

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 228 of 2017

IN THE MATTER OF:

Hasmukh Bachubhai Baraiya

...Appellant

Vs.

Symphony Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Shyam K Shelat, Advocate.

ORDER

17.08.2017- The appeal is filed by the Shareholder of Symphony Limited preferred application under Sections 56, 58 and 59 of the Companies Act, 2013 for direction to the 1st Respondent Company to issue duplicate shares in respect of 21500 equity shares vide Ledger Folio Nos. 021673 and 021674 and for an order to release unclaimed dividend on those shares.

2. The National Company Law Tribunal (hereinafter referred to as "Tribunal") Ahmedabad Bench, taking into consideration the disputed question of the fact and that the appellant apart from the general statement that share certificate have been misplaced has not enclosed any evidence in its support and in view of the provisions of the law, and further taking into consideration the fact that a suit is pending between the appellant and the 5th Respondent claiming right over the 20000 equity shares, refused to grant relief to the appellant by impugned order

dated 26th April, 2017 passed in TP No.116/2016(New). The impugned order is under challenge in this appeal.

3. Ld. Counsel appearing on behalf of the appellant submits that three issues have not been considered by the Tribunal, but from the detailed impugned order dated 26th April, 2017, which runs into 20 pages, we find that no such arguments were advanced. In the circumstances, this Appellate Tribunal cannot decide any other issue apart from the issue as were raised by appellant before the Tribunal.

4. Ld. Counsel for the Appellant then submits that the impugned order is bad, there being conflicting observations made by the Tribunal. It is submitted that at one place the Tribunal accepted that the letter of 1st Respondent dated 20th November, 2015 shows that the signature of the transferor on the transfer deed tallied with the specimen signature of the petitioner and in the records of the 1st Respondent Company and the shares were not transferred only due to insufficient stamp, but on the ground that a dispute is pending before a Civil Court and the Tribunal has no power to exercise the jurisdiction under section 56 of the Companies Act has rejected the claim.

5. Ld. Counsel for the appellant relied on sub-section (2) of Section 46 of the Companies Act, 2013 to suggest that if the company refuses to exercise its power for issuance of duplicate certificate of shares in case the shares are lost or destroyed, it is always open to the Tribunal to issue

appropriate direction to the company to act in accordance with law (Section 46(2)) for issuance of duplicate shares certificate.

6. The aforesaid submissions made on behalf of appellant though appears to be attractive but in the present case, as we find that there is a doubt about the averment of appellant about misplacement of the equity shares, and in spite of loss of shares by the appellant in the year 1997, the appellant did not choose to file any application for issuance of duplicate shares certificate on the ground that it has been misplaced for about 20 years i.e. till September, 2015 and there is nothing in the record to suggest that shares were lost and no specific date or year of loss has been shown and the 5th Respondent in the meantime claimed that the shares were transferred in his favour by the appellant as back as January 1998, it is not a fit case to interfere with the impugned order.

7. Further what we find that in November, 2015, when 3rd Respondent intimated the appellant that shares have been transferred in January, 1998 in favour of 5th Respondent, then the appellant filed petition under sections 56, 58 and 59 of the Companies Act, 2013 and the FIR was lodged much, thereafter in May, 2017 i.e. more than twenty years from the date the shares certificates alleged to have been lost. Aforesaid facts give an idea that the appellant has suppressed some facts and tried to make out the case for getting relief from Tribunal.

8. Admittedly, there is dispute relating to title over the shares certificate between the appellant and the 5th Respondent. A suit is

pending between the parties with regard to same shares certificate since 2016. In such a situation, there being a doubt about the averment made by appellant that the shares were lost or misplaced the Tribunal rightly refused to exercise its power. We find no reason to entertain the same. The prayer made in this appeal is accordingly rejected.

9. However, it is made clear that if suit is decreed in favour of appellant or the other party, holder/owner of the certificates may move before the company for issuance of shares certificate/duplicate shares in view of such fresh cause of action. In such case parties may raise all the contention and the Tribunal may pass appropriate order in accordance with law, uninfluenced by any observations made in the impugned order or order of this Appellate Tribunal. It is also made clear that this order will not come in the way of SEBI in the matter of investigation, if it has initiated.

10. The appeal is dismissed with aforesaid observations. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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