

In Re: Coronation Tea Co. Ltd.

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SooperKanoon Citation : sooperkanoon.com/864475

Court : Kolkata

Decided On : Apr-26-1961

Reported in : AIR1961Cal528,[1962]32CompCas568(Cal)

Judge : S.P. Mitra, J.

Acts : [Companies Act, 1956](#) - Sections 9, 108, 108(1), 111(1), 111(3) and 155; ;
[Stamp Act, 1899](#) - Sections 2(11), 2(14) and 12

Appeal No. : Suit No. C.P. 243 of 1960

Appellant : In Re: Coronation Tea Co. Ltd.

Advocate for Pet/Ap. : R. Chaudhuri and ;R.N. Mitra, Advs.;A.C. Roy, Adv.

Disposition : Application dismissed

Judgement :

ORDER

S.P. Mitra, J.

1. This is an application for rectification of the Share Register of the Company.
2. The first objection of the company is that the transfer forms which have been used are not in accordance with the provisions of Article 48 of the Articles of Association relating to transfer or transmission of shares. Under Article 48 (b) a

form has been set out. Upon comparing the form with the forms used by the petitioner I find there has been substantial, if not verbatim, compliance with the requirement. In any event, Article 48 (b) prescribes that, the transfer may also be recorded 'in any usual or common form which the Board shall have approved'. When the petitioner applied to have her name registered, it was open to the Board to approve of the forms used by the petitioner and her transferors. I do not see why approval could not be given to these forms. This contention of learned Advocate for the company therefore, does not appear to me to be reasonable.

3. The next contention is that unless a person is a member of a Company, he cannot make an application under Section 155 of the [Companies Act, 1956](#). His remedies are under Section 111 and he may prefer an appeal to the Central Government as provided by Sub-section 3 of that section. This argument is obviously untenable as Section 155 clearly provides that, if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having become a member, the person aggrieved may apply to the court for rectification of the register. In *Sadashiv v. Gandhi Sewak Samaj Ltd.*, : AIR1958 Bom247 , it is observed that Section 155 is the controlling section and gives the court an overriding power notwithstanding any previous order of the Central Government. It would be meaningless to give the court a general power to decide any question including any question relating to the title of a person as is given by Section 155(3) and then indirectly cut off that power by giving the Central Government the same power to decide the same question in appeal first.

4. With respect I agree with these observations. To my mind, in view of the provisions of Sections 9 and 111(1) of the Companies Act, Sub-section 3 of Section 111 merely puts a fetter on the powers of the directors and does not in any way abridge the powers of The court.

5. Mr. Roy appearing on behalf of the company has also urged that under Section 108 a company shall not register a transfer of shares unless, inter alia, a proper instrument of transfer 'duly stamped' has been delivered to the company. In the present case there are instruments of transfer but they are not 'duly stamped' inasmuch as the stamps which have been affixed have not been cancelled.

6. The expression 'duly stamped' has been defined in Section 2(11) of the Indian Stamp Act. The definition is as follows :

' 'Duly stamped', as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the propel amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India except Part B States'.

7. Section 12 of the Act runs thus :

'12 (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again;

(b) whoever executes any instrument on any paper bearing an adhesive stamp, shall at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) 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.

(3) The person required by Sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner'.

8. Section 35 of the Indian Stamp Act provides, inter alia, that instruments which have not been 'duly stamped' are inadmissible in evidence. Section 63 lays down that any person required by Section 12 to cancel an adhesive stamp, in the manner prescribed by that section shall be punishable with fine which may extend to one hundred rupees.

9. Mr. Rule Chaudhuri, learned counsel for the petitioner has submitted that Sections 12, 35 or 63 of the Stamp Act have no relevance whatsoever in considering whether an instrument has been 'duly stamped' for purposes of

Section 108 of the [Companies Act, 1956](#). All that the court has to see is whether stamps of the proper amount have been affixed to the instrument of transfer. If an adhesive stamp affixed to an instrument is not cancelled in accordance with the provisions of Section 12(1) (a) or (b) of the Stamp Act it is deemed to be unstamped for the purpose of attracting the consequences specified in Section 35 and 63 of that Act only.

10. Mr. Chaudhuri has placed reliance on Section 47 of the Act which is as follows :

'47. When any bill of exchange (or promissory note) chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill (or note) and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill (or note) shall, so far as respects the duty, be deemed good and valid:

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill (OR note)'.

11. Mr. Chaudhuri contends that an unstamped instrument does not, therefore, lose its character. Only for the special purposes of the Stamp Act it is deemed to be unstamped.

12. It is also to be observed, according to learned counsel, that in Section 2(11) of the Act the necessity for cancellation has not been mentioned. For giving the instrument an unstamped character a legal fiction has been introduced in Section 12 in order that the provisions in Sections 35 and 63 may be made applicable.

13. I am unable to accept these contentions of Mr. Chaudhuri. To my mind a company cannot register a transfer of shares unless a proper instrument of transfer 'duly stamped' has been delivered to the company (Section 108, [Companies Act, 1956](#)). There is no definition of the expression 'duly stamped' in the Companies Act. But it has been defined in Section 2(11) of the Indian Stamp

Act. 'Duly stamped', as applied to an instrument, means that the instrument bears, inter alia, an adhesive stamp of not less than the proper amount and that such stamp has been affixed in accordance with the law for the time being in force in India except Part 'B' States. In order that it can be said to have been affixed in accordance with law it must be cancelled either by the person who affixes it or by the person who executes the instrument, if it bears an adhesive stamp (Section 12 Indian Stamp Act). In the instant case adhesive stamps have been affixed to the instruments of transfer but they have not been cancelled. The Company is right in contending therefore, that the instruments are not 'duly stamped'.

14. Mr. Chaudhuri has also advanced another argument. He says that the instruments of transfer delivered to the company are not 'instruments' in terms of Section 2(14) of the Indian Stamp Act. This section provides that an 'instrument' includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. Learned counsel has drawn my attention to Article 62 in Schedule 1 to the Stamp Act. This Article deals with transfer whether with or without consideration, inter alia, of shares in an incorporated company or other body corporate. The duty payable on such documents is (one-half) of the duty payable on a conveyance (No. 23) for a consideration equal to the value of the share. According to Mr. Chaudhuri until a resolution is passed by the Board of Directors of the Company approving of the transfer no right or liability is created or extinguished. It is only when such a resolution is passed that the stamp is to be cancelled. Under Section 111(1) of the [Companies Act, 1956](#) nothing in Sections 108, 109 and 110 shall prejudice any power of the company under its articles to refuse to register the transfer of any share in the company. Under Regulation 19 (1) (2) of Table 'A' in Schedule 1 the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof. Under Regulation 21 the Board may subject to the right of appeal conferred by Section 111, decline to register (a) the transfer of a share, not being a fully-paid share, to a person of whom they do not approve; or (b) any transfer of shares on which the company has a lien. Under Regulation 22 the Board may also decline to recognise any instrument of transfer unless (a) a fee of Rs. 2/- is paid to the company in respect thereof; (b) the instrument of transfer is accompanied by the certificate of

the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; and (c) the instrument of transfer is in respect of only one class of shares. These provisions, learned counsel has urged, indicate that a transfer of shares means a tripartite agreement between a buyer, his seller and the company. Until the Board of Directors of the company gives its approval to the transfer, it cannot be effective. The question of cancellation of stamps will arise only when the approval of the Board is given.

15. Strong reliance was placed by Mr. Chaudhuri on the following notification published in the Calcutta Gazette on July 24, 1941 :

'Stamps. Notification No. 6714 St.--18th July, 1941,--In exercise of the powers conferred by Section 75 of the Indian [Stamp Act, 1899](#) (II of 1899), read with the Government of India, Finance Department (Central Revenues) Notification No. 9 stamps, dated the 13th November, 1937 the Governor is pleased to make the following rule relating to the cancellation of 'Share Transfer' stamps:

Mode of cancelling 'Share Transfer' Stamps at the time of registration of the deed of transfer. --'Share Transfer' stamps affixed to deeds of transfer of shares shall, before effect is given to the transfer by the Joint Stock Company concerned, be cancelled by the company by means of a punch which can perforate either the word 'cancelled' or an abbreviation thereof, namely, 'Cancl'd' or 'Canceled' or the initials of the company, in sufficient prominence to render the stamps permanently unfit for re-utilisation even though the stamps were previously cancelled in accordance with Section 12 of the Indian [Stamp Act, 1899](#). In case a company fails to cancel the Share Transfer stamps as provided in this rule the company shall be liable to the penalty prescribed by Section 63 of the Indian [Stamp Act, 1899](#) :

Provided that for the purpose of cancelling 'Share Transfer' Stamps, the Provincial Government may, on being satisfied by a certificate from the Collector or the Superintendent of Stamps, permit any Joint Stock Company to adopt any other method in lieu of perforation by means of a punch.

By order of the Governor,

B. R. SEN.

Secy. to the Govt. of Bengal.'

16. Mr. Chaudhuri seeks to draw support from the terms of this Notification in favour of his argument that it is the duty of the company and not of the transferor or the transferee to cancel the stamps in the manner indicated in the Notification at the time of registration of the deed of transfer. Learned counsel relies on the case of *in re Copal Varnish Co. Ltd.*, reported in (1917) 2 Ch 349 for the proposition that an instrument of transfer has no legal effect till the consent of the Directors is obtained and registration is effected.

17. On this point also I am unable to agree with Mr. Chaudhuri. Section 2(14) of the Indian Stamp Act merely states that an instrument includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. The definition is extensive and is not restricted to the kinds of documents specifically referred to. An 'instrument' is a writing, and generally imports a document of a formal legal kind : vide Stroud's Judicial Dictionary, 3rd Edition, vol. 2 page 1472. It cannot be said, therefore, that an instrument of transfer of shares is not an 'instrument' within the meaning of Section 2(14) of the Indian Stamp Act. In any event, it cannot be urged that this document is not a document by which any right or liability is, or purports to be, created or recorded. In (1917) 2 Ch 349 cited by Mr. Chaudhuri, Eve J. has pointed out that by the instrument of transfer an equitable interest in the shares is passed to the transferee. Lord Watson, describing the rights of transferees holding Wank transfer deeds in *Colonial Bank v. John Cady*,. (1890) 15 AC 267 at p. 277 observes that :

'It would, therefore, be more accurate to say that such delivery (meaning delivery of blank transfer deeds) passes, not the property of the shares, but a title, legal and equitable, which will enable the holder to vest himself with the shares without risk of his rights being defeated by any person deriving title from the registered owner.'

18. Secondly, the requirement of Section 108(1) of the Companies Act 1950, inter alia, is that a proper instrument of transfer 'duly stamped' and executed by or on behalf of the transferor and by or on behalf of the transferee must be delivered to the company. The section does not speak of any execution by the company. The language used in the first proviso to Section 108(1) is interesting, it is as follows :

'Provided that where, on an application in writing made to the company by the transferee and bearing the stamp required for an instrument of transfer, it is proved to the satisfaction of the Board of Directors that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee has been lost the company may register the transfer on such terms as to indemnity as the Board may think fit'.

19. The expression used in this proviso is not 'duly stamped' but 'bearing the stamp'.

20. Thirdly, it seems to me that, the Notification published in the Calcutta Gazette on July 24, 1941 merely contemplates a second cancellation by the company 'to render the stamps permanently unfit for re-utilisation'. This second cancellation must be made by the company. The Notification clearly lays down 'even though the stamps were previously cancelled in accordance with Section 12 of the Indian [Stamp Act, 1899](#)'. The Notification, in my opinion, gives an indication that the stamps on the instrument of transfer are cancelled in accordance with the provisions of Section 12 of the Stamp Act.

21. Lastly, I may refer to Union of India v. Kulu Valley Transport Ltd., (1958) 28 Com Cas 29. It was held, inter alia, by the Punjab High Court that, where the adhesive stamps on the transfer deeds executed by the transferors were not cancelled, the document should be regarded as un-stamped, and to order rectification of the register of members in a case where there is no duly stamped transfer deed would amount to ordering the company to act in contravention of Section 108(1) of the [Companies Act, 1956](#).

22. For reasons aforesaid, I am of opinion that the company in the present case was justified in refusing registration of the shares concerned.

23. in the result, therefore, this application is dismissed.

24. I make no order as to costs since I find from the correspondence that passed between the parties that the company raised various objections to registration but never wrote to the petitioner that the stamps had not been cancelled. It is stated in paragraph 8 of the affidavit-in-opposition being the affidavit of Kalipada Sen affirmed on the 8th November 1960 that this defect was pointed out when the original deeds were delivered to the company; but I am told that the company accepted registration, fees from the petitioner and granted receipts therefor. I also direct the company to return to the petitioner the relevant share scrips along with the instruments of transfer within a fortnight from date.

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