

**IN THE CITY CIVIL COURT AT AHMEDABAD
COURT NO.2**

CIVIL SUIT NO. 1936 OF 2000

ORDER BELOW EXH.50

1. This application is filed by the defendant No.2 under Order XIV Rule-II, Sub-Rule (2) of the Code of Civil Procedure and prayed that before entering into merits and demerits of the present suit, it would be necessary to decide the preliminary issue of question of law that “Whether the Civil Court is having jurisdiction to try, entertain and decide the present suit?
2. It is inter alia averred by the defendant No.2 that the plaintiffs have filed this suit for declaration, inter alia claiming and praying that plaintiffs may be declared as legal and lawful owners of the suit shares and also prayed to declare the to continue to be the owners of the suit share entitled to receive and retain the possession of the suit shares.
3. During the pendency of the suit, defendant No.2 M/s. Alankit Assignment Ltd is impleaded as defendant No.2 and thereafter, defendant No.2 filed its WS at Exh.40. Thereafter, Court has framed issues at Exh.30 on 17-6-2019. The defendant No.2 thereafter filed an application on 18-1-2020 to recast the issues” framed by this Court which is pending and issues are yet to be re-cast by this Court.
4. It is further averred that during the pendency of the present suit various changes took place in law and new enactment also came

into existence. It is also pertinent to note that, the Companies Act, 1956 has been exhaustively amended and The Companies Act, 2013 came into existences. Not only that the Company Law Board has been abolished and new adjudicatory body i.e. National Company Law Tribunal has been established. As per Sec.430 of the Companies Act, 2013 the jurisdiction of Civil Court has completely barred and all the powers are vested with the National Company Law Tribunal.

5. The plaintiffs have filed reply to this application at Exh.52 contended *inter alia* that the as per the provisions of S.289 this Court has been vested with powers to decide title of the plaintiffs to the suit shares and not the Company Law Tribunal as contended by defendant No.2. Therefore, on this Court has jurisdiction to entertain and decide the present suit. The defendant No.2 has filed an application to re-cast issues and instead of proceedings with the same, defendant No.2 has come up with new application. The defendant No.2 is unnecessary dragg the issue common in both applications filed by it. The defendant No.2 is joined in the capacity of Share transfer agent of the defendant No.1 and this Hon'ble Court has already framed the issues in the suit. It is true that the Company Law has changed with Companies Act, 2013. However, power of declaration of title still vest with this Court. Therefore, there is no need to re-cast issues framed by this Court and without further delay, defendant may be called upon to cross examine the plaintiffs.

6. I heard learned advocate Mr.A.P.Joshi for the defendant No.2 and Mr.P.B.Vakharia , LA for the plaintiffs.

7. In support of the arguments, LA for the defendant No.2 has placed reliance upon the following authorities and submitted that in view of the ratio laid down in the cited judgement, this Court has no

jurisdiction to try, entertain and decide the present application :

1. MANU/SC/0187/2019 : Shashi Prakash Khemka and Ors.
2. GLR VOL. XXXIX(2) P. NO.1436 : Mafatlal Industries Ltd Vs. Gujarat Ga Co. Ltd
3. MANU/DE/0895/2020 : Jaiveer Singh Virk Vs. Sir Sobha Singh & Sons Pvt Ltd
4. MANU/DE/3791/2018 : Sas Hospitality Pvt Ltd & Ors Vs. Surya Constructions Pvt Ltd & Ors.
5. MANU/NL/0016/2019/NCLAT, New Delhi : State Bank of India & Ors. Vs. Kamlesh Kalidas Shah and Ors.
6. Company Application No.13/58/(4) and 59/CLB/MB/MAH/ 2015 : Kamlesh Kalidas Shah Vs. SBI
7. CS No.4284/1998 decided by City Civil Court, Ahmedabad.
8. I heard the learned Advocates appearing for the parties at length and perused contents of this application, reply filed by plaintiffs at Exh.52 and perused the averments and pleadings of the suit filed by the plaintiffs and I also perused the ratios cited by the learned advocate for the defendant No.2.
9. The plaintiffs have files this suit and prayed vide para 11(a) of the plaint that to “declare that the plaintiffs will this day are the legal and lawful owners of the Share Certificates fully described in para 2 of the plaint and continue to be owners of the said shares certificates entitled to receive and retain the possession of the said Share Certificates. It is also prayed vide para (b) that “having so said to grant a mandatory injunction directing the defendant No.1 and 2 to

return and deliver the actual possession of the Share certificates fully described in para 2 of the plaint to the respective plaintiffs with all the benefits, dividends etc accrued thereto till this day”.

10. It would be worthwhile to reproduce the relevant provisions contained under Section 430 of Companies Act, 2013 which reads as under :-

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

11. Thus, under Section 430 of the Companies Act expressly bars the jurisdiction of the Civil Courts with respect to any matter which the NCLT or the NCLAT is empowered to determine under the Act or any law for the time being in force. The Section also states that no injunction shall be granted by any Court or authority concerning any action which is taken or to be taken by the NCLT or NCLAT in pursuance to the power granted under the Act and any law for the time being in force.

12. In the case of **Mafatlal Industries Ltd. V. Gujarat Gas Co. Ltd.** reported in 1998 (2) G.L.R.1436 cited by the LA for the

defendant No.2, the Hon'ble Gujarat High Court has held that the provisions of Section 111 and 111A, is not jurisdiction of merely a summary nature, but includes within its compass power to hold full-fledged enquiry in respect of title to shares and to decide any question which it considers necessary or expedient to decide in connection with the application for rectification. The Court has also held that the remedies provided by the provisions of Section 111 read with 111A are a complete code in so far as any dispute about non-compliance with or non-observance of the provisions of the Act, is concerned and thus the scope under Section-111A is wide enough and this Board is competent to adjudicate upon any dispute relating to the transfer of shares or the rectification of the register of members.

13. In the case of **Shashi Prakash Khemka V. NEPC Micon & Others** reported in **2019 SCC Online SC 223**, the Hon'ble Apex Court while determining the question as to whether **an issue relating to transfer of shares should be adjudicated by** Civil Courts or by the Company Law Board, held that the matters in which power has been conferred on the National Company Law Tribunal, the jurisdiction of the Civil Courts is completely barred. In the said case, it was alleged that the dispute that was in question was the title of shares and therefore the Civil Courts should have the power to adjudicate the matter. The Court, while, setting aside the judgment given by the Madras High Court observed that relegating the parties

to the civil suit would not be an appropriate remedy since Section 430 of the Companies Act, 2013 is widely worded.

14. The Hon'ble Delhi High Court has in case of Jaiveer Singh Virk vs. Sir Sobha Singh and Sons Pvt. Ltd. and Ors. reported in MANU/DE/0895/2020, after taking cognizance of the judgment of the Hon'ble Apex Court in the case of Ammonia Supplies Corporation (P) Ltd. (Supra) wherein it was held that CLB could not go into the adjudication of disputed issues of title to the shares but recently the Supreme Court in Shashi Prakash Khemka Vs. NEPC Micon reported in MANU/SC/0187/2019 has held that NCLT and NCLAT have exclusive jurisdiction in matters under Companies Act, 2013. In other words, impliedly the Hon'ble Apex Court overruled its own previous ruling in the case of Ammonia Supplies Corporation (P) Ltd. – which has been so observed by Hon'ble Delhi High Court in Sir Sobha Singh's case.

15. The issue of jurisdiction as to whether a Civil Court or the National Company Law Tribunal (NCLT) under the Act came up for consideration before the Hon'ble Delhi High Court in **SAS Hospitality Pvt Ltd v Surya Constructions Pvt Ltd**. Reported in **MANU/DE/3791/2018**. The Hon'ble Delhi High Court in its order found that the NCLT has exclusive jurisdiction. In the said suit, the plaintiff, SAS Hospitality, filed a suit seeking a declaration that the

allotment of shares by Surya Constructions in favour of five investors is null and void. The defendants in the suit challenged the jurisdiction of the Civil Court in adjudicating the matter and instead argued that the NCLT was the appropriate forum. While the Hon'ble Delhi High Court held that the NCLT is the proper forum to adjudicate the matter and made significant observations in regard to the aspects of jurisdiction which reads as under :-

"The bar contained in Section 430 of the 2013 Act is in respect of entertaining "any suit", or "any proceeding" which the NCLT is "empowered to determine". The NCLT would be empowered to pass any such orders as it thinks fit, for the smooth conduct of the affairs of the company, which would include an injunction order. The NCLT would also be empowered to oversee and supervise the working of the company, and also appoint such persons as it may deem necessary to regulate the affairs of the company. The jurisdiction to go into these allegations, vests with the Tribunal under Section 242 of the 2013 Act. Under Section 242(2), the NCLT has the power to pass "such order as it thinks fit", including providing for "regulation of conduct of affairs of the company in future". These powers are extremely broad and are more than what a Civil Court can do. Even if in the present case, the Court grants the reliefs sought for by the Plaintiff, after a full trial, the effective orders in respect of regulating the company, and administering the affairs of the company, cannot be passed in these proceedings. Such orders can only be passed by the NCLT, which has the exclusive jurisdiction to deal with the affairs of the company. Moreover, the powers of the NCLT being broader and wider than what can be exercised by this Court in exercise of civil jurisdiction under Section 9 CPC. The NCLT is a specialised Tribunal constituted for the purpose of speedier and effective regulation of the affairs of the companies.

16. This Court is conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment viz. Companies Act, 2013. In this regard, reference deserves to be

drawn to the judgment delivered by the Hon'ble Apex Court in case of **New India Insurance Co. Ltd. V. Shanti Misra** reported in **(1975) 2 SCC 840**, wherein the Hon'ble Apex Court was dealing with the claim of payment of compensation under the Motor Vehicles Act. The victim of the accident had passed away because of the vehicular accident before the constitution of the Claims Tribunal under the Motor Vehicles Act, 1939, as amended. The legal heirs of the deceased filed a claim petition for payment of compensation before the Tribunal after the Tribunal was established. The question that arose was whether the claim petition was maintainable having regard to the fact that the cause of action had arisen prior to the change of the forum for trial of a claim for payment of compensation. The Hon'ble Apex Court has held that the change of law operates retrospectively even if the cause of action or right of action had accrued prior to the change of forum. The claimant shall, therefore, have to approach the forum as per the amended law. The claimant, observed this Court, had a "vested right of action" but not a "vested right of forum". It also held that unless by express words the new forum is available only to causes of action arising after the creation of the forum, the general rule is to make it retrospective. The following passages are in this regard apposite: (SCC pp. 844-45, paras 5-6)

"5. On the plain language of [Sections 110-A](#) and [110-F](#) there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. **It**

is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away.

17. In view of above discussion, it is clear that this Court has no jurisdiction to try, entertain and decide the present suit. Accordingly, present application Exh.50 is required to be allowed. Hence, I pass the following order :-

ORDER

This application is allowed. The plaint is ordered to be returned for want of jurisdiction, leaving the Plaintiff to avail its remedies, in accordance with law before the NCLT.

**(MRS.MAMTA RAMANLAL SHAH)
ADDL. PRINCIPAL JUDGE
COURT NO.2, AHMEDABAD
(UID GJ00446)**

DT.13-10-2022

*Raj

**IN THE CITY CIVIL COURT, COURT NO.2, AT BHADRA,
AHMEDABAD**

CIVIL SUIT NO. 1936 OF 2000

Order below Exh.1:

In view of the order passed below Exh.50, this suit stands rejected for want of jurisdiction and it stands disposed of accordingly. No order as to costs.

Registry is hereby directed to return the plaint to the plaintiff to avail the remedies in accordance with law before the Court having competent jurisdiction i.e. NCLT.

**(MRS.MAMTA RAMANLAL SHAH)
ADDL. PRINCIPAL JUDGE
& ADDL. SESSIONS JUDGE,
COURT NO.2, AHMEDABAD
(UID GJ00446)**

DT.13-10-2022