter cannot be doubted to be summary in nature. So, whenever a question is raised court has to adjudicate on the facts and circumstance of each case. If it truly is rectification all matter raised in that connection should be decided by the court under Sec. 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by civil court. Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right civil court would have jurisdiction. There is nothing under the Companies Act expressly barring the jurisdiction of the civil court, but the jurisdiction of the 'court' as defined under the Act exercising its powers under various sections where it has been invested. with exclusive jurisdiction, the jurisdiction of the civil court is impliedly barred. We have already held above the jurisdiction of the 'court' under Sec. 155, to the extent it has exclusive, the jurisdiction of civil court is impliedly barred. For what is not covered as aforesaid the civil court would have jurisdiction. Similarly we find even under Sec. 446(1) its words itself indicate jurisdiction of civil court is not excluded. This sub section states, '..... no suit or legal proceedings shall be commenced ..... or proceeded with ..... except by leave of the court'. The words 'except by leave of the court' itself indicate on leave being given the civil court would have jurisdiction to adjudicate one's right. Of course discretion to exercise such power is with the 'court'. Similarly under Sec. 446(2) 'court' is vested with powers to entertain or dispose of any suit or proceedings by or against the company. Once this discretion is exercised to have it decided by it, it by virtue of language therein excludes the jurisdiction of the civil court. So we conclude the principle of law as decided by the High Court that jurisdiction of Court under Section 155 is summary in nature cannot be faulted. Reverting to the second limb of submission by learned counsel for the appellant that court should bot have directed for seeking permission to file suit only because a party for dispute sake states that the dispute raised is complicated question of facts including fraud to be adjudicated. The Court should have examined itself to see whether even prima facie what is said is complicated question or not. Even dispute of fraud, if by bare perusal of the document or what is apparent on the face of it on comparison of any disputed signature with that of the admitted signature the Court is able to conclude no fraud, then it should proceed to decide the matter and not reject it only because fraud is stated. Further on the other hand learned counsel for the respondent totally denies any share having been purchased by the appellant-company or any amount paid to it. No transfer of any such share was ever approved by the Board of Director. It is urged the money even if advanced to Sri V.K.Bhargava by the appellant-company if at all was a private transaction between the two to which respondent-company has no concern. So we find there is total denial by the respondent. We have gone through the judgment of the High Court. It has rightly held the law pertaining to the jurisdiction of 'court' under Sec. 155 and even referred to some of the documents of the appellant but concluded since they are disputed and said to be forged hence directed for seeding leave if advised for suit. We feel it would have been appropriate if the court would have seen for itself whether these documents are disputed and any document is alleged to be forged whether it said to be so jurisdiction of the civil court. So we conclude the principle of law as decided by the High Court that jurisdiction of Court under Section 155 is summary in nature cannot be faulted. reverting to the second limb of submission by learned counsel for the appellant that court should not have directed for seeking permission to file suit only because a party for dispute sake states that the dispute raised

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We have gone through the judgment of the High Court. It has rightly held the law pertaining to the jurisdiction of 'court' under Sec. 155 and even referred to some of the documents of the appellant but concluded since they are disputed and said to be forged hence directed for seeking leave if advised for suit. We feel it would have been appropriate if the court would have seen for itself whether these documents are disputed and any document is alleged to be forged whether it said to be so only to exclude the jurisdiction of the court or it is genuinely so. Similarly we feel appropriate while deciding this the court should take into consideration the submissions for the respondents, whether it would come within the scope of rectification or not in the light of what we have said above.

Since the High Court has not examined this case in the aforesaid light, we feel it appropriate to direct the High Court to decide this question in the light of what we have said afresh, without prejudice to any party of any observation made by us above. In case High Court comes to the conclusion that any issue raised does not come within Sec. 155 then we feel it appropriate on the facts and circumstances of this case, as it is pending since 1984, that High Court exercises its discretion under Sec.446(2) to get it adjudicated by the court (Company Judge) itself instead of sending back to the civil to which we order.

With the aforesaid findings the appeal is partly allowed. Costs on the parties.