

**Anil Gupta Vs. Delhi Cloth and General Mills Co. Ltd.**

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**Court :** Delhi

**Decided On :** Sep-11-1981

**Reported in :** [1983]54CompCas301(Delhi)

**Judge :** B.N. Kirpal, J.

**Acts :** [Companies Act, 1956](#) - Sections 155; [Limitation Act, 1963](#) - Sections 5 and 17 - Schedule - Article 137

**Appeal No. :** Company Petition No. 133 of 1978

**Appellant :** Anil Gupta

**Respondent :** Delhi Cloth and General Mills Co. Ltd.

**Judgement :**

B.N. Kirpal, J.

1. This is a petition under s. 155 of the Companies Act for rectification of the register of members of the respondent-company. The prayer of the petitioner is that in respect of 2,500 shares, the names of Shri Rajinder Lal Kapoor and Ravi Krishan Munjal should be removed and the petitioner's name inserted.

2. According to the petitioner, a number of shares of the respondent-company were owned by the Joint Hindu family of which the petitioner's father, late Shri Yogesh C. Gupta was the karta. The case of the petitioner is that while he was a minor, according to the petitioner his date of birth is 19th November, 1953, his father had written a letter on 1st August, 1970, to the respondent-company. In the said letter it was stated that a partial partition of Yogesh C. Gupta's HUF had taken place on 31st July, 1970. It was further stated that as a result of the partial partition, 1,700 shares had been allowed to each of his two minor sons, that of the petitioner and Sunil Gupta, were furnished along with their dates of birth. As directed by Yogesh C. Gupta the transfer of the shares was recorded in the register of members of the company. Thenceforth, the said 1,700 shares stood in the name of the petitioner but in the register of members it was recorded that the petitioner was under the guardianship of Yogesh C. Gupta.

3. A letter dated 5th May, 1972, was written by late Shri Yogesh C. Gupta to the respondent-company. In the letter it was stated that the petitioner, who was born on 19th November, 1953, had become a major. Shri Yogesh C. Gupta asked the company that it should let him know the formalities which were required by the company for making an endorsement of the attainment of majority on the share certificates and for keeping the petitioner's signatures on the company's record. A reply dated 8th May,

1972, was received from the company. In the said reply it was stated that in order to enable the company to note in the register of members the fact that the petitioner had attained majority, Shri Yogesh C. Gupta was required to send (a) copy of the birth certificate attested by a First Class Magistrate or any other documentary proof evidencing his date of birth, (b) relevant share certificates, and (c) specimen signatures of the petitioner. It is apparent now that the information and particulars asked for by the aforesaid letter were never supplied to the company.

4. On 12th April, 1974, another letter was written by Yogesh C. Gupta to the company. It was stated in the said letter that in 1970 when the shares were transferred in the names of the petitioner and his younger brother, Sunil Gupta, they were minors and Yogesh C. Gupta was signing on their behalf as guardian. It was further stated in the said letter that both the sons had become majors. The company was asked by the said letter to let Shri Yogesh C. Gupta know as to what procedure should be company adopted so that the two sons could operate their own accounts. The company was also asked to endorse the shares in the names of the two sons. In reply to the aforesaid letter, the company wrote a letter dated 23rd April, 1974. The company required Yogesh C. Gupta to furnish the same information and particulars which it had required earlier, namely, copies of the metriculation certificates certified by a first class magistrate or any other documentary proof evidencing their date of birth, relevant share certificates and specimen signatures on the forms which were enclosed to the said letter. The information, particulars and the documents asked for were never supplied to the respondent-company .

5. It is alleged in the petition that during the lifetime of Yogesh C. Gupta all the shares scrips of all the members of the family used to be kept in his custody. Yogesh C. Gupta died on 5th December, 1975. The petitioner at that time was a student in the Delhi University. In 1976 the petitioner took up a course of studies at Chandigarh which he completed in May, 1978. It is alleged in the petition that from informal enquiries he came to know that he held 560 shares of the company. The petitioner could, however, lay his hands only on 60 shares certificates. On 23rd September, 1975, the petitioner, believing that he was the owner of only 560 shares, wrote a letter to the respondent-company asking it to stop transfer of 500 shares in respect of which the share certificates were missing. The company thereupon wrote two letters to the petitioner dated 3rd October, 1975, and 6th November, 1975. The loss of 500 shares was noted by the company. By letter dated 6th November, 1975, the petitioner's was intimated that the company had been informed by the petitioner's mother that some transfer deeds in respect of the aforesaid 500 shares might have been acquired by some other person fraudulently. The petitioner was informed by the company that the company could not refuse registration of transfer in case the transfer deeds bore Yogesh C. Gupta's signature, 'because your majority has been informed to us only now.' The petitioner was advised to obtain an injunction order so as to prevent the registration of any transfer.

6. The petitioner also wrote a letter dated 7th May, 1976, to the company. He requested for a complete up to date statement of account confirming his shareholding from the books of the company. The company supplied him with the statement asked for. According to the petitioner it is only at this stage, when the aforesaid statement was sent to him by the company, that he came to know for the first time that he held 3,060 shares in the company. In the statement which had been supplied it was known that 1,000 shares had been transferred in favor of Rajinder Lal Kapoor and the transfer registered on 11th August, 1973. Another transfer was registered on 27th

September, 1974, in respect of 1,500 shares in favor of Ravi Krishan Munjal. It is these transfers in respect of 2,500 shares which are being impugned by the petitioner.

7. In the petition it is further mentioned that in April, 1977 the petitioner came across a letter dated 16th June, 1975, written by one Sant Ram Dhuper to the petitioner's father. According to the said letter, Sant Ram Ghuper had been given 3,000 shares to tide over some temporary financial difficulty. The petitioner immediately served a notice dated 19th April, 1977, on Sant Ram Dhuper calling upon him to deliver 3,000 equity shares back to the petitioner. The shares not having been returned and in fact 2,500 shares having been transferred, the petitioner lodged a complaint under ss. 420/406 IPC. It is further, mentioned in the petition that it was only in October, 1978, that, while looking through the papers of his late father the petitioner located the letters dated 5th May, 1972, and 12th April, 1974, and the replies written by the company to Yogesh C. Gupta, which letters have been referred to hereinabove. On 6th October, 1978, the petitioner wrote a letter to the respondent-company, inter alia, stating the company knew that the petitioner had attained majority on 19th November, 1971, and as such any transfer of 2,500 shares without the petitioner's signature was invalid in the eye of law. The petitioner demanded from the respondent-company that the dividend in respect of the aforesaid 2,500 shares should be paid to him and he further informed the company that he was taking legal action to have his name inserted in the books of the company. A reply dated 13th October, 1978, was sent by the company. The company informed the petitioner that the documents and particulars required by the company had never been supplied to it. In the absence of the said documents being supplied, the company could not taken cognizance of the petitioner having alleged by attained majority. It was further mentioned that the petitioner knew about the transfer having been made for about four years and no reason had been given as to why he had not objected to the transfer till then. The company stated that the transfers which were given effect to were perfectly valid and it was only the transferees who were entitled to the dividend and not the petitioner. The petitioner has, as already noted, filed the present petition in which it has been prayed that the register of members of the company should be rectified and in place of Rajinder Lal Kapoor and Ravi Krishan Munjal, the petitioner's name should be inserted. The other reliefs claimed are that the words 'minor under the guardianship of Mr. Yogesh C. Gupta' appearing in the records of the company should be deleted and that 2,500 share scrips should be ordered to be issued by the company in favor of the petitioner who alone should be paid the dividend. The petitioner has also prayed for damages and costs. Though only the company was imp led as a respondent at the foot of the petition, it is noted that the copy of petition is intended to be served on Sant Ram Dhuper, Rajinder Lal Kapoor and Ravi Krishan Munjal.

8. On the petition being filed, notices were ordered to be issued to the respondent-company as well as to Shri Sant Ram Dhuper, Rajinder Lal Kapoor and Ravi Krishan Munjal. At no stage was any of these three persons ever imp led as parties to the petition though they filed replies to the petition. There in no order of the court directing the addition of these three persons as parties to the petition.

9. In the reply filed by the company a number of preliminary objections have been taken. Two of the preliminary objections which were taken and argued before me were that the petition itself was barred by time and, secondly, as disputed questions of law and fact are involved, the petition under s, 155 was not maintainable. On

merits, the case of the company was that in the register of members it was mentioned that the members was the petitioner under the guardianship of Yogesh C. Gupta. The register of members had never been corrected because Yogesh C. Gupta had not furnished the required documents and information. In the absence of the same the company had not alternative but to act on the transfer deeds which were duly executed by Yogesh C. Gupta who alone, as per the register of members, was entitled to execute the same in his capacity as a guardian of the petitioner.

10. By order dated 30th April, 1980, it was directed that evidence would be, in the first instance, by affidavits. After the filing of the affidavits the deponents were permitted to be cross-examined.

11. Before me it was urged on behalf of the petitioner that the shares were transferred by the company illegally and without sufficient cause. In this connection it was contended that the company had information that the petitioner had become a major and the transfer deeds were admittedly not signed by the petitioner. The company, it is contended, could not have acted on the transfer deeds which were signed by the petitioner's father. It is further contended that the company had been negligent in not properly recording the majority and minority of the petitioner in the register of members. It was lastly contended that neither the petitioner nor his father had received any consideration for the alleged sale of the said shares.

12. Before dealing with the merits of the case, it would be proper to deal with the objections of the respondent to the effect that the petition is barred by time. The submission of the respondent is that art. 137 of the limitation Act is applicable. According to the respondent the petition under s. 155 should have been filed within three years when the right to apply accrued. The submission of Mr. Seth is that the right to apply accrued when the transfers, which are sought to be impugned, were recorded in the register of members of the company.

13. Previously there was some doubt as to whether art. 137 applies to application under the Special Acts. This controversy has been set at rest by the decision of the Supreme Court in the case reported as Kerala State Electricity Board v. T. P. Kunhaliumma, : [1977]1SCR996 . That was a case where a petition had been filed under s. 16(5) of the Indian Telegraph Act, 1885. A question arose whether the said petition had been filed within time. The contention of the petitioner was that art. 137 did not apply. Taking note of the changes brought about by the Limitation Act of 1963, the Supreme Court held as follows (at p. 286) :

'The conclusion we reach is that article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two - Judge Bench of this court in Altani Municipal Council's case : (1969)IILLJ651SC and hold that article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of article 137 of 1963 Limitation Act.'

14. In the present case the transfers were effected on 11th August, 1973, in respect of 1,000 shares, and on 27th September, 1974, in respect of 1,500 shares. An application under s. 155 of the Companies Act could be filed within three years of the said transfers. Prima facie it appears that the present petition which was filed on

23rd November, 1978, is barred by time.

15. Realizing the aforesaid difficulty it was contended on behalf of the petitioner that he did not know of the transfer of the shares in 1973 or 1974. The contention of the petitioner is that the period of limitation will begin to run from the date of knowledge. This contention is not well-founded. According to art. 137 of the time begins to run when the right to apply accrues. Section 17, however, provides that the period of limitation shall not begin to run until the plaintiff or applicant has discovered fraud or mistake where such fraud or mistake has occurred. Reliance has been placed by the petitioner on Smt. Kaushalya Devi v. National Insulated Cable Co. of India Ltd. [1977] TLR 1928, in which case. 17 of the Limitation Act had been invoked. It was held by S. S. Chadha J. in that case (at p. 1933) that 'Under article 113 of the Schedule to the [Limitation Act, 1963](#), the period of limitation is 3 years when the right to sue accrues. The right to sue or cause of action accrued on the date on which the plaintiffs obtained the knowledge of the fraud. The time could not run against the plaintiffs unless the knowledge is imputed to them.' These observations were made by the learned judge because s. 17 of the Limitation Act was invoked in that case. In the present case, it is the action of the respondent-company which is being impugned. In the petition no allegations of fraud have been made against the respondent-company. The petitioner has been unable to show as to how the provisions of s. 17 could be applicable to the present case. Fraud or mistake not having been pleaded, the petitioner cannot get any assistance from the aforesaid case of Kaushalya Devi [1977] TKR 1928.

16. At this stage the learned counsel for the petitioner submitted that under s. 5 of the Limitation Act, I should condone the delay. The respondent had raised the objection that the petition was time-barred when it had filed a reply dated 11th December, 1978. All this time no application under s. 5 of the Limitation Act has been filed, I would, therefore, not be inclined to entertain the oral request which has been made by the learned counsel. Even otherwise no case has been made out by the petitioner for condoning the delay. Admittedly, after the petitioner received a statement in 1976 showing the transfer of the aforesaid shares, the petitioner obtained knowledge of the said transfer. At that time the period of limitation had not expired. The petitioner could have filed a petition under s. 155. He did not choose to do so. The petitioner waited for nearly 2 1/2 years before filing the present petition. The petitioner has not been absent from Delhi permanently. No reason has been given as to why the delay should be condoned. It is well settled that sufficient cause must be shown before the delay can be condoned. Each day's delay has to be explained. In the present case there is no valid Explanation forthcoming as to why there was an undue delay in the filing of the petition. It is admitted by the petitioner that he went to Chandigarh in 1976 and completed his studies therein May, 1978. According to the petitioner himself during this period he used to visit Delhi for a day or two. In any event after May, 1978. the petitioner has been permanently residing in Delhi. The present petition, as already noted, was filed on 23rd November, 1978. There is no reason given for the delay at least after May, 1978. Another factor, which cannot be regarded as wholly irrelevant in considering the question as to whether the delay should be condoned or not, is that till the date of the filing of the petition the shares which were transferred in 1973 and 1974 in favor of Shri Kapoor and Shri Manjal have further changed hands. Along with the reply the respondent company has filed a statement which shows that 42 transfers have been registered by the company till the date of the filing of the petition. None of the transferees are parties to this petition. All these transfers have taken place because of the delay on the part of the petitioner.

I would, therefore, not be inclined to condone the delay. As a result of the aforesaid discussion the petition is liable to be dismissed on the ground that it has been filed beyond period of limitation.

17. On merits also the petitioner cannot succeed. It is the admitted case that in the register of members of the respondent-company it was recorded that the member was the petitioner under the guardianship of Yogesh C. Gupta. Yogesh C. Gupta no doubt in 1972 and in 1974 wrote to the company informing it that the petitioner had become a major. The company, however, wanted to be satisfied about this and requested Shri Gupta to send proof of age and also the share scrips so that necessary endorsement could be made thereon. The requirement of the company cannot be regarded as being unreasonable. This requirement was not complied with. It is contended by the petitioner that in 1970, the transfer was made in favor of the petitioner without the company requiring any birth certificate from Yogesh C. Gupta. The position in 1970 was different. The transfer was made pursuant to the letter dated 1st August, 1970. This letter was written by the transferor, namely, Yogesh C. Gupta. The company rightly acted in accordance with the directions of the transferor, namely, Yogesh C. Gupta, and, to my mind, was bound to record in its register of members that the transferee, i.e., the petitioner, was a minor. This was recorded that it was recorded that Yogesh C. Gupta was the guardian. The petitioner himself at no stage wrote any letter to the company asking for the removal of the guardianship's name from the register of members. The petitioner was quite happy and content in allowing his father to continue to act as the guardian. It is difficult to believe that the petitioner did not know that certain shares were held in his name and that his father was the guardian in respect thereof. He was living together with his father in New Delhi. In the absence of any request from the petitioner himself the company could not be regarded as having acted unreasonably in asking Yogesh C. Gupta to furnish proof that the petitioner had attained majority. Furthermore, the company acted reasonably when it required Yogesh C. Gupta to furnish to the company the share scrips so as to enable the company to record the change. Admittedly the share scrips were not so furnished. Under these circumstances, the company did not commit any illegality when it acted on the basis of and in accordance with the transfer deeds which had been duly executed by Yogesh C. Gupta at the time when he was still recorded as the guardian of the petitioner.

18. Before parting I might notice an argument which was raised on behalf of the respondent to the effect that complicated questions of law and fact ought not be gone into and decided in a petition under s. 155 of the Companies Act. In support of this contention the learned counsel relied upon *Smt. Soma Vati Devi Chand v. Kirshna Sugar Mills Ltd.*, which was approved by a Division Bench of this court in *Punjab Distilling Industries Ltd. v. Biermans Paper Coating Mills Ltd.* [1973] 43 Comp Cas 189, and a subsequent decision in *Kaushalya Devi's case* [1977] TLR 1928.

19. The learned counsel for the petitioner, however, has strongly relied upon the decision of the Gujarat High Court in the case of *Shri Gulabrai Kaliadas Naik v. Shri Laxmidas Lallubhai Patel* [1978] 48 Comp Cas 438. While construing the provisions of s. 155, the learned judge observed as follows. (at p. 442) :

'A bare perusal of section 155 on its own language does not indicate that the jurisdiction conferred by the section is one hedged in with a condition that it can only be exercised when relief can be granted in a summary manner. There is nothing in the language of section 155 which excludes decision of questions of title to shares

that may arise in an application for rectification of register. On the contrary, the language of sub-section (3) makes it abundantly clear that in such application, court has power to decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register and the court would have further jurisdiction to decide the question of title even when it arises between members or alleged members, or between members or alleged members on the one hand and the company on the other. Sub-clause (b) of sub-section (3) further widens the jurisdiction of the court under section 155 when it permits or enables the court generally to decide any question which it is necessary or expedient to decide in connection with the application for rectification.'

20. After referring to the provisions of the Companies Act, 1913, as well as the provisions of the English Act, the learned judge further held that the proceedings under s. 155 were more or less analogous to a suit. The learned judge was of the opinion that the jurisdiction of the court while dealing with a petition under s. 155 was not of a summary nature. The learned judge concluded that complex and complicated questions of title should be appropriately examined in a petition for rectification under s. 155 and the court's jurisdiction would not be lost merely because third parties may have to be impleaded and the allegations qua them gone into.

21. The observations in the Gujarat case [1978] 48 Comp Cas 438 are clearly contrary to the decision of the Division Bench of this court in Punjab Distilling Industries case [1973] 43 Comp Cas 189. I am bound by the Division Bench decision of this court and, in case disputed or complicated questions of fact and law arise, it must be held that recourse can not be had to s. 155 of the Companies Act. The learned counsel for the petitioner has contended that in the present case no complicated questions of law and fact have arisen. This is not correct. It is the case of the petitioner that shares were not given to Sant Ram Dhuper for the purpose of sale and no consideration was received. According to Sant Ram Dhuper, on the other hand, the shares were sold to him. Which of the two versions is correct would require detailed investigation into the facts and would amount to deciding a dispute between an alleged purchaser and an alleged seller of the shares and such questions cannot be decided in these proceedings under s. 155 of the Companies Act. If there is any fraud played upon the petitioner by Sant Ram Dhuper, as a result of which shares which were standing in the petitioner's name have been transferred, the remedy of the petitioner would lie by way of a suit and not by filing the present petition. Another factor which is to be taken into consideration is that a very large number of transactions of sale of these very shares have taken place. None of the purchasers are parties to these proceedings. The exercise of jurisdiction under s. 155 by ordering rectification of register of members would create all sorts of complications affecting person who have not had an opportunity to represent their case here and who are admittedly bona fide purchasers for value without notice of this dispute. Under the circumstances, the objection raised by the counsel for the respondents must prevail.

22. For the aforesaid reasons the petition is dismissed. The parties are, however, left to bear their own costs.