

## **Simret Katyal vs Mahavir Ice Mills Pvt. Ltd. And Ors. on 30 November, 1993**

**Equivalent citations: [1995]83COMPCAS699(CLB)**

### **ORDER**

1. This is a petition filed under Section 111 of the Companies Act, 1956, on April 16, 1992, against Mahavir Ice Mills Private Ltd. (hereinafter called "the company") and two others, praying for rectification of the register of members of the company and to register transmission of 18,321 equity shares held by the late Shri Harinder Katyal, in favour of the petitioner. The company was incorporated on February 8, 1949. The authorised capital of the company is Rs. 10 lakhs. The petitioner is the widow of the late Harinder Katyal who was a shareholder and director of the company. The deceased was also the brother of respondents Nos. 2 and 3, who are the directors of the company. Shri Harinder Katyal who died on February 11, 1990, held 18,321 equity shares of Rs. 10 each in the company. Subsequent to his death on April 30, 1990, the petitioner and respondent No. 2 entered into a compromise in a litigation pending between them in the High Court of Delhi, in which a memorandum of settlement was signed resulting in settling some of the disputes between the two parties. A consent decree was passed by the Hon'ble Delhi High Court accordingly. In the above proceedings, respondent No. 2 has acknowledged the petitioner as the sole heir and respondent No. 3 was a witness to the said memorandum of understanding. According to the petitioner by virtue of the operation of law, the petitioner is entitled to the shares held by her husband, the late Harinder Katyal. The company is presently not doing any business but owns certain properties.

2. It is stated in the petition that the petitioner wrote to the company on April 27, 1991, for transmission of the said shares but it was declined to be accepted by the respondents.

3. It was further stated that the same demand was made through her advocate by notice dated May 15, 1991, and the respondents evaded service of these notices and the same were returned. After several efforts, the petitioner sent a notice on January 16, 1992, which was also returned unserved. It is stated that the petition is filed within a period of four months of sending intimation of transmission of shares, by operation of law.

4. The petitioner alleged that the respondents are evading the service of notice from the Bench. On further direction the petitioners could serve on respondent No. 3 but were not successful in serving on respondents Nos. 1 and 2.

5. The case was fixed up for various dates from August 26, 1992, to July 19, 1993, and on nearly six occasions adjournment was sought by the respondents on the ground of the compromise proposal or otherwise.

6. On July 21, 1992, the petitioner filed an application for interim relief to (i) restrain the company

and its directors from transferring or alienating any property and assets pf the company; (ii) restrain the directors from altering in any way the shareholding of the company.

7. At the hearing held on August 26, 1992, counsel for the respondents undertook that no transfer of the property or assets of the company will be done before the next hearing. On July 20, 1992, respondent No. 3 had also filed an affidavit undertaking that she shall not be a party to any transaction for the purpose of transferring, alienating or parting with the possession of any assets of the company, both movable and immovable, till the transmission is duly registered. Respondent No. 3 has also admitted in her reply all the facts stated in paras 1 to 18 of the petition.

8. A reply on behalf of respondents Nos. 1 and 2 was received on September 14, 1992. It is stated in the reply that the petitioner is the sole proprietor of the firm, Universal Poultry and Breeding Farm, which was previously owned by her late husband, which owed a sum of Rs. 3,73,113 besides interest to the respondent-company and as such the company has a paramount lien on every share standing in the name of the late Harinder Katyal. The petitioner has not lodged the original share scrips along with certified copy of the order passed by the court of a competent jurisdiction granting probate and/or letter of administration. It is further stated that the late, Harinder Katyal had been alienating, transferring, pledging, etc., the shares in favour of financial institutions and other creditors from whom he has been taking money by way of loan and/or deposits. There is no evidence in the petition to show whether the share scrips in question have riot been charged or pledged, and no one else has any interest on them. No letters, including letters allegedly dated April 27; 1991, May 15, 1991, or January 16, 1992, were tendered to or refused by the respondents. Since neither the instrument of transfer and/or the original share certificates have been submitted nor the intimation of the transmission been de'ivered'to the company, the question of refusal of registration does not arise. No copy of the will of the late Harinder Katyal has been given to the company/respondents nor has the same been filed before this Bench. The reply states that the petitioner has filed a petition under Section 372 of the Indian Succession Act on August 7, 1990, for grant of a succession certificate with respect to the said shares, which has been suppressed by her. As, such the right of the petitioner is already sub judice and the issue raised here is substantially the issue before the succession court. It is stated that in view of the above, the Company Law Board should dismiss the petition.

9. The issues raised before us relate to :

- (i) Whether the petition is maintainable ;
- (ii) Whether the petitioner has a title to the impugned shares ;
- (iii) if the petitioner has a title, whether the register of members should be rectified.

10. Shri M. S. Vinaik, advocate for the petitioner, refuted the preliminary objections that any money is owed by the petitioner's late husband as no evidence has been produced. He further quoted the articles as well as Table "A" of the Companies Act to the effect that lien can be exercised only in respect of partly paid shares whereas in the present case, the shares are fully paid. In this

connection, he cited *Khadija v. P. K. Mohammed. (P.) Ltd.* [1985] 58 Comp Cas 543 (Ker) to state that in relation to dealings in shares whether in respect of transfers or transmissions or in respect of sales in exercise of the lien the provisions of the Companies Act, 1956, and those in the memorandum and articles of association of the company should govern the matter. He also refuted the charge of pledge of shares as no evidence has been produced in this regard. Referring to the contention of non-submission of the share certificates and other relevant documents, counsel referred to the proviso to Section 108(1) by which the company has the power to register as shareholder any person to whom the shares are transmitted by operation of law. He also cited the case of *World Wide Agencies (P.) Ltd. v. Margaret T. Desor* [1990] 67 Comp Cas 607 (SC) to emphasise the point that when a member dies his estate is entrusted with legal representatives. He also referred to *Hemendra Prasad Barooah v. Bahadur Tea Co. (P.) Ltd.* [1991] 70 Comp Cas 792 (Gauhati) which reiterates the devolution of property on the legal representatives. He further stated that the succession certificate should not be insisted upon when the directors have knowledge about the successors and that the loss of the share certificates cannot be a reason to decline registration of the transmission. In this connection, he cited *Shakuntala Rajpal v. McKenzie Philip (India) (P.) Ltd.* [1986] 60 Comp Cas 545 (Delhi). In this case, the following relevant point was highlighted (headnote) :

"In the case of transmission of shares by operation of law, estate duty clearance certificate should not be insisted upon. Moreover, the status of the petitioners as children of S had not been disputed and in the circumstances, the respondents should not have insisted upon asking for succession certificate or estate duty clearance."

11. As regards providing a copy of will, he drew our attention to the memorandum of understanding between the petitioner and the respondent which recognises the petitioner as the sole heir and which has been the basis of the consent decree. As regards cause of action and attraction of the jurisdiction of this Bench, the counsel submitted that the petition has been made under Section 111 for rectification of the register, in which case there is no pre-condition of lodgment of documents or time limits. He, however, emphasised that intimation was given to the respondents through registered letters which were refused.

12. Shri M. S. Vinaik, advocate, stated that there are conflicting statements in the replies of respondents Nos. 2 and 3. Whereas respondent No. 3 has admitted all the facts mentioned in the petition, respondent No. 2 has challenged the petition. He stated that there are three conflicting contentions of respondent No. 2 in the different papers on record with regard to the shareholding of the late Shri Harinder Katyal, and the right of the petitioner as the sole heir. These three contentions can be seen in the reply of respondent No. 2, memorandum of understanding before the Hon'ble Delhi High Court and the objections filed by respondent No. 2 in the succession court.

13. As regards the petition for a succession certificate, it was clarified that the succession certificate was needed to facilitate establishment of petitioner's rights in various other claims. According to the advocate, under Section 387 of the Indian Succession Act, this will not be a bar to the transmission of shares.

14. The advocate also drew our attention to the provisions of Article 8(b) of the articles of association of the company which enables transfer by a member to his family members and, as such, there is no restriction in the articles. Counsel submitted that the petitioner has inherited these shares from her late husband and she being the sole heir is entitled to the shares and the same has been acknowledged by respondent No. 2 and evidenced by the memorandum of understanding.

15. Shri A. S. Chandiok, advocate, appearing on behalf of respondents Nos. 1 and 2, submitted that a purported copy of the will of the petitioner's late husband is filed for the first time along with the rejoinder on September 25, 1992. The will is not dated. There is a specific reference to the house property belonging to the executant but no specific reference to the shares. Further, if the will had existed before April 30, 1990, it should have been referred to in the memorandum of understanding dated April 50, 1990. He also referred to a copy of the application for succession certificate filed by the petitioner and stated that there is no reference to the will in that petition either. He further stated that subsequent to the memorandum of understanding two suits have been filed by the petitioner and she herself has gone to a succession court for issue of a succession certificate. This only goes to show that she herself is not confident about her entitlement. The advocate further submitted that the refusal by the company to register is conspicuously absent. There is no intimation to the company of transmission. The advocate cited the case of *Margaret T. Desor v. World Wide Agencies* [1989] 66 Comp Cas 5 (Delhi) to the effect that 'when the succession is not established, the company can refuse transmission. The respondent's counsel also drew our attention to Article 8(d) of the articles of association to state that the directors can refuse transfer in order to exercise the right of lien as the provisions relating to transfer apply to transmission as well. He also emphasised that the application for issue of a succession certificate was prior in period of time and the Bench should avoid conflicting decisions. He further stated that there is nothing wrong in insisting on the production of a succession certificate by the board of directors. He also stated that the company is still willing to register the transmission in case the requirements of law are complied with.

16. After the arguments were complete, both the parties were allowed liberty to submit written statements supplementing their case before August 6, 1993. The respondents were also allowed the liberty to register the shares on condition that in case the proceedings in the succession court are adverse then the respondents will be at liberty to come seeking rectification of the register of members. Both the parties accordingly made their written submissions which reiterate the entire written submissions already made and the arguments advanced by them during the hearings.

17. We have carefully considered the petition, the replies and rejoinder and the arguments of learned counsel. We have also examined the written submissions in detail. We have noted in the written submission that the respondents have challenged the ownership of 5,000 shares by the deceased which they had not done in their initial reply. The arguments relating to maintainability are mainly based on the plea that (a) the petitioner's proprietary firm is indebted to the respondent company and that the company is entitled to exercise the right of lien on the shares ; (b) no intimation to the company for registration of transmission has been served ; (c) there is already a petition by the petitioner in the succession court which involves the same issues, and (d) share scrips along with the relevant documents were not produced and there was no refusal and as such the Company Law

Board has no jurisdiction.

18. We find that neither in the reply nor during the arguments were the respondents able to substantiate the alleged liability of the petitioner's proprietary firm and as such it is a bald statement without any support. The petitioner's counsel also referred to the articles of association of the company which permits the applicability of Table "A" of the Companies Act to this company. He also referred to Clause 9 of Table A which permits the company to have a lien only on partly paid shares and not on the fully paid shares. As such the plea of indebtedness and exercise of the right of lien by the company has no basis.

19. With regard to the non-production of share scrips and other relevant documents by the petitioner, the contention of the petitioner that the share scrips were lying in the premises of the company since the deceased member was a director; is a plausible one. It is stated that the office of the company is in the premises of Bhagwandass and Co. Pvt. Ltd. which is now in the control of respondents Nos. 2 and 3. It is also not established by the respondents that the share scrips are in the possession of someone else. Still this is not a formidable problem and the same could have been got over by proper public notice before issuing a duplicate share scrips. As regards other relevant documents, a specific exemption has already been contemplated under the second proviso to Section 108(1). Since the parties are closely related to each other there is no justification to insist on the filing of any instrument of transmission. The petitioner's counsel has also rightly drawn our attention to various cases to establish that a company can register transmission without an instrument of transmission. The decision of the Delhi High Court in *Shakuntala Rajpal v. McKenzie Philip (India) (P.) Ltd.* [1986] 60 Comp Cas 545 is very relevant which states that the lack of a succession certificate cannot be a reason for declining to register transmission.

20. As regards the question of non-intimation and non-refusal, therefore, the lack of jurisdiction of the Company Law Board, we have noted that the petition has been filed under Section 111 and the prayer is for rectification of the register of members. A petition under Section 111 may lie either under Sub-section (2) or Sub-section (4). Whereas Sub-section (2) deals with an appeal on a refusal by the board of directors, Sub-section (4) deals with an application for rectification of the register. In the latter case there is no limitation of time and there is no pre-condition of a refusal by the board of directors. Though the petition is stated to be under Section 111 the prayer makes it clear that it is an application for rectification of the register.

21. As regards the objection of parallel proceedings, we have noted that the- petition for issue of a succession certificate does cover the impugned shares. In this connection; the petitioner has drawn our attention to the provisions of Section 387 of the Indian Succession Act which specifically states that even the decision of the succession court is no bar to the trial of the same question in any other court. In view of the above we decide that the petition is maintainable.

22. As regards the title of the petitioner as a legal heir to these shares, it is an admitted fact that there are no other legal heirs and that the petitioner is the only legal representative of the deceased. This is evident from the memorandum of understanding which constituted the basis for the consent decree dated May 17, 1990 of the Delhi High Court in I. A. No. 3939 of 1990. It was argued by the

respondents that the petitioner herself is not confident about her title and hence she has gone to the succession court for issue of a succession certificate in respect of the impugned shares. It was submitted on behalf of the petitioner that since the memorandum of understanding has clearly established the petitioner as legal representative and since the succession certificate was needed for certain other purposes they had to resort to the petition in the succession court. He also met the arguments of the respondents that the will of the deceased was produced only subsequently along with the rejoinder since they had presumed that since respondent No. 2 is a signatory, the memorandum of understanding has already established their entitlement. He also met the arguments of the respondents about the contents of the will including the date of the will. It is worthwhile to keep in mind the fact that out of the two directors, one is the brother-in-law and the other is the sister-in-law of the petitioner. It is also established that respondent No. 2 and the petitioner are living in the same premises. The memorandum of understanding dated April 30, 1990, signed by the petitioner and respondent No. 2 is witnessed by respondent No. 3.

23. We are convinced on the basis of material produced before us that the petitioner is the only legal representative and has a valid title to the shares by operation of law. However, in view of the pending proceedings in the succession court, we shall take appropriate notice of this fact while considering reliefs hereunder.

24. The respondents have submitted that any decision of the succession court would be a judgment in rem final and conclusive whereas the decision in the present case would not be a judgment in rem. Hence, they prayed that in the interest of justice and judicial propriety, the Company Law Board should stay the present proceedings to avoid inconsistency in decision. As regards the contention of 5,000 shares standing in the name of someone else and not the deceased, it appears to be a clear afterthought. These shares were stated to be in the name Of the deceased's late mother. The various annual returns, copies of which were produced by the petitioners do not substantiate the contention of the respondents.

25. In view of the petitioner's apprehensions of transfer/alienation of properties of the company and since the succession court's decision is no bar to the proceeding here, we do not consider it necessary to stay our proceedings. We are already convinced that the petitioner has title to the impugned shares. We, therefore, order that respondent No. 1 shall register transmission of 18,321 equity shares standing in the name of the late Harinder Katyal to the name of the petitioner within four weeks from the date of receipt of a copy of this order and the register of members of the company rectified accordingly. If the share certificates are not traceable, the respondent-company may issue at the petitioner's cost a public notice in at least two newspapers circulating in Delhi, one in English and the other in Hindi, within a week of the receipt of a copy of this order, and if no objection is received from any one the shares shall be registered accordingly. In case any objection is received the respondents are at liberty to approach this Bench for appropriate relief. The respondents are given the liberty to approach this Bench with a petition for rectification of the register in case the succession court disentitles the petitioner to the impugned shares. Both the parties are at liberty to seek any clarification with regard to this order.

26. No order as to costs.