

(1998) 02 CAL CK 0004

Calcutta High Court

Case No: F.M.A.T. No. 232 of 1998 and F.M.A. No. 1634 of 1998

Inter Sales

APPELLANT

Vs

Reliance Industries Ltd.

RESPONDENT

Date of Decision: Feb. 27, 1998**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 9
- Companies Act, 1956 - Section 10, 10(1), 2(11), 53, 84

Citation: (1999) 35 CLA 370 : (2002) 108 CompCas 680 : 1 CWN 210**Hon'ble Judges:** R. Dayal, J; Prabir Kumar Samanta, J**Bench:** Division Bench**Advocate:** P.P. Banerjee and Tapas Saha, for the Appellant; P.C. Sen, Soumen Sen, Supratik Banerjee and S.K. Samanta, for the Respondent**Final Decision:** Allowed

Judgement

R. Dayal, J.

This appeal is directed against the order dated 23-12-1997, passed by the City Civil Court at Calcutta, rejecting the application filed by the plaintiff-appellant under Order 39, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 ("the Code") on the ground that the matter relates to loss of equity shares and consequential reliefs and in view of the provisions of Section 84 of the Companies Act, 1956 ("the Act") and the provisions of the City Civil Courts Act, particularly, item 10 of the First Schedule, such type of matter is not triable in the City Civil Court but is under the exclusive jurisdiction of this court, that is, the High Court.

2. We have heard Shri P.P. Banerjee, Advocate for the appellant and Shri P.C. Sen, Advocate on behalf of the respondents, Shri Banerjee submits that the Act does not provide for adjudication of the dispute that has arisen between the parties and the jurisdiction of the City Civil Court vested in it by Section 9 of the Code is not ousted by any provision in the Act. On the other hand, Shri Sen submits that a combined

reading of Sections 2(11), 10 and 84 of the Act would show that it is the Company Court that has jurisdiction with respect to any matter relating to a company and since the subject-matter of the suit relates to a company, it is the Company Court that has the exclusive jurisdiction to deal with the matter.

In order to appreciate the controversy involved, it would be beneficial to refer to the cause of action pleaded by the plaintiff-appellant in the civil suit. The plaintiff has pleaded to have purchased 2,000 equity shares of respondent No. 1-company in July, 1997, and thereafter to have sent the same along with duly signed and stamped transfer deeds to respondent No. 2 with the request to transfer the same in the name of the plaintiff and send back the share certificates to its office. The defendant-company received the shares through defendant No. 3 vide acknowledgement memo dated 4-8-1997, and intimated the plaintiff through defendant No. 3 that the aforesaid shares had been duly transferred in the name of the plaintiff and despatched to the address of the plaintiff on 24-9-1997. The plaintiff enquired in the local post office whether the registered cover alleged to have been addressed to the plaintiff, was lying undelivered or returned but the postal authority informed that they had not received any cover addressed to the plaintiff. Thereafter, the plaintiff, vide letter dated 25-11-1997, intimated the matter to the defendants and requested them to enquire into the matter from the post office from where the registered cover had been posted. The plaintiff has further pleaded that it apprehends that the shares have been lost either in transit or some persons of the defendant-company having vested interest, after getting possession wrongfully, were trying to make illicit gain in an unauthorised manner. The plaintiff has prayed for a decree of declaration that the plaintiff is the lawful owner of 2,000 shares of defendant No. 1-company and that the defendants are bound to transfer the same or issue duplicate share certificates in the name of the plaintiff. Mandatory injunction is also sought directing the defendants to make over the duly transferred 2,000 shares in the name of the plaintiff or to issue duplicate share certificates to the plaintiff in respect of the shares. Even though relief of declaration of title is sought, yet, having regard to the admission that the company has transferred the shares in its books, the real dispute is about the issue of duplicate shares.

3. Section 84(4), makes provision, inter alia, for issue of a duplicate certificate as under :

"(4) Notwithstanding anything contained in the articles of association of a company; the manner of issue or renewal of a certificate or issue of a duplicate thereof, the form of a certificate (original or renewed) or of a duplicate thereof, the particulars to be entered in the register of members or in the register of renewed or duplicate certificates, the form of such registers, the fee on payment of which, the terms and conditions, if any (including terms and conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by a company in investigating evidence), on which a certificate may be renewed or a duplicate thereof may be

issued, shall be such as may be prescribed."

4. The expression "the court" is defined in Section 2(11) as under : "Definitions.--In this Act, unless the context otherwise requires,--(1) to (10)** (11) "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."

5. Reference was also made during arguments to Rule 4(3) of the Companies (Issue of Share Certificates) Rules, 1960, which reads as under :

"(3) No duplicate share certificate shall be issued in lieu of those that are lost or destroyed, without the prior consent of the Board or without payment of such fees, if any, not exceeding Rs. 2 and on such reasonable terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as the board thinks fit."

A perusal of the aforesaid legal provisions would show that as provided by Section 84(4), the manner of issue of duplicate share certificates may be prescribed by rules and the manner has, in fact, been provided by Rule 4(3) of the Companies (Issue of Share Certificate) Rules. However, no machinery has been provided in the Act for adjudication of a dispute with respect to issue of duplicate shares. Section 2(11) does not specify the powers of the Company Court. It only defines the expression "the court" occurring in the statute, with reference to any matter relating to a company as meaning the court having jurisdiction under the Act with respect to that matter as provided in Section 10. Section 10 specifies the court which has jurisdiction under the Act. In respect of certain matters, with respect to which conditions specified in Clause (b) of Section 10(1) are fulfilled, such court is the District Court of the district in which the registered office of the company is situate. But, where no notification has been issued under Sub-section (2), or in respect of such matters as are not covered under Clause (b), such Court is the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate. To fall within the jurisdiction of "the court" as defined in Section 2(11) read with Section 10, the matter should be such as is provided by the Act to be adjudicated by "the court". In respect of matters regarding which the Act does not provide for adjudication by the court, the adjudicating authority cannot mean "the court" as defined by section 2(11). It is only where the Act provides for adjudication by "the court", "the court" would mean the court as defined in Section 2(11). The definition clause cannot be given the interpretation that whenever there is a dispute relating to a company, it is the company court as defined in Section

2(11), that will have the jurisdiction. A similar view was taken by a Division Bench of this Court in [The Asansol Electric Supply Co. and Others Vs. Chunilal Daw and Others](#),

"Section 2(11) is the definition section of the words "the court". Therefore, whenever the words "the court" are mentioned in the provisions of the Act, the same will mean the court having jurisdiction under the Act with respect to that matter relating to a company as provided in Section 10. Section 10 refers to the High Court as the court having jurisdiction under the Act. The cumulative effect of Section 2(11) and Section 10 is that the expression "the court" occurring in any provision of the Act will mean the High Court. It does not mean that in all matters the High Court will have jurisdiction and the Civil Court will not have jurisdiction in respect of any matter relating to a company.

In our view, on a proper construction of the provisions of Section 2(11) and Section 10, it must be held that the Act does not altogether exclude the Jurisdiction of the Civil Court."

6. Reliance has, however, been placed on behalf of the respondents on the decision rendered by a learned single Judge of this Court in Hirendra Bhadra v. Triton Engg. Co. (P.) Ltd. 1975 80 CWN 242 where having regard to the controversy involved, it was held that the matters, "which have been alleged against the petitioner are all matters under the Companies Act and that being so, it is only the court it has been mentioned in Section 10 of the Act that has jurisdiction to entertain any suit". As observed earlier, it has already been held by a Division Bench of this Court, with which we are in respectful agreement, that all matters under the Act are not within the exclusive jurisdiction of the court mentioned in Section 10.

7. We, therefore, hold that the "court" as defined in Section 2(11), read with Section 10, does not have the jurisdiction to decide the subject -matter of the suit from which the present appeal has arisen and as such the Jurisdiction of the Civil Court vested u/s 9 of the Code does not get ousted by the Act.

8. The learned counsel for the respondent also submits, in the alternative, that the City Civil Court, Calcutta, does not have the jurisdiction because all the defendants reside or work at Bombay, that is, outside the jurisdiction of the courts in West Bengal and also because no part of the cause of action arose within West Bengal. It is, no doubt, true that all the defendants reside or work at Bombay. The question for decision, therefore, is whether any part of the cause of action arose within West Bengal. The case of the plaintiff is that the shares were sent by the plaintiff from Calcutta to the defendants at Bombay for effecting transfer in the name of the plaintiff and it was the duty of the defendants to send the same back to the plaintiff at Calcutta and to deliver the same at Calcutta and since the defendants failed to deliver the same at Calcutta, need arose for seeking the declaration prayed for and a direction for issue of duplicate share certificates and so a part of the cause of

action for the reliefs sought by the plaintiff, particularly, the issue of duplicate share certificates arose at Calcutta. In support of the argument, reference has been made by the learned counsel to Section 53 of the Act which provides that a document may be served by a company on any member thereof either personally, or by sending it by post to him to his registered address, or if he has no registered address in India, to the address, if any, within India supplied by him to the company for the giving of notices to him. Sub-section (2)(a) of that section provides that where a document is sent by post, service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, provided that where a member has intimated to the company in advance that documents should be sent to him under a certificate of posting or by registered post with or without acknowledgement due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member. The learned counsel submits that the duty of delivery the share certificates after effecting the transfer was duly discharged by the defendant-company by sending the same by registered post and since the registered cover was delivered to the post office at Bombay, no part of the cause of action arose in West Bengal. However, we are unable to persuade ourselves to agree with this submission. Section 53 raises a presumption about service of a document sent by registered post but that presumption is rebuttable. As such, where a document has been sent by registered post, and for some reason the same has not been delivered to the addressee, it cannot be said that the company, stood discharged from its obligation and no right remained with the addressee. The question whether a part of the cause of action arose within the jurisdiction of the court in West Bengal is to be determined with reference to the allegations so made in the plaint and if from the allegations so made, an obligation arises in favour of the plaintiff and against the defendants, there can be, no doubt, that a part of the cause of action for the reliefs claimed has arisen within the jurisdiction of the court in West Bengal. Furthermore, the presumption arises only where the registered post has been properly addressed. This is a question which remains to be considered by the court. There is no presumption that the registered post was properly addressed. Therefore, we are of the view that a part of the cause of action arose within the Jurisdiction of the City Civil Court, Calcutta, and, therefore, that court has the jurisdiction to deal with the civil suit from which this appeal has arisen.

9. We make it clear that the question as to territorial jurisdiction of the City Civil Court was raised by the learned counsel for the respondents and both learned counsels wanted us to deal with this question. It is for this reason that we have dealt with this question, even though the question was not raised before the City Civil Court.

10. In the result, we allow the appeal, set aside the order of the City Civil Court and direct the City Civil Court to proceed to dispose of the injunction application

expeditiously according to law. The parties shall maintain status quo with respect to the shares in question till the disposal of the injunction application. Parties shall appear before the Court on 16-3-1998. There shall no order as to costs.