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HIGH COURT OF DELHI : NEW DELHI

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CS(OS) No.1424/1988

Sh. Bhupendra P. Watal Plaintiff
Through : Ms. Tamali Wad, Adv.

Versus

M.J. Investment & Financial Consultants
& Ors. Defendants
Through : Mr. Ankur Chibbar, Adv. for
Defendant Nos.1-2
Mr. J.P. Singh, Sr. Adv. with
Mr. A.S. Mathur and Ms. Shruti
Verma, Advs. for Defendant Nos.5-9

Decided on : January 27, 2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

MANMOHAN SINGH, J

1. The present suit has been filed by the plaintiff for declaration, rendition of accounts and recovery of money. As per amended plaint dated 24th July, 2006 against twelve defendants, the plaintiff sought the following reliefs :

- a) That a decree for declaration be passed in favour of the plaintiff against the defendants that the 1300 shares of M/s. Hindustan Aluminum Corporation Limited mentioned in para No.5 above are not stolen property and that the plaintiff had validly introduced and transacted the said shares in the market on the floor of the Delhi Stock Exchange and as a consequential relief, the defendant No.11 be directed to register the transfer of the said shares in favour of the transferee. And in the alternative :

- b) Decree for the payment of Rs.1,49,400/- (Rupees one lac forty nine thousand four hundred only) or the value of the shares at the time of the passing of the decree be passed in favour of the plaintiff and against the defendants No.1-3.
- bb) A decree for rendition of accounts be passed in favour of the plaintiff and against defendants No.5-9 and defendant No.11 in respect of the bonus shares, rights shares, dividend on the original 1300 shares, right shares, bonus shares, right issue of non-convertible debentures and convertible debentures, interest on the non-convertible and convertible debentures.
- bc) On rendition of accounts a decree be passed in favour of the plaintiff and against defendants No.1-3, 5-9 and defendant No.11 in respect of the value of the benefits which have so accrued and found due on such rendition of accounts.
- c) Interest pendent lite and till date of payment be awarded to the plaintiff against the defendant Nos.1-3.
- d) Cost of the suit be awarded to the plaintiff by the defendants.

2. Brief facts for deciding this case are that the plaintiff is a share broker conducting his business in the name and style of Bhupender & Co. The plaintiff is registered with the Delhi Stock Exchange ('DSE' for short). On instructions of Defendant No.1 being M.J. Investment through its partners defendant Nos. 2 and 3, the plaintiff sold 1500 shares of HINDALCO on the floor of DSE out of which 1000 shares were sold on 1st September, 1987 and remaining shares were sold on 2nd September, 1987. Out of the said 1500 shares, defendant nos. 1 to 3 delivered the share certificates and transfer deeds signed by the registered holders thereof for 1300 shares i.e. by defendant Nos.5-8 who were the registered holders and owners of the said shares. The remaining 200 shares were covered by purchase from the open market. The details of the shares are given in para 5 of the amended plaint.

3. Defendant No.9, Sh. N.L. Hamirwasia is the President of Mysore Cement

Ltd. and defendant Nos.5 to 8 are members of his family who are the registered holders of 1300 shares.

4. In the course of time, the shares came to be held by Defendant No.10, M/s. Amexco Nominees Pvt. Ltd. who lodged these shares for transfer with Hindustan Aluminium Transfer Corporation Ltd.

5. It is alleged that due to some dispute regarding the said shares between defendant Nos.1 to 3 and defendant No.9, the latter lodged a police report on 27th January, 1988 against defendant Nos.1-3 claiming that the said share certificates were stolen around 11th September, 1987 from his custody. Defendant No.9 also informed HINDALCO that the said shares were stolen property and the same should not be transferred in the name of defendant No.10. HINDALCO thus refused to transfer the shares in the name of defendant No.10. Defendant No.10 claimed the said shares to be bad delivery and defendant No.4 Sh. Babu Lal Bagri purchaser of 400 shares of the said shares raised a bill dated 8th March, 1988 for Rs.47,012/- demanded payment for return of money from the plaintiff. He also approached DSE alleging that the plaintiff had introduced stolen shares in the market and thus it was the plaintiff's liability to compensate him for the loss suffered by him.

6. It is averred in the plaint that on the complaint of defendant No.4, DSE suspended the plaintiff from carrying on business on the floor of DSE for over 24 hours on 22nd/23rd March, 1988 causing immense loss to the plaintiff both in terms of money as well as reputation.

7. It is submitted that the share certificates along with blank transfer forms duly signed by the registered shareholders namely defendant Nos.5-8 were delivered by defendants No.1-3 to the plaintiff in the usual course of business and the

plaintiff has no reason to suspect that the said shares were stolen property. The plaintiff dealt with the said shares bona fide for valuable consideration without notice of any defect in the title of defendant Nos.1-3.

8. As a result of all the above stated unforeseen events, the plaintiff wrote a letter on 9th March, 1988 to defendant Nos.1-3 informing them that the said shares were claimed to be stolen property and that HINDALCO refused to transfer the said shares to the transferee. In reply to this letter, the defendant Nos.1-3 on 28th April, 1988 informed the plaintiff that:-

“that the shares were duly sent by Sh. Nirbhey Lodha, authorized representative/official of Sh. N.L. Hamirwasia of Mysore Cement Co., to which the shares belongs to Sh. Prakash Agiwal, Chartered Accountant at Daryaganj and said Chartered Accountant had duly handed over the shares to Sh. C.P. Jain one of the partners, in his office. Prior to that Sh. Nirbhey Lodha when he visited Delhi met the said Sh. C.P. Jain in the office of Sh. Prakash Agiwal, Chartered Accountant in the presence of Sh. Rajender Prasad Jain of M/s. Aay Kay & Company and instructed the said Sh. C.P. Jain in front of the said Chartered Accountant to sell the shares in the market which would be sent to the Chartered Account by him in due course of time. The alleged theft report, if any alleged to have been lodged is absolutely false and baseless.”

9. The plaintiff submitted that the complaint made by defendant Nos.5-9 was absolutely forged and a false report was lodged by defendant No.9 because of some dispute between defendant Nos.5-9 and defendant Nos.1-3.

10. Further, defendant No.12 Parmanand Relan & Co. after filing of the suit also raised a bill of Rs.95,423/- on the plaintiff for return of the said amount in lieu of bad delivery of 700 shares out of the said 1300 shares.

11. It is also alleged that defendant No.11 company HINDALCO has issued rights and bonus shares on the above said shares. Dividend has also been disbursed on the original 1300 shares, bonus shares and rights shares. Defendant No.11 company has also issued partly convertible debentures and non convertible

debentures on rights basis and accrued interest on them. The plaintiff estimates the total value of such benefits to be approximately Rs.22 lac. The total value of 1300 shares at the time of sale was Rs.1,49,400/- which defendant Nos.1-3 are liable to pay to the plaintiff in case the shares are proved to be stolen property. It is argued that the value of shares varies from time to time and the plaintiff is entitled to the value as on the date of payment. It is also alleged that defendant Nos.1-3 are liable to pay interest on the said amount @ 18% p.a.

12. Defendant No.2 filed written statement taking several preliminary objections inter alia that the suit was bad for non-joinder of necessary parties namely Shri Nirbhay Lodha and Prakash Agiwal. On merits, it was stated that the defendant Nos.1 to 3 had directed the plaintiff to sell their 1300 shares on the floor of DSE for which share certificates and transfer deed duly signed by the registered holder were delivered to the plaintiff. The lodging of FIR by N.L. Hamirwasia has been denied with the averment that there was no occasion for Shri N.L. Hamirwasia to lodge a report as he was not the registered holder of the shares. It was averred that the said 1300 shares were delivered to the plaintiff along with transfer deeds duly signed and authenticated by the registered holder and witnessed by M/s. Agiwal and Associates and the plaintiff never approached the defendant regarding any objection about validity of the transfer deed and shares at any time and as such the plaintiff was now estopped from filing the present suit against the answering defendant.

13. The bank draft was also sent to defendant No.9 by defendant No.3 vide his letter dated 2nd December, 1987 and as the shares were purchased by the defendant no.2 through Sh. Prakash Agiwal from M/s. Agiwal & Associates who was along with partner of defendant No.1 Sh. Nirbhay Lodha. The transfer deeds

were duly signed by registered holder and were sent to the defendants through representative Shri Nirbhay Lodha, therefore, there could not have been any question of theft.

14. The defendant no.3 in his written statement also contended that the suit is bad for non joinder of parties. It was stated that he had received the shares from M/s. Prakash Agiwal and Associates who informed him that the said shares were given to them by Shri Nirbhay Lodha. It is contended that the liability is therefore, of Shri Nirbhay Lodha or Prakash Agiwal and Associates and not of the defendant No.3. Further, the defendant no.3 in his written statement has categorically stated that the present suit is bad for non joinder of necessary parties inasmuch as Shri Nirbhay Lodha from whom the shares were received and Shri Prakash Agiwal and Associates are necessary and proper parties to the present proceedings and in the absence of the said persons, the matter cannot be properly adjudicated.

15. The defendant Nos.5-9 filed the written statement raising preliminary objection that the suit is undervalued as consequential relief follows from the main relief. It is also contended that the plaintiff has no cause of action against defendant Nos.5-9. It is denied that there exist some disputes between the defendant Nos.5-9 and defendant Nos.1-3. It is submitted that the report regarding the theft of the share certificates was lodged without any extraneous consideration or motive. The report has been filed when the said shares were stolen from the property of defendant No.9.

16. The Circle Inspector, District Tumkur Karnataka on investigation had seized the shares of Hindustan Aluminium Corporation Limited and returned the same back to the Defendants No.5 to 9. It is denied that Sh. Nirbhay Lodha authorized

representative/official of defendant No.9 at any time sent the concerned shares to Sh. Agiwal and instructed for sale of the shares to Sh. C.P. Jain. The said shares are stolen property and the plaintiff has no title to sell them in the open market and they were received by the plaintiff in the guise of stolen goods and nothing else. The share certificates along with transfer deeds were wrongly and illegally delivered by the defendant Nos.1-3 to the plaintiffs who then wrongly and illegally sold the same on the floor of the DSE.

17. Defendant Nos.4 to 12 also urged that the Delhi Stock Exchange is a necessary and proper party to the instant suit.

18. The defendant nos.4 to 12 also raised an objection that in view of the bye laws of the DSE, the instant suit is not maintainable. In this respect, it is submitted that in terms of bye law 281 of the DSE, only claims, complaints, differences and dispute between members of the stock exchange, arising out of or in relation to transaction made subject to the Rules, have to be referred to the Arbitration Committee. Further Bye Law 282 lays down that in such cases, before commencing legal proceedings against a member, permission of the Board of Directors of the Stock Exchange is to be taken.

19. The defendant No.1 was proceeded ex-parte vide order dated 30th July, 1999. The defendants No.4, 10 and 12 have not contested the suit being formal parties. On the basis of pleadings of the parties, the following issues were framed on 17th November, 1988:

- (1) Whether the suit is bad for non-joinder of necessary parties?
OPD
- (2) Whether the suit is not maintainable on account of bye-laws of the Delhi Stock Exchange?
OPD
- (3) Whether the suit is barred under Section 41 of the Specific Relief Act?
OPD
- (4) Whether the suit has been instituted by duly authorized person?

- OPP
- (5) Whether the shares traded by the plaintiff were the stolen property of defendants No.5 to 9? If so, to what effect? OPD
- (6) If the answer to issue No.5 is in the affirmative, whether defendant No.3 or any other defendant is liable to the plaintiff and to what extent? OPD
- (7) If the answer to Issue No.5 is in the negative, are the defendants No.5 to 9 and 11 not liable to hand over the shares for registration and defendant No.11 to register shares in favour of the transferees? OPD
- (8) Whether the plaintiff is entitled to decree of rendition of accounts against defendants No.5 to 9 and 11 in respect of bonus shares, rights shares, dividends on the original 1300 shares, of non-convertible and convertible debentures and interest on the said debentures and on such rendition, final decree for the amount found due? OPP
- (9) Whether the plaintiff is entitled to interest? If so, at what rate, on what amount and for what period? OPP
- (10) Relief.

20. As a result of the application being I.A. No.10617/2009 filed by defendant Nos.5-9 on 18th January, 2000 an additional issue was framed by this court as under:-

- (11) Whether the defendants No.1 to 3 are bonafide purchaser from the defendants No.5 to 9 or from their authorized agent/representative for valuable consideration. OPD 1-3

21. The plaintiff examined himself as PW1 in the matter. Defendants No.1-3 examined two witnesses i.e. Mr. Ravinder Kumar as D2W1 and Mr. P.C. Agiwal as D2W2. Mr. Rohitesh Hamirwasia, defendant No.8 was examined by way of affidavit filed on behalf of defendants No.5-9 in the Court as DW-5. The cross examination was conducted before the Local Commissioner on 1st October, 2003. Thereafter the plaint was amended and the order for allowing the amendment was passed on 4th July, 2006. On 25th July, 2007 a statement was made by the plaintiff not to produce further evidence. The defendants also did not produce any evidence.

22. The defendant No.2 had produced the additional documents and evidence by

way of affidavit which was allowed vide order dated 26th February, 2009. He was cross examined by defendants No.5-9 on 31st March, 2008. The judgment was reserved on 15th April, 2009.

Issue No.1 and 2

23. The defendant No.2 i.e. D2W1 in his examination-in-chief has stated as under:-

“There was no dispute between us and defendants 5 to 9 before filing of this case. After filing of this case we came to know about the report lodged by defendants 5 to 9 with the police alleging that these shares were stolen property.”

24. In his cross-examination by counsel for defendants No.5-9, he has stated as under:-

“The shares belonged to Mr. Hamirwasia and payment was to be made by us to Mr. Hamirwasia by way of bank draft in his name. The delivery of shares was given to us by Mr. Agiwal and we were to sell the shares as brokers and thereafter payment was to be made to Mr. Hamirwasia who were the registered shareholders.”

25. Shri Prakash Agiwal has appeared as D2/W2 for defendant No.2 where in his examination in chief, he stated that he does not recollect having introduced defendant no.2 to Shri Nirbhay Lodha and he further stated that he does not have any knowledge about any share transactions between Shri Nirbhay Lodha and Shr. C.P. Jain (defendant No.3). In his cross-examination by the counsel for the plaintiff, he stated as under:-

“I do not know Mr. N.L. Hamirwasia. I do not know whether Mr. Nirbhay Lodha used to work for Mr. N.L. Hamirwasia. Mr. Nirbhay Lodha did not give share to me. I know Mr. C.P. Jain as he has done his articleship with Mr. D.C. Jain and I used to visit Mr. D.C. Jain being from his native place. I do not recollect Mr. Nirbhay Lodha having given any share to Mr. C.P. Jain.”

26. The learned counsel for defendant Nos.5-9 argued that the plaintiff had not pleaded anything specifically stating that the defendants No.5 to 9 were known

to the plaintiff in any manner whatsoever nor it is the case of the plaintiff that the said shares were delivered by the Defendants No.5 to 9 to the plaintiff. The plaintiff has no link whatsoever to the Defendants No.5 to 9 and did not know the Defendants No.5 to 9 in their personal capacity. In view of this stand of the plaintiff, no decree of any nature can be passed against defendant Nos.5 to 9 and the defendant Nos. 5 to 9 cannot be held liable for any loss caused to the plaintiff in any manner whatsoever.

27. It is thus submitted by defendants No.5-9 that defendant Nos.1 to 3 have not been able to clear the position with regard to the fact of them being in possession of the said shares particularly when in their cross-examination they have stated that they cannot identify Shri Nirbhay Lodha.

28. It is argued that the defendant Nos.1 to 3 have not been able to show that they were bonafide purchasers from defendant Nos.5 to 9 or their authorized agent since they were not able to prove that any consideration had passed onto the registered holders of the said shares namely defendant Nos.5 to 9. The defendant nos.1 to 3 have not filed any document by which it can be shown that the consideration amount was passed on by the defendant nos.1 to 3 in any manner to defendant nos.5 to 9. It is submitted that since the defendant nos.5 to 9 were the registered holders of the said shares, any consideration for sale of the said shares has to come defendant nos.5 to 9. The suit is not bad for joining defendant no. 5 to 9 and is not maintainable on this reason and also under the Bye-laws of the Delhi Stock Exchange.

29. It is argued by learned counsel for the plaintiff that in the present case, both these Bye Laws have no application, as neither defendant nos.5 to 9 nor defendant nos.1 to 3 are members of stock exchange. The specific relief claimed

by the plaintiff in the instant suit is against persons who are not members of the DSE. Thus, it cannot be said that the dispute which is the subject matter of the present proceedings has arisen between members of DSE. In any case, it is the defendant nos. 4 to 12 who have raised a claim against the plaintiff and not vice-a-versa. It is also pointed out that in terms of Bye Law 299, the claims raised by the defendant nos.4 to 12 against the plaintiff cannot be referred to arbitration as being time barred. The said bye law expressly stipulates that the Arbitration Committee shall not take cognizance of disputes that are not referred within three months from the date it arose. In the instant case, the defendant no.4 (Babulal Bagri) raised his claim vide bill dated 8.3.1988 and thereafter on 11th July, 1988 (Ex. P/4) but the matter was referred to arbitration in November, 1989.

30. It is submitted by the plaintiff that the Delhi Stock Exchange is neither a necessary nor a property party in the instant proceedings as the plaintiff has no grievance against the DSE. I agree with the submission of the plaintiff as in the present suit, relief in the nature of declaration that the shares are not stolen property has been sought against defendant nos.5 to 8 who are the registered holders of these shares and for rendition of accounts and in the alternative for recovery of money against defendant nos.1 to 3 on whose instructions the shares were sold by the plaintiff on the floor of DSE and to whom the valuable consideration being the sale proceeds of the shares were given by the plaintiff after selling the same in the month of September, 1987. In so far as Shri Nirbhay Lodha or Sh. Prakash Agiwal not being made a party to the present suit is concerned, it is submitted that they are neither necessary nor proper parties. No relief has been claimed against them by the plaintiff. It is not as if no order can be made effectively in their absence nor is it that their presence is necessary for a

complete and final decision of the question involved in the instant proceedings.

31. Considering the above mentioned facts and circumstances, I do not find any force in the submission of the defendants that the suit is bad for non-joinder of parties and Delhi Stock Exchange is a necessary party in the present suit. It appears from the above mentioned fact that the plaintiff has filed the suit against all the relevant parties who are involved in the transaction in question hence, issues no.1 and 2 are accordingly decided in favour of the plaintiff against the defendants.

Issue No.3

32. The objection that the suit is barred under Section 41 of the Specific Relief Act, 1963 has been raised only by defendant nos.2 and 3. In this regard it is submitted that the plaintiff has no personal interest in the matter and the suit is hit by provisions of Section 41(j) of the Specific Relief Act and thus an injunction cannot be granted when the plaintiff has no personal interest in the matter.

33. In terms of Bye Law 150 of the DSE Bye Laws, if there is any defect in the title, genuineness of ownership or regularity of validity of the shares in question, then the plaintiff may be held personally responsible to remove the said defect. Also Bye Law 153 stipulates that a broker who receives payment against delivery of defective documents shall be personally responsible for them to the buyer to whom the same are delivered or to any subsequent buyer. Therefore, the plaintiff has a real legal interest to protect and the Court in such a case would not ordinarily enquire into his motive. He in the facts of the present case has suffered damage or injury occasioned by reason of actions of defendant nos. 4 and 12, which can be remedied only by way of a declaration as sought for in the

instant suit which is maintainable in the eyes of law, it is not correct to allege by the defendants that the plaintiff has no personal interest in the matter. It is held that the suit is not barred under Section 41 of the Specific Relief Act, 1963 thus, this issue is decided against the defendants.

Issue No.4

34. The issue as to whether the suit has been instituted by a duly authorized person has been raised by defendant nos. 2 and 3.

35. As regards this objection, it is submitted by the plaintiff that the present suit has been filed by Shri B.P. Wattal, a member of the Delhi Stock Exchange who traded in the name and style of Bhupender & Co., a proprietorship firm. The suit has been filed by the plaintiff in his personal capacity as sole proprietor of Bhupender & Company. In view of this fact, I do not think that there is any legal infirmity in the filing of the instant suit. This issue also is decided in favour of the plaintiff and against the defendants.

Issue No.5-6 and 11

36. As per Issue no. 5, the onus of proving that the shares were actually stolen lies on the defendants.

37. The defendant No.8 in his evidence has deposed that the share certificates along with the transfer deeds were kept with his father defendant No.9. He has made the statement that the share certificates along with the transfer deeds were stolen but during cross examination he stated that he could not remember whether the transfer deeds along with the share certificates were stolen. The defendant No.8 who appeared as DW-5 also denied as to where the share certificates were kept by his father although in the FIR dated 27th January, 1988 it was specifically mentioned that the share certificates were kept by the

defendant No.9 in the drawer of his office table.

38. Further in his affidavit, defendant no. 8 has averred that the FIR was lodged on 27th January, 1988, but during cross examination he has stated that he could not remember as to when the complaint with the police was lodged by his father. In his affidavit, he has made a specific statement that the defendant Nos.5 to 9 did not hand over the shares to the defendant Nos.1 to 3 either by themselves or through Mr. Prakash Aigwal or Mr. Nirbhey Lodha for being sold in the market but during cross examination has submitted that he did not remember whether his father (defendant No.9) had given the shares to the defendants No.1 to 3 with duly signed transfer deeds.

39. In the written statement filed before this court, the defendants No.5 to 9 have admitted Shri Nirbhay Lodha to be the authorized representative of defendant No.9 but this fact has been contradicted by defendant No.8 who appeared as DW-5 on behalf of defendant nos. 5-9 during his cross examination by deposing that he had no knowledge whether Shri Nirbhay Lodha was employed by the defendant No.9.

40. Further, in their written statement before this Court defendant nos. 5 to 9 have not denied receipt of legal notice dated 29th March, 1988 sent on behalf of the plaintiff. HINDALCO in its reply dated 15.4.1988 which is Ex. PW1/20 intimated the plaintiff that on 13.4.1988 the Investigating Officer, Circle Inspector Dandinashivara Police Station, Turuvekere Distt. Karnataka visited their office and seized 1100 shares lodged with the company for transfer in the name of M/s Amexco Nominees Private Limited. The receipt of the said legal notice is proved by the plaintiff by producing the postal receipts and R.D. Card which are Ex-PW1/22 to PW1/29. The company did not deny any of the

statements of the plaintiff contained in his legal notice, especially regarding shares being lodged with duly signed transfer deeds of the authorized transferors.

41. It is submitted by the plaintiff that as per practice in the trade, in the case of a blank transfer the seller only fills in his name and signature. Neither the buyer's name and signature nor the date of sale is filled in the transfer form. The advantage in giving such a blank deed is that the buyer will be at liberty to sell it again without filling his name and signature to a subsequent buyer. In the latter case, he can avoid the payment for the transfer stamp and new deed to the buyer. The process of purchase and sale can be repeated any number of times with the blank deed and ultimately when it reaches the hands of one who wants to retain the shares, he can fill in his name and get it registered in the company's books. For this ultimate transfer and registration, the first seller will be treated as the transferor. The person to whom the blank transfer along with the certificate is delivered can effectually transfer his interest by handing his certificate to another, and the document may thus pass from hand to hand until it comes into the possession of a holder who thinks fit to insert his own name as transferee, and to present the document to the company for the purpose of having his name entered in the register of shareholders and obtain a new certificate in his own favour. The important point to be noted here is that the share certificate should also be delivered along with the blank transfer deed.

42. The plaintiff has relied upon the case decided by Apex Court in ***Vasudev Ramachandran Shelat Vs. Pranlal Jayanand Thaker***, AIR 1974 SC 1728 wherein it was held that a transfer is complete between the transferor and the transferee when all the formalities such as execution of transfer deeds and handing over the shares certificates are complete.

43. Also in the case of *Mahavir Singh vs. Jai Singh*, (1978) 48 Comp Cases 558 at 562 (Del) it was observed that the delay made by the Company in actually effecting the transfer is immaterial as the transfer is complete between the transferors and the transferee when all the formalities such as execution of transfer deeds and handing over of share certificates are complete.

44. In *Howrah Trading Co. Ltd. vs. CIT* (1959) 29 Company Cases 282, AIR 1959 SC 775 referred by the plaintiff, the Supreme Court recognized the validity of 'blank transfers' vis., where the name of transferor is entered and the transferor signs the transfer with the share scrip annexed, and hands it over to the transferee who, if he chooses, may complete the transfer by entering his name and then apply to the company to register his name in the place of that of the transferor.

45. It is argued by the plaintiff that since the sole intention of the defendant Nos.5 to 8 was merely to get back the share certificates lodged with HINDALCO for transfer, they deliberately did not disclose all these facts to the court below and obtained an injunction against the company from effecting any transfer.

46. Defendant No.2 submitted that the signatures on the transfer deeds have not been denied by the registered holders and the transfer deeds duly signed by defendant Nos.5 to 8 have been issued from DSE in the month of September, 1987 when the dealing between the defendant Nos.1 to 3 and Shri Nirbhay Lodha took place.

47. Defendant Nos.1-2 annexed a list of shares of HINDALCO company Ex.D-2W/1 to prove that the shares were delivered by the defendant Nos.5 to 9 to their representative Shri Nirbhay Lodha for sale through Delhi broker. Shri Nirbhay Lodha was/ is apparently an employee of defendant No.9 and as such it was not

difficult for defendant No.9 to produce Shri Nirbhay Lodha as a witness in the present suit. The connection of Shri Nirbhay Lodha with the shares in question is proved from the list Ex.D2W1/1 but also from Panchnama dated 28.1.88 and telex dated 5.2.1988. No reasons are given by defendant Nos.5 to 9 as to why the letter dated 21.9.1987 was written by Shri Nirbhay Lodha to the brother of defendant No.2 at the address of defendant No.1 firm having reference of shares pertaining to defendant Nos.5 to 8 and their transfer when as per the defendant Nos.5 to 9, they at no point of time had any kind of dealings with the defendant Nos.1 to 3.

48. The factum of dispatch of letter by courier receipt dated 15.9.87 by the brother of defendant No.2 to Shri Nirbhay Lodha and with reference thereof writing letter by Shri Nirbhay Lodha on 21.9.87 to the brother of defendant No.2 itself shows the fact that the defendant Nos. 5 to 9 had in fact sold their shares to the defendant Nos.1 to 3 through Shri Nirbhay Lodha.

49. By sending the bank demand draft of Rs.10,474/- in favour of Rohitesh Hamirwasia (defendant No.8) by the defendant Nos.1 to 3 coupled with the fact that the defendant Nos.5 to 9 authorized Shri Rohitesh Hamirwasia in court cases at Karnataka to act on their behalf itself suggests he was authorized.

50. Defendant nos.1-3 admit that the consideration of sale in respect of 1300 shares has been given by the plaintiff to them. The defendant no.3 has stated that he received/purchased shares through M/s. Agiwal and Associated Chartered Accountants and the transfer deed in respect of the said shares were duly witnessed by Shri Prakash Agiwal, hence he had no reason to disbelieve the authenticated transfer deeds received by him

51. As such, the lodging of report with police after more than four months on 27th

January, 1988 is apparently an afterthought by defendant Nos.5-9. The conduct of the defendant Nos.5 to 9 establishes that the shares had never been stolen and it the same does not require an injunction order of the court.

52. The said defendants have failed to discharge their onus of proving that the shares were stolen. Also the Munsiff Court has not come to any conclusion nor recorded any finding that the shares were stolen. The plaintiff sold 1500 shares of HINDALCO in the Delhi Stock Exchange on 1st and 2nd of September, 1987. Defendant no. 9 filed an FIR which records that 1500 shares held by the family of defendant No.9 were kept in the drawer of his office table as on 11.09.1987 and were found missing. An FIR was registered on 27.01.1988. Thus, as per the defendants' statement, the shares were in defendant no. 9's drawer on 11.09.1987 and could not have possibly been stolen by the plaintiff and subsequently sold in Delhi ten days earlier. Admittedly, the plaintiff and defendant nos. 5 to 9 were unknown to each other.

53. The FIR of the alleged theft was registered on 27.1.1988 by defendant no. 9 after four months of the sale of shares in September, 1987. The Police Report filed on 24.07.1988 records that there is no proof as to when the theft occurred and who was the thief, hence no charges were framed. Also, undisputedly, the lock of the drawer in which the shares were supposed to be kept in was found to be intact as was the lock of the chamber in which the table was kept and these facts have been recorded in the Panchnama dated 28.01.1988 and relied upon by defendant nos. 5 to 9. Even after discovering the identity of the plaintiff, the same was not disclosed to the police or the Munsif Court in Karnataka in April 1988. Having failed to prove any information, the lower court at Karnataka passed an order dated 3.11.1988 (Ex. DW5/5) directing release of share

certificates to the defendant Nos.5-8, who had already appeared before this Court on 5.9.1988 in the instant suit and had not disclosed the identity of the plaintiff nor apprised the court below about the proceedings before this Court including the injunction/restrain order dated 4th July, 1988 passed by this Court, in fact they allowed the Munsiff Court in Karnataka to allow the report of the police dated 27.01.1988 and released the same to them.

54. The plaintiff filed the present suit in June, 1988 and the defendant Nos.5 to 9 were served in the said Suit in September, 1988 and the closure report before the Magistrate in Bangalore was filed on 3rd November, 1988. The defendant Nos.5 to 9 having come to know about the shares should have informed the police about the same and should have prosecuted the plaintiff.

55. The share certificates were attached by duly executed transfer deeds and as per the case of the plaintiff, there is no defect of any nature for transfer of shares in the name of defendant No.10. The plaintiff argued that as per the advise of HINDALCO, the defendant Nos.5 to 8 had obtained an injunction order which shows its connivance with defendant Nos.5-9 to create a false story against the plaintiff. Further, HINDALCO and Mysore Cement Company of which the defendant No.9 was the President are Birla Group companies.

56. I agree with the learned counsel for the plaintiff that if it was just a case of theft of share certificates, there was no need for HINDALCO to advise the defendants No.5 to 9 to obtain an injunction restraining the transfer as in terms of Section 108 of the Company's Act, transfer of shares cannot be effected merely with the share certificates in absence of duly signed transfer deeds. The conduct of defendant no. 11 in advising the registered holders of the shares to obtain an injunction on one hand and not cooperating with the police by not disclosing the

name/details of the plaintiff shows collusion with defendant nos. 5 to 9 in order to facilitate the release of share certificates to defendant nos. 5 to 8 which otherwise would not have been possible as all the formalities of share transfer were complete when the same were lodged with defendant no. 11 by the bona fide purchasers.

57. It further appears from the record that the version of the defendant Nos.5 to 9 in the complaint made to police and in application filed before HINDALCO was different as at one place it has been stated that the share certificates were misplaced and at the other place stated that the share certificates were stolen.

58. In view of above, issue no.5 is decided against the defendants No.5 to 9 and 11 and it is held that the plaintiff had not traded the stolen property of defendants No.5 to 9. The defendant nos. 5 to 9 and 11 have failed to discharge their burden in view of the reasons given above and the complaint lodged by defendant no. 9 was false and frivolous, hence this issue is decided in favour of the plaintiff and against defendant nos. 5 to 9 and 11.

59. The defendant No.2 who had been examined once was again examined and allowed to file the original documents and to file the additional evidence by way of affidavit vide order dated 26th February, 2009. In his statement, he has stated that he had given 1300 shares of M/s. Hindustan Aluminum Corporation Limited to the plaintiff for sale along with transfer deeds duly executed by the registered share holders and attested by the witnesses. He has made a statement that the said shares were given to the defendant No.3 by one Mr. Prakash Agiwal who is the Chartered Accountant having office in Daryaganj, Delhi and Mr. Nirbhey Lodha who is known to Mr. Prakash Agiwal. According to him, Mr. Nirbhey Lodha was employed with Mysore Cement Limited and Mr. N.L.

Hamirvasia is President of Mysore Cement Limited. The defendant No.2 has further made a statement that Mr. Nirbhey Lodha while handing over the share certificates had annexed copy of the list of shares which were being handed over to the defendant No.3. The said list was exhibited as Ex.D2W1/1. He also made a statement that at the time of delivery of share certificates certain deeds were not delivered to defendant No.3 therefore, the brother of defendant No.2 Mr. Ajay Mangla who works in defendant No.1 firm along with him and defendant No.3 wrote a letter dated 15th September, 2007 to Mr. Nirbhey Lodha asking him to send the remaining transfer deeds of share certificates. The said letter was sent through Air Linkers Courier. The receipt of the same was exhibited as Ex.D2W1/2. In response to the said letter, Mr. Nirbhey Lodha sent a letter dated 21st September, 1987 to Mr. Ajay Mangla wherein it was admitted by Mr. Nirbhey Lodha that all the transfer deeds were not available in the Bangalore/Ammasandra. However, it was confirmed that the share had already been delivered. The said letter was exhibited as Ex.D2W1/3. Mr. Prakash Agiwal had requested the defendant No.2 to deposit a sum of Rs.15,900/- on account of Mr. N.L. Hamirwasia in favour of M/s. Damania & Co. and a sum of Rs.41,750/- on account of Mr. N.L. Hamirwasia in favour of Verma & Co. The said receipt is exhibited as Ex.D2W1/4. According to the statement of defendant No.2, the defendant No.3 had sent a demand draft of Rs.10,474/- in favour of Mr. Rohtas Hamirvasia alongwith a covering note dated 2nd December, 1987 and the covering note was exhibited as Ex.D2W1/5. A further statement was made in the affidavit that the share certificate delivered to defendant No.3 were not stolen but were delivered by authorized person Mr. Nirbhey Lodha on behalf of defendants No.5-9 for sale through Delhi broker.

60. The said witness was cross examined by defendants No.5-9 on 31st March, 2009 and it appears from cross examination that defendants No.5-9 were not able to extract any contrary statement to the statement already made by him in examination-in-chief. This court is not agreeable to the submission of learned counsel for defendants No.5-9 that defendant Nos.1-3 have not been able to prove Issue No.11 in their favour as the defendants No.1-3 have not filed any documents whatsoever by which it can be shown that the consideration amount was passed on by defendant Nos.1-3 in any manner to defendants No.5-9. It is not very much relevant that defendant No.8 was not cross examined by defendants No.1-3 and therefore, in the absence thereof the said issue can be decided against defendants No.1-3. For the reasons given by this Court while deciding the Issue No.5 in the matter it is clear that the defendant Nos.1-3 were the bona fide purchaser of the shares of the defendants No.5-9 and no relief can be issued against them. It is actually defendant nos. 5 -9 who are liable for the claims made by the plaintiff. Therefore, this issue is accordingly decided in favour of defendants No.1-3 accordingly.

Issue No. 7

61. In view of the outcome of Issue No. 5, 6 and 11 and the case of Mahavir Singh (supra), this issue is also held to be in favour of the plaintiff and against the defendants. Admittedly, the share certificates were released to defendant nos. 5 to 9 and since it has been proved that the said share certificates were not stolen, the same be returned to the defendant no. 11 who shall register the share certificates in the name of the bona fide purchasers/ transfers.

62. Vide order dated 4th July, 1988 this court restrained the defendant No.11 company from distributing any benefit in any manner in respect of 1300 shares as

mentioned in the plaint.

63. The letter dated 26th April, 1989 from Shri Raghvan addressed to the defendant no.8 filed by the defendants No.5 to 9 discloses that HINDALCO had released rights and bonus shares to the registered holders. Thus, it appears that the Company has been releasing the benefits in respect of the shares to the defendant Nos.5 to 9 and they have to furnish a statement of account with regard to the receipt of dividends benefits and all other accruals in connection with the shares in dispute which had taken place till 31.10.1995. Thus, this issue is decided accordingly.

Issue no. 8

64. The fact that the share certificates being the subject matter of the instant suit were released to the Defendants No.5 to 8 pursuant to the order dated 3.11.1988 passed by the Munsiff Court, Karnataka is an admitted position and defendant no. 8 has made an admission to the same effect during his cross examination. The letter dated 26.4.1989 from Shri Raghvan addressed to the Defendant No.8 and relied upon by Defendants No. 5 to 9 discloses that HINDALCO had released rights and bonus shares to the registered holders. The Company has been releasing benefits in respect of the shares to the Defendants No.5 to 9. By order dated 31.10.1995, this Court had directed defendant Nos.5 to 8 to furnish a statement of account with regard to the receipt of dividends, benefits and all other accruals in connection with the shares in dispute which had taken place till 31.10.1995 and which may take place in future till the final disposal of the suit. Defendants No. 5 to 9 have not done the same. Defendants No.5 to 9 are liable to render accounts to the plaintiff with respect to all benefits, accruals and dividends on the shares in dispute and on such rendition, a final decree for the

amount found due will be passed. This issue is, hence decided in favour of the plaintiff.

Issue no. 9

65. The plaintiff has submitted that it should be entitled to the award of interest on the value of the shares and referred to the decision of the Apex Court in *Ghaziabad Development Authority v. Union of India*, (2000) 6 SCC 113 wherein the Apex Court has held that reasonable interest on equitable grounds may be awarded in appropriate cases where there is no express or implied contract for its payment nor any applicable statutory provisions. The same is payable on account of unreasonable delay or failure to fulfill commitments. However as per prayer, the plaintiff has not claimed any interest/ pendent lite against the defendant nos. 3 to 9 and 11, therefore, the same cannot be granted and this Issue is accordingly decided against the plaintiff.

66. For the aforesaid reasons given, this Court is of the view that the plaintiff is entitled to a decree in terms of prayer (a), (bb) and (d) of paragraph 22 of the amended plaint. Hence, the suit is decreed in favour of the plaintiff and against defendant nos. 5 to 9 and 11 with costs. The suit against the other defendants is dismissed. Decree be drawn accordingly.

MANMOHAN SINGH, J.

JANUARY 27, 2010

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