

Before S. S. Sandhawalia, C.J. and P. C. Jain, J.

JOGINDER SINGH,—Appellant

versus

BASAWA SINGH AND ANOTHER,—Respondents.

Regular Second Appeal No. 1221 of 1973.

June 3, 1983.

Companies Act (I of 1956)—Section 155—Code of Civil Procedure (V of 1908)—Section 9—Company declining to include the name of an alleged member in its register of members—Suit for injunction by such a person seeking inclusion of his name—Jurisdiction of the civil Court—Whether expressly or impliedly barred—Jurisdiction exercisable by a Company Court under Section 155—Whether summary in nature—Petition under section 155 involving disputed and complicated questions—Whether to be entertained by the Company Court.

Held, that a Company Court has jurisdiction to entertain and decide a petition on merits under section 155 of the Companies Act, 1956 but the established practice recognised universally practically by all High Courts is that the Company Court ordinarily does not decide a petition under section 155 of the Act if complicated questions involving serious disputes arise in the petition. The scope of inquiry under section 155 of the Act is of a summary nature and the Company Court may refuse and decline to grant the discretionary relief where serious disputed and complicated questions are involved.

(Paras 14 and 15).

Held, that under section 9 of the Code of Civil Procedure a Civil Court can entertain a suit of a civil nature except a suit of which its cognizance is either expressly or impliedly barred. It is settled principle that it is for the party who seeks to oust the jurisdiction of a Civil Court to establish his contention. There can be no gain saying that if the legislature intends to oust the jurisdiction of the Civil Court, it must say expressly or by necessary implication. There are no words either in section 155 of the Act or in any other provision which can lead to the inference that the Civil Court's jurisdiction is barred. It is, therefore, held that for the matters falling within the purview of section 155 of the Act, the jurisdiction of the Civil Court is not barred.

(Paras 16 and 17).

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Case referred by a Single Bench consisting of Hon'ble Mr. Justice Prem Chand Jain on 17th March, 1983 to a larger Bench for the decision of an important question of law involved in this case. The Larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and the Hon'ble Mr. Justice Prem Chand Jain finally decided the case on 3rd June, 1983.

Regular Second Appeal from the decree of the Court of Shri Harbans Singh, Additional District Judge, Jalandhar, dated the 28th day of July, 1971 affirming with costs that of the Court of Shri D. S. Chhina, Sub Judge II Class, Jullundur, dated the 19th day of June, 1968, granting the plaintiff a decree prayed for directing defendant No. 1 to give effect to the shares transferred by defendant No. 2,—vide transfer deed Ex. D-2 in favour of the plaintiff so far as it concerned defendant No. 1 after getting formalities, if any, duly completed from the plaintiff and defendant No. 2 and further entitling the plaintiff to his costs from both the defendants.

D. N. Awasthy, Sr. Advocate with Ranjit Kumar Pachnanda,
Advocate for the Appellant.

J. S. Narang, Advocate for the Respondent.

JUDGMENT

Prem Chand Jain, J.

1. Joginder Singh appellant had shares Nos. 424 to 443 and 3859 to 3868 of M/s Onkar Bus Service Limited, Jullundur, respondent (hereinafter referred to as the Company) as entered in Share Certificate No. 41 L.F. 50, dated 30th October, 1945 and No. 41 L.F. 339, dated 19th December, 1951 respectively. According to the plaintiff, the appellant transferred the aforesaid shares to him and executed a transfer deed for this purpose. The transfer deed was handed over to the Company for giving effect to the transfer of the aforesaid shares in the name of the plaintiff respondent. It was further alleged that the Company in collusion with the appellant failed to give effect to the said transfer in favour of the plaintiff in the registers of the Company, with the result that the plaintiff was not paid any dividend on those shares, in spite of repeated demands. With the above allegations, the plaintiff-respondent filed a suit for a declaration against the appellant and the Company to the effect that he was the owner, by transfer of shares Nos. 424 to 443 and

3859 to 3868 as described above. A further prayer for the issuance of a permanent injunction to the Company, to recognise the rights of the plaintiff and to bring his name as a shareholder in the Company's registers and to pay all dividends accruing in respect of the said shares to the plaintiff, has been made.

2. The suit was contested by the defendants on several grounds.

Besides other issues, one of the issues that required determination in the suit was whether the Civil Court had no jurisdiction to try the suit? Both the Courts have held that the Civil Court has jurisdiction to try the suit. The question of jurisdiction was again agitated before me sitting singly when the appeal came up for hearing. Finding that the point regarding jurisdiction was of considerable importance I directed that the matter be decided by a larger Bench. That is how we are seized of the matter.

3. The legal question requiring our decision in this appeal may be formulated thus :—

“Is the Civil Court's jurisdiction expressly or impliedly barred to try a suit in respect of the matters falling within the purview of the provisions of Section 155 of the Companies Act (hereinafter referred to as the Act)?”

4. It was contended by Mr. Pachnanda, learned counsel for the appellant, that for the relief claimed in the suit, the plaintiff should have filed a petition under Section 155 of the Act, that the Company Court has jurisdiction to grant the relief claimed in the suit and that the Civil Court's jurisdiction to entertain a suit in respect of those matters regarding which relief can be granted by the Company Court, is barred. In the alternative what was sought to be argued by the learned counsel was that with regard to the matters covered by the provisions of Section 155, Civil Court's jurisdiction to entertain a suit even if not expressly barred would be deemed to be impliedly barred.

5. On the other hand, Mr. J. S. Narang, learned counsel for the plaintiff, submitted that jurisdiction of the Company Court under Section 155 of the Act was of summary nature, that cases involving complicated questions of law and fact are ordinarily to

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be decided by a Civil Court and that the Civil Court's jurisdiction to entertain suits and decide the same in respect of the matters falling under Section 155 of the Act, was not barred.

6. Section 155 of the Act, which deals with the power of the Court to rectify register of members reads as under:—

“155. (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.

(2) The Court may either reject the application or order rectification of the register; and in the latter case, may direct the company to pay the damages, if any, sustained by any party aggrieved.

In either case, the Court in its discretion may make such order as to costs as it thinks fit.

(3) On an application under this section, the Court—

(a) 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 alleged members, or between members or alleged members on the one hand and the company on the other hand; and

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(4) From any order passed by the Court on the application, or on any issue raised therein and tried separately, an appeal shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908—

(a) if the order be passed by a District Court, to the High Court ;

(b) if the order be passed by a single Judge of a High Court consisting of three or more Judges, to a Bench of that High Court,

(5) The provision of sub-section (1) to (4) shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members.”

(7) An analysis of the aforesaid section shows that a right is given to a person aggrieved or any member of the Company, or the Company, for rectification of the register in case the name of any person entered in the register of members of the company or after having been entered in the register, is without sufficient cause omitted therefrom or 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. On such an application being made, the Court would proceed to decide that application as provided under sub-sections (2) and (3) of the section.

(8) In order to find out a correct answer it would be necessary first to determine the nature and scope of the power exercisable by the Company Court under this section. As is evident from the contentions of Mr. Pachnanda, the stand taken on behalf of the appellant is that the powers exercisable by the Company Court under this section is not of a summary nature. In support of this contention of his, the learned counsel had relied on the judgment of the Gujarat High Court in *Shri Gulabrai Kalidas Naik and others v. Shri Laxmidas Lalubhai Patel of Baroda and others* (1).

(9) After giving my thoughtful consideration to the entire matter, I find myself unable to agree with the proposition enunciated by the learned counsel that the enquiry under section 155 of the Act is not of a summary nature. This matter is not *res integra* and there are precedents within this Court, as well as of the other High Courts and the Supreme Court, wherein it has been held that the

(1) (1978)48 Company cases 438.

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relief under section 155 is discretionary and the scope of section 155 of the Act is restricted to a summary enquiry.

(10) The first case to which reference may be made is in *People's Insurance Co. Ltd. v. M/s. C.R.E. Wood and Co. Ltd. and others* (2), wherein while referring to some earlier decisions of this Court, Tek Chand J. (as his Lordship then was) observed thus:—

“In the above noted decisions I had held that when serious disputes were involved, proper forum for their adjudication was a Civil Court. I had expressed the view that the summary remedy under S. 155 of the Companies Act, 1956, was not available to the litigant as of right without the Court having discretion to refuse it. I had also expressed the view that if the case be one of difficulty and complication, it should more appropriately be decided at a regular trial, and that this provision was not intended for settling controversies under several heads necessitating a regular investigation. Having regard to the nature of the controversy and comparatively simpler facts of this case, it is a case which can be suitably disposed of by this Court under S. 155 of the Act. In determining whether judicial discretion be exercised by the Court for purposes of directing or refusing rectification of register of members, depends on the facts of each case.”

(11) The next case to which reference may be made is in *Smt. Soma Vati Devi Chand v. Krishna Sugar Mills Ltd., Delhi and others*, (3) wherein, H. R. Khanna, J. (as his Lordship then was), relying on the earlier decisions, declined relief on the ground that there were complicated matters, which could only be adjudicated after recording evidence and that it would not be proper to go into them in the summary proceedings under section 155 of the Act. A similar view has been taken in a latest unreported judgment of this Court in (*Rakesh Kumar Malik and anothers v. Rohtak Ashoka Theatres Pvt. Ltd. & others*) decided by R. N. Mittal, J., (4).

(2) A.I.R. 1960 Punjab 388.

(3) A.I.R. 1966 Punjab 44.

(4) C.P. 12 of 1980 decided on 31-3-1983.

(12) The next case to which reference may be made is in *Public Passenger Service Ltd. Chidambaram v. M. A. Khadar and another* (5), wherein it has been observed thus:—

“Counsel for the appellant contended that the relief under S. 155 is discretionary and the Court should have refused relief in the exercise of its discretion. Now, where by reason of its complexity or otherwise the matter can more conveniently be decided in a suit the Court may refuse relief under S. 155 and relegate the parties to a suit. But the point as to the invalidity of the notice dated January 20, 1957, could well be decided summarily, and the Courts below rightly decided to give relief in the exercise of the discretionary jurisdiction under S. 155. Having found that the notice was defective and the forfeiture was invalid, the Court could not arbitrarily refuse relief to the respondents.”

(13) There are other decisions of the various High Courts to the same effect, but I do not purpose to refer to those judgments as it would unnecessarily be burdening this judgment, in view of the precedents of this Court and the decision of the Supreme Court in *Public Passenger Service's* case (supra).

(14) The only judgment that needs specific mention and consideration is in *Shri Gulabrai's* case (supra) of the Gujarat High Court on which reliance had been placed by Mr. Pachnanda. I have gone through that judgment carefully. The question that was posed by the learned Judge for decision in that case was that where arena of dispute involves such disputed questions of fact, which involve allegations and counter-allegations and which requires to be determined so as to find out the title to shares in the presence of persons other than the members of the company, would the Company Judge be precluded from proceeding with the petition within the four corners of section 155 of the Act? From the aforesaid question, it is quite evident that what was sought to be argued before the learned Judge was that a petition involving disputed questions of fact was bound to be rejected outrightly, and, in my view, it is in that context that the learned Judge held that question of title could be decided by the Company Court and that there was nothing to suggest in the section that the scope of enquiry was summary in nature. But before us that is not the question nor has it been suggested that this Court's jurisdiction is straightaway barred

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where serious disputed questions involving investigation arise in a petition under Section 155 of the Act. There can be no gainsaying that a Company Court has jurisdiction to entertain and decide a petition on merits under section 155 of the Act. But the established practice recognised universally practically by all the High Courts is that the Company Court ordinarily does not decide a petition under section 155 of the Act if complicated questions involving serious disputes arise in the petition. As I read *Shri Gulabrai's case* (supra), the learned Judge in the circumstances of that case felt that the matter could be decided under section 155 of the Act and on that score decided the same. The learned Judge positively felt that no such complicated or complex question arose in that petition which could not effectively be decided by him. Thus the decision in *Shri Gulabrai's case* (supra) is of no assistance to the learned counsel for the appellant.

(15) As a result of the aforesaid discussion I find no escape from the conclusion that the scope of enquiry under Section 155 of the Act is of a summary nature and that the Company Court may refuse and decline to grant the discretionary relief where serious disputed and complicated questions are involved.

(16) Having arrived at the aforesaid conclusion, the question posed in this appeal for decision becomes very easy to be answered. Under section 9 of the Code of Civil Procedure, a Civil Court can entertain a suit of a civil nature except a suit of which its cognizance is either expressly or impliedly barred. It is settled principle that it is for the party who seeks to oust the jurisdiction of a Civil Court to establish his contention. There can be no gainsaying that if the legislature intends to oust the jurisdiction of the Civil Court, it must say expressly or by necessary implication. I cannot find any words either in section 155 of the Act or in some other provision of the Act which can lead to the inference that the Civil Court's jurisdiction is barred.

(17) In this view of the matter, I hold that for the matters falling within the purview of Section 155 of the Act, the jurisdiction of the Civil Court is not barred.

(18) No other point arises for consideration.

For the reasons recorded above, I find no merit in this appeal, and, consequently, dismiss the same. In the circumstances of the case I make no order as costs.

N.K.S.