
(1954) 02 CAL CK 0025

Calcutta High Court

Case No: Application under the Companies Act No. 187 of 1953

In Re: Sree Bihariji Mills Ltd.

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 19, 1954

Acts Referred:

- Companies Act, 1956 - Section 34(3), 34(4), 38
- Stamp Act, 1899 - Article 62, 10, 11, 12, 12(1)
- Stamp Rules - Rule 17, 17(2)

Citation: (1956) 2 ILR (Cal) 551

Hon'ble Judges: Bachawat, J

Bench: Single Bench

Advocate: Binayk Banerjee, for the Appellant; A.C. Bhabhra, for the Respondent

Final Decision: Dismissed

Judgement

Bachawat, J.

One Sree Bihariji Mills Ltd. since deceased was the registered holder of the 1,350 shares in the Respondent company. On his death his widow Sm. Pandey took out a succession certificate. By a deed of transfer dated July 16, 1952, Pandey in consideration of the sum of Rs. 81,000 transferred the shares to the Petitioner Kedarnath. The deed of transfer was lodged with the Respondent company on or about November 25, 1952. The Respondent company from time to time stated that the matter was receiving consideration. Before the petition was launched the Respondent did not inform the Petitioner that it refused to register the transfer.

2. This application was made on or about June 25, 1953. In the affidavit in opposition the Respondent for the first time indicates that it declines to register this transfer.

3. I may observe that there was an order for injunction restraining the registration of the transfer but that order has been vacated.

4. Mr. Bhabra on behalf of the Respondent opposes rectification of the share register on the sole ground that the transfer deed is not duly stamped.

5. The behaviour of the directors of the Respondent company in this case is surprising. As soon as the deed of transfer was lodged it was the duty of its directors to examine the Deed and if the Deed was not properly stamped to inform the Petitioner at the earliest opportunity. If the company refused to register the transfer it was the duty of the company u/s 34(4) of the Indian Companies Act to give notice of the refusal within two months from the date on which the instrument of transfer is lodged and by Section 34(3) of the Act the directors who are knowingly party to the default are placed under severe penalties.

6. But the technical point has now been taken and I am compelled to adjudicate upon it.

7. u/s 34(3) of the Indian Companies Act, it is not lawful for any company to register a transfer of shares in the company unless the proper instrument of transfer duly stamped and executed by the transferer and the transferee has been delivered to the company along with the scrip. It is not disputed by Mr. Bhabra that a proper instrument of transfer duly executed by the transferer and the transferee was delivered to the company along with the scrip. Mr. Bhabra however contends that this instrument of transfer was not duly stamped.

8. If the instrument of transfer is not duly stamped it cannot be said that the name of the Petitioner was without sufficient cause not entered in or omitted from the Register of Members.

9. If the deed of transfer lodged with the company is not duly stamped, the Court has no power to direct rectification of the Register u/s 38 of the Indian Companies Act. The lodgment of a duly stamped instrument of transfer is condition precedent to the making of an order under that section. New Citizen [New Citizen Bank of India Vs. Asian Assurance Co. Ltd.,](#) .

The Indian Companies Act does not define the words "duly "stamped".

10. Section 2(11) of the Indian Stamp Act provides that the word "duly stamped" in that Act means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India.

11. Under Article 62 read with Section 3 of the Act a deed of transfer of shares in an incorporated company is chargeable with one half of the duty payable on a conveyance for a consideration equal to the value of the share.

12. Chapter I, Part B of the Indian Stamp Act provides for stamps and for the mode of using them. Section 10 provides that duty is to be paid and the payment is to be indicated on the instrument by means of stamps according to the provisions

contained in the Act or where no such provision is applicable as the collecting Government may by rule direct. Section 11 of the Act provides for the stamping of certain instruments with adhesive stamps but that section does not provide for the stamping of an instrument of transfer of shares. Rules 17 of the Indian Stamp Rules provides that such instrument may be stamped with special adhesive stamps bearing the words "share "transfer".

13. Section 12(1) of the Act provides that whoever affixes any adhesive stamp to any instrument shall, when affixing such stamp, cancel the same so that it cannot be used again. Section 12(2) of the Act provides that any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall so far as such stamp is concerned be deemed to be unstamped.

14. Clearly, Section 12 is enacted for the protection of revenue so that a stamp affixed to an instrument may be effectively cancelled and may not be used again for defrauding the revenue. The words of Section 12(2) are general and are not confined to adhesive stamps which may be affixed u/s 11. In my judgment, Section 12(5) of the Indian Stamp Act applies to all instrutsots bearing adhesive stamps whether such adhesive stamp is affixed u/s 11 of the Act or under Rule 17 of the Indian Stamp Rules. By virtue of Section 76(2) of the Indian Stamp Act all rules made under the Act have effect as if they are enacted by the Act. The rules are part of the Act, and an adhesive stamp affixed under Rule 17 has the same effect and is subject to the same consequences as an adhesive stamp affixed u/s 11 of the Act.

15. Mr. Bauerjee appearing on behalf of the Petitioner expressly conceded and formally admitted on behalf of his client that the adhesive stamps affixed in this case to the instrument of transfer has not been cancelled in accordance with Section 12(1) of the Indian Stamp Act. I must, therefore, u/s 12(2) of the Indian Stamp Act hold that the instrument so far as these stamps are concerned be deemed to be unstamped.

16. Mr. Banerjee relied upon Rule 17(2) inserted by the Bengal Provincial Stamp Act. That rule provides that share transfer stamps affixed to a deed of transfer shall before effect is given to the transfer by the company be cancelled, by the company by means of a punch so as to render the stamp permanently unfit for it-utilisation, though the stamps were previously cancelled in accordance with Section 12 of the Indian Stamp Act, 1899. The words of this Sub-rule rather confirm the objection of Mr. Bhabra. Even though the stamps are previously cancelled in accordance with Section 12, Sub-rule (2) of Rule 17 makes it mandatory upon the company to cancel the deed of transfer again by a punch.

17. This rule provides for a cancellation in addition to the cancellation provided by Section 12. The cancellation u/s 12(3) may be done in a somewhat perfunctory manner. The legislature, therefore, thought it desirable that before the share transfer is given effect to, the company should cancel the share transfer deed by

means of a punch which can perforate words in sufficient prominence to render the stamps permanently unfit for re-utilisation.

18. Mr. Bhabra also contended that stamps of proper value have not been affixed to the share transfer deed. He submitted under Article 62 of the Indian Stamp Act the deed of transfer of 1,350 shares must be stamped on the basis that there are in fact 1,350 deeds each transferring one share in the company. I do not agree with this submission. Even on the assumption that this submission is correct there is no evidence to establish that stamps of the proper value have not been affixed to the instrument. Mr. Bhabra asked me to assume that the price of a share if separately sold would be Rs. 60 because Rs. 81,000 is the total price of 1,350 shares. There is no warrant for that assumption. The purchaser of a large block" of shares very often pays a larger price than he will be willing to pay if he was purchasing a single share. There is no evidence that the price of each share if separately sold is u/s 60. I may also record that the learned attorney intervening on behalf of the Government admits that stamps of the proper value were affixed to the instrument.

19. Be it recorded that Mr. Bhabra has not contended that the transfer is open to any objection other than the objection that it is not duly stamped. I hope that if a properly stamped deed of transfer is again lodged with the company, the company will forthwith register that deed.

20. I regret to say that I am compelled to give effect to this very technical point urged by the Respondent after such a lapse of time. I, however, see no escape from the conclusion that the deed is not duly stamped and that accordingly the company cannot act upon this deed. This litigation, however, is caused entirely by reason of the laches on the part of the Respondent company. Had the Respondent company informed the Petitioner beforehand that the deed of transfer was not duly stamped, the defect might have been rectified before the petition was launched. The Respondent is solely responsible for the costs of this litigation. Although I am forced to refuse this application I must allow the Petitioner full costs.

21. This application is dismissed. The Respondent must pay the Petitioner the costs of this application which shall be assessed as of a hearing. Let the costs of this application be taxed forthwith.