

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Company Appeal No.34 of 2007 (O&M)

Date of Decision: March 13, 2015

Gurnam Singh

...Appellant

Versus

M/s IDMA Laboratories Ltd., Panchkula & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Arun Bansal, Advocate,
for the appellant.

Mr.D.K.Gupta, Advocate,
for the respondents.

AMIT RAWAL, J.

The present Company Appeal has been filed by invoking the provisions of Section 10F of the Companies Act, 1956 (for short “the Act”) against the order dated 4.6.2007 passed by the Company Law Board, whereby the Company Petition filed by the appellant bearing CP No.7/111 of 2002 under Section 111 of the Act for rectification of the register of the members maintained by the respondent-Company, has been dismissed on the ground of limitation.

The appellant, in the petition filed under Section 111 of the Act, contended that he was known to the family of respondent No.2- Managing Director and on his representation, agreed to extend a loan of

10,000 ponds valuing approximately ₹5,00,000/- as on that date and it was agreed that the said sum would be in the nature of a deposit for a period of 10 years and would carry interest @ 18% per annum with half yearly rests and accordingly a demand draft bearing No.011639 dated 16.1.1989 was deposited by the appellant, but the appellant was surprised on receiving a letter dated 22.3.1990, whereby the respondent-company, without there being any application, issued 26,488 shares of ₹10/- each vide share certificate No.22-25 for a sum of ₹2,64,880/-. Many correspondence exchanged between the parties, whereby the appellant unequivocally mentioned that he had never agreed to buy the shares, but had given the money by extending the loan and also requested the company to cancel share certificates by causing rectification. Since the respondent-company did not cancel the share nor rectified his register of members, it necessitated the appellant to file a winding up petition in this Court, which was dismissed vide order dated 14.12.2000 and the appeal bearing No.33 of 2001 filed against the order of the Company Judge was also dismissed on 19.9.2002 and accordingly on 30.9.2002 appellant filed the petition under Section 111 of the Act before the Company Law Board.

It is a matter of record that a demand draft dated 16.1.1989 had been deposited in the account of the company for 10,000 ponds. The appellant had also enclosed the entire correspondence exchanged between the appellant and the company as annexures with the petition filed. The Company Law Board, vide order dated 4.6.2007, dismissed the petition filed under Section 111 of the Act on the ground of delay and laches, i.e., filed after an inordinate delay of 12 years, though observed that the

appellant, on merits, had a case on sound footing. It is the said order which has been challenged in the present company appeal.

Mr.Arun Bansal, learned counsel appearing for the appellant, in support of his grounds of appeal, submitted that the Limitation Act does not apply to the proceedings before the Company Law Board under Section 111 of the Act for seeking rectification of the register of members and if at all the petition was filed with delay and laches, the Company Law Board has inherent powers to condone the delay as the petition, on merits, was found to be on sound footing. He further submits that the shares could not be allotted to the appellant without any application made by him. He, in support of his contentions, relied upon the following judgments:-

1. Sha Mulchand and Co., Ltd. v. Jawahar Mills Ltd., Salem, AIR 1953 Supreme Court 98;
2. Canara Bank v. National Power Grid Corporation Ltd., 2004 (122) Company Cases 312;
3. Rahul Subodh Windoors Ltd. v. A.K.Menon and another, 1999 (96) Company Cases 597;
4. Khurshid Alam v. P.Pagnon Company Private Limited and others, 2002(108) Company Cases 523;
5. Lalithamba Bai v. Harrisons Malayalam Ltd. and another, 1988 (63) Company Cases 662;
6. H.H.Manabendra Shah v. Official Liquidator, Indian Electrim tools corporation Ltd. (In Liquidation) and others, 1977 (47) Company Cases 356;
7. Ram Kishan and others v. Kanwar Papers Private Ltd., 1990 (69) Company Cases 209;
8. Kumar Malavalli v. CRCW Search Technologies P.Ltd., 2004(118) Company Cases 618;
9. Shiv Dayal Agarwal and others v. Sidhartha Polyester Pvt. Ltd. and others, 1997(88) Company Cases 705;
10. Citi Bank NA v. Power Grid Corporation of India Ltd. and another, 1995(83) 454;
11. Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority, (1988) 2 Supreme Court Cases 338;
12. State of Gujarat v. Jat Laxmanji Talasji, (1988) 2 Supreme Court Cases 341;
13. Kunvarjeet Singh Khandpur v. Kirandeep Kaur and others, (2008) 8 Supreme Court Cases 463;

14. Asia Resorts Ltd. v. Usha Breco Ltd., (2001) 8 Supreme Court Cases 710.

Mr.D.K.Gupta, learned counsel appearing on behalf of the respondent submitted that the appellant has failed to give a sufficient cause, much less, reasonable explanation in not approaching the Company Law Board, particularly it is evident from the correspondence made on behalf of the company that even the Reserve Bank of India had granted the sanction on 12.7.1990 for issuance of share to the appellant, who is stated to be a Non-Resident of India. It has been further submitted that the petition filed before the Company Law Board was an outcome of an abuse of the process of the Court and the same had been filed with an ulterior motive and the petition filed under Section 111(4) of the Act was not maintainable, particularly on the premise that where a document has been questioned on the ground of fraud and misrepresentation, such question cannot be decided under Section 111 of the Act and the remedy, if any, was under different provisions of the Act. He further submits that the appellant had failed to prove on record any document to show that 10,000 ponds were extended as a loan transaction. There was no agreement in this regard. Learned counsel in support of his submissions relied upon the following judgments:-

1. Jagjit Rai Maini and others v. Punjab Machinery Works (P) Ltd. and others, 2001(103) Company Cases 979;
2. Anil Gupta v. Delhi Cloth and General Mills Co.Ltd. 1983 (54) Company Cases 301;
3. Suresh Kumar Manchanda v. Prakash Roadlines Ltd.and others, 1996(87) Company Cases 102;
4. C. Mathew v. Cochin Stock Exchange Ltd., 1998(91) Company Cases 344;
5. Dr.C.Uma v. Satyam Computer Services Ltd. and others, 2010 (154) Company Cases 114;
6. Smt.Nupur Mitra and another v. Basubani Private Limited and others, 2002 (108) Company Cases 359; and

7. Abani Bhusan Bhattacharya v. Ericsson India (P) Ltd. and others, 1998 (93) Company Cases 939.

I have heard the learned counsel appearing for the parties, appraised the paper book and the impugned order and as well as the case law cited in support of the respective contentions and am of the view that the appeal is liable to be dismissed as the petition filed before the Company Law Board was suffering from inordinate delay and laches.

In order to lend support to the aforementioned reasoning/ findings, I draw support from the catena of judgments relied upon by the learned counsel for the respondents, wherein various Courts while culling out the “*ratio decidendi*” held that where a person had the knowledge of the transfer of shares and did not avail the remedy as prescribed under the law as late as for 11 years, then the principles as enunciated under Article 137 of the Limitation Act would apply. The cause of action would arise from the date of transfer and not from the date of knowledge. In the instant case, the appellant had acquired the knowledge of issuing the share certificate in respect of the amount paid by the appellant in the year 1990 and till 2000 the appellant did not take any effective steps for vindicating his grievance, if any. The judgments relied upon by the learned counsel for the appellant have been rendered by the Company Law Board and are based upon the facts and circumstances of each case, whereas the judgments relied upon by the learned counsel for the respondents are of the various High Courts. The other judgments dealt with proposition that where there is no denial, the limitation is not arrested. However, in the instant case, the respondents in the year 1990, informed the appellant about issuance of shares, then cause

of action for seeking rectification accrued in the year 1990.

The Hon'ble Supreme Court had an occasion to interpret the provisions of Article 137 of the Limitation Act to the provisions of Telegraph Act, 1885 in **The Kerala State Electricity Board, Trivandrum Versus T.P.Kunhaliumma, AIR 1977 (SC) 282**. In paragraphs 18 and 22 of the said judgment, the Hon'ble Supreme Court held that the provisions of Article 137 of the Limitation Act, 1963 will apply to any petition or application filed under any Act and would not confine to the applications contemplated by or under the Civil Procedure Code. In essence, the applicability of Article 137 was extended to the provisions of other Act also. For the sake of brevity, paragraphs 18 and 22 of judgment of T.P.Kunhaliumma (supra) are extracted herein below:-

“18. The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Civil Procedure Code. In the 1908 Limitation Act there was no division between applications in specified cases and other application as in the 1963 Limitation Act. The words “any other application” under Article 137 cannot be said on the principle of edjusedem generis to be applications under the Civil Procedure Code other than those mentioned in Part 1 of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal

or making the application during such period.

22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two Judge Bench of this Court in Athani Municipal Council case (supra) and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Civil Procedure Code. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.”

The Karnataka High Court in **Suresh Kumar Manchanda's case (supra)**, while dealing with the provisions of Section 155 of the Companies Act, held that the doctrine of laches has a very great significance in respect of a member of the company, whose name appears in the register of members, but he cannot be permitted at his whims and fancies to ask for rescission of such a contract to take shares as it would be lost because of inaction or lack of prompt action on his part. Thus, the onus is heavily on the shareholder to set right the mistake, if any, in the register without any delay.

In the present case, since the appellant has failed to vindicate his grievance for almost 11 years and in the absence of any explanation given in the petition filed under Section 111(4) of the Act, the Company Law Board has no occasion to ponder on this aspect. I am in agreement with the findings rendered by the Company Law Board that the petition filed under Section 111(4) of the Act on behalf of the appellant was hit by

doctrine of delay and laches. The appellant has miserably failed to explain the delay, much less, reasonable cause of not approaching the forum well within the reasonable time of three years from the date of acquisition of knowledge, which, in the instant case, the appellant had acquired in the year 1990.

In view of what has been observed above, the order of Company Law Board is upheld and the appeal is accordingly dismissed.

March 13, 2015
ramesh

(AMIT RAWAL)
JUDGE