

Company Law Board

Rajiv Das vs United Press Limited And Ors. on 4 September, 2001

Equivalent citations: 2002 111 CompCas 584 CLB

ORDER A.K. Banerji, J., Chairman

1. By means of this petition filed under Section 111 of the Companies Act, 1956 (the Act), Dr. Rajiv Das (the petitioner) has sought appropriate orders seeking splitting of 3,738 fully paid up equity shares of the first respondent company which presently stood in the joint names of Shrimati Kanti Devi (second respondent) and the petitioner, in two equal lots and for putting the name of the petitioner in the first place in one lot.

2. Shorn of unnecessary details, the respective case of the contesting parties are as follows.

3. The petitioner has come up with a case that he holds a total of 8,143 fully paid up equity shares of Rs. 10 each in the first respondent company, out of the said holding 3,738 fully paid up equity shares stands jointly in the name of his respondent is the first named shareholder. Of late, differences and disputes have arisen between the second respondent and the petitioner for which the petitioner has reason to believe that the second respondent may take advantage of her voting rights with regard to the joint shares and use the same against the interest of the petitioner. Consequently, the petitioner had applied to the respondent company to split his joint holding of 3,738 equity shares, in two equal lots, where each shareholder shall be the first name in one lot so that his voting rights can be used by both the persons in respect of their holding. The first respondent company, however, vide letter dated 30.5.2000 and 29.6.2000 asked the petitioner to lodge share transfer forms and the share certificates for the said shares before the shareholding could be split in two lots. According to the petitioner, the second respondent was keeping the certificates in her custody and just to avoid the split in holding, is refusing it under the ploy of share transfer forms and share certificates.

4. All the 3 respondents filed their replies opposing the petition. Supplementary affidavits and rejoinders have also been filed.

5. While refuting the allegations made in the petition, the respondents have submitted that the second respondent is the whole time director and the

respondent No. 3 is the director of the first respondent company. Since January, 1999, the petitioner has started interfering in the management affairs of the company, and has forcibly snatched and taken away unlawfully the statutory records including the register of members, minutes books, copies of annual returns and other statutory records, and all the share certificates of the second respondent. This situation was duly reported to the respondent company by the second respondent who had also lodged a FIR with the Police on 18.4.2000. The respondents denied that the petitioner held 8,143 fully paid equity shares singly and jointly in his name as alleged. It was stated that 100 fully paid up ordinary shares were held jointly by the petitioner and Shrimati Bijlee Devi of which the latter was the first named joint holder. It was further stated that, as per the mandatory provisions of the Act, transfer deeds executed by both the joint shareholders duly stamped and completed were required to be submitted along with the relative share certificates. As the petitioner has failed to comply with the said mandatory requirement, the respondent company could not consider the request of the petitioner for splitting the shares and had duly conveyed the same to the petitioner. Therefore, it was submitted that the petitioner that the petitioner was not entitled to the relief sought for in his petition.

6. In the rejoinder, the petitioner has denied and disputed the allegations made in the reply filed by the respondents, and has reiterated his contentions made in the petition and further submitted that he has every right to have his name transposed as requested so that he can have the voting rights for his part of the shares.

7. We have heard the counsel for the parties and have also perused the pleadings. Though, the petition mentions that it was being filed under Section 111 of the Act, but as the respondent company was a public limited company, with the consent of the counsel for the parties, we have treated the instant petition as one under Section 111A of the Act. It may be mentioned that though in the pleadings, a number of allegations had been made by the parties which goes beyond the scope Section 111A of the Act, the learned counsel for the parties have confined their arguments within the parameters of the Section.

8. Shri Utpal Bose, learned counsel for the petitioner, has submitted that, by means of the present petition, the petitioner has challenged the illegal refusal of the respondent company to split 3,738 shares which the petitioner held jointly along with the second respondent, in two equal lots and putting the name of the petitioner in the first place in one lot. Elaborating his arguments, the learned counsel has contended that splitting of the shares in favour of either of the joint holders could be done as both are members of the company and neither any consent from the other holder nor the original certificates and transfer deeds are required to be submitted. Hence, the refusal of the respondent company to do so is without sufficient cause. In support of this submissions, the learned counsel has

strongly relied on the decisions of the Chancery Division in the case of *Burns v. Siemens Bros. Dynamo Works Ltd.* (1919) 1 Ch 225 wherein the facts of the said case, it was held that in order to enable the joint holder of the shares of effectually exercise their voting powers, they were entitled to have their holding split into two joint holdings with their names in different orders and the register could be altered accordingly. Reliance has also been placed upon the decision of the Bombay High Court in the case of *Narandas Munmohands and Ors. v. Indian Manufacturing Company Ltd* AIR 1953 Bom 443, wherein it has been held that in case of public company, every joint holder is a member, and it is not correct to say that they constitute a single member. Learned counsel has also sought support from the decision of the Punjab High Court in the case of *Jarnail Singh Harjit Singh v. Bakshis Singh Sham_Singh and Anr.* AIR 1960 Punj 455, wherein the Division Bench had held that in case of a joint holder, transfer of shares in their names individually is not prohibited.

9. On the other hand, Shri K.K. Mitra, learned counsel appearing for the respondents has contended that the application under Section 111A of the Act is not maintainable as the respondent company being a public limited company, the petitioner's request for splitting of the joint shares cannot be considered until and unless share transfer deeds duly executed by both joint holders, and duly completed and stamped, are lodged with the company together with the relative share certificates as required under the mandatory provisions of Section 108 of the Act. In support of his submissions, the learned counsel has placed reliance on the decision of the Calcutta High Court in the case of *Hemlata Saha v. Stadmed (P) Ltd. and Ors.* (1964) 2 Comp LJ 75(Cal): (1964) 68 CWN 1007.

10. We have carefully considered the respective submissions made by the learned counsel for the parties. In our view, the submissions made by the learned counsel for the respondents are well founded. It is not seriously disputed that the 3,738 joint shares which is the subject matter of the present dispute was initially standing in the name of the second respondent, Shrimati Kanti Devi, who is the mother of the petitioner. In the year, 1985, the second respondent got included the name of the petitioner in the share certificates along with her as joint holder. However, the first name in the share certificates continued to be of the second respondent. It is also not disputed that differences having arisen between the petitioner and the second respondent resulted in filing of an FIR with the police by the second respondent against the petitioner. While making a request for splitting of the joint shares, the petitioner had neither taken the consent of the second respondent nor submitted the original certificates or the transfer deeds duly signed and stamped as required. The respondent company has demanded the original certificates and the transfer deeds for considering the request of the petitioner for splitting the shares into two lots as requested and in our view, the

stand taken by the respondent company could not be said to be illegal or without sufficient cause.

11. In the case of *Hemlata Saha v. Stadmed (P) Ltd. Ors.* (1964) 2 Comp LJ 75 (Cal) on which the learned counsel for the respondents have strongly relied, the facts were that after the death of the original shareholder, the register of members were rectified by scoring out the name of the deceased shareholder and inserting the names of his heirs and legal representatives as holder of the 1940 share jointly. One of the joint holders, namely the mother of the deceased subsequently sought division in respect of her 1/6th shares out of the joint shares for being allotted to her exclusively by rectification of the register of members. It was on those facts that the Calcutta High Court held as follows:

"In an application under Section 155 of the Companies Act, 1956, the court has powers to decide any question relating to title to shares. By an allotment in severalty can only be done in an action of partition. Without a proper adjudication, the company is not bound to recognise the claim of one of the joint holders to a particular lot of shares. A company has no power under the Companies, Act to divide and allot shares amongst the joint holders of the shares. Moreover, it cannot register the transfer of shares unless a proper instrument of transfer duly stamped is lodged with it in accordance with Section 108 of the Act. It has therefore, no obligation or duty to the transferee, unless it is furnished with such an instrument. In such a case, refusal to rectify the share register does not amount to default by the company and an application under Section 155, therefore, is not maintainable." (see head notes)

12. We are of the view that the ratio of the above-noted decision under Section 155 applies on all force to the case at hand. Consequently, following the decision of the Calcutta High Court, we hold that an allotment in severalty of the shares claimed by the petitioner can only be done in an action for partition, unless the parties agree to amicable partition. The company cannot take upon itself the obligation to divide and allot the shares to a joint holder, and it has no such power under the Act to do so.

13. As regards the decision of the Chancery Division in the case of *Burns v. Siemens* (1919) 1 Ch 225, supra on which the learned counsel for the petitioner relied heavily, the said decision was also considered and distinguished by the High Court in the case of *Hemlata Saha* (1964) 2 Comp LJ 75 (Cal), supra, on the ground that the said case did not arise out of an application for rectification of the shares register. Besides, in the first place, the joint holders had agreed to the transfer of holdings in their names in a particular order, in the second place, the order was made in a regularly constituted suit which was tried on evidence. In the case at hand, the position as already noticed above, is different. Therefore, as held

by the Calcutta High Court, such an order as sought by the petitioner in the present case, cannot be asked for in an application filed under Section 111A of the Act.

14. As regards the two other decision cited by the learned counsel for the petitioner, we have carefully perused the same and find that the question involved in those cases being quite different, thus were distinguishable on facts and are of no help to the petitioner. In the case of Narandas Manmohandas Ramji and Ors. AIR 1953 Bom 443, supra which arose out of a suit for declaration, the question before the Bombay High Court was whether 3 or 4 person who agree to accept shares jointly in a company, would be considered as a single member. On the facts of the said case, the High Court had held that each one of the joint holders would become a member of the company. Similarly, in the case of Jarnail Singh harjit Singh AIR 1960 Punj 455, supra, which arose out of a suit for declaration, the question before the Division bench of the Punjab High Court was whether in the case of a private company, transfer of shares by a shareholder in favour of one out of several joint holders was contravention of Article 8(a) of the articles of association of the said company. In the facts of the said case, it was held that transfer of shares by a shareholder in favour of one of the joint holders was not prohibited. Therefore, the decisions cited above have no application in this case at all.

15. As a result, in view of the reasons stated above, the relief sought by the petitioner cannot be granted, and therefore the petition must fail. The petition is accordingly dismissed without any order as to cost.