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ADESH KAUR

v.

EICHER MOTORS LIMITED AND ORS.

(Civil Appeal Nos. 19426-19427 of 2017)

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JULY 03, 2018

[R. F. NARIMAN AND INDU MALHOTRA, JJ.]

C *Companies Act, 2013 – s.59 – Rectification of register of members – On facts, respondent no. 2 issued duplicate shares without following proper procedure, in favour of impersonator, who in turn transferred the said shares to respondent no. 8 – Subsequently, appellant came to know about the fraud and sought issuance of revalidated fresh share certificate for the said equity shares –*
D *However, the same was not done – Company petition by appellant – NCLT held that the Company was liable for the acts of their Register cum Share Transfer agents, and as such there was no reason for appellant to resort to civil court in order to prove her title – However, the appellate tribunal holding that since criminal complaint and SEBI investigation was pending, it was not correct for the tribunal to exercise its power to rectify the register u/s. 59, set aside the judgment of NCLT and relegated the appellant to a suit – Correctness of –*
E *Held: Not correct – Tribunal was correct in not relegating the appellant to any further proceedings since it was a case of fraud wherein the appellant was the victim, and respondent no. 2 was the perpetrator – Further, the due procedure of the RTI Circular was not followed – Thus, the appellate tribunal’s order is set-aside and*
F *that of the tribunal is upheld.*

Allowing the appeals, the Court

G **HELD: The tribunal was absolutely correct in not relegating the appellant to any further proceedings inasmuch this was an open and shut case of fraud in which the appellant has been the victim, and respondent no. 2 the perpetrator. Equally, it is clear that the due procedure of the RTI Circular has not been followed. When the duplicate shares were issued, stock exchanges were not informed and neither was an advertisement in a widely circulated newspaper issued as the value of the shares were far**

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greater than Rs. 10,000/-. The appellate tribunal in relegating the appellant to a further proceeding was not correct. Therefore, the appellate tribunal's order is set-aside and that of the tribunal is reinstated. If respondent No. 8 does not happen to be on the register at all, then there would be no difficulty whatsoever in restoring the appellant back to its original position. Even if respondent No. 8 has been entered on the Register, his name will have to be deleted in view of the fact that the transfer to him has been declared to be void in law. The Company is directed to rectify its register, insofar as the physical share certificates are concerned, and the concerned depository to rectify the demat records in accordance with this order. [Paras 8-11][204-B-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 19426-19427 of 2017.

From the Judgment and Order dated 29.08.2017 of National Company Law Appellate Tribunal at New Delhi in Company Appeal (AT) Nos.176 and 177 of 2017.

Mr. K. V. Viswanathan, Sr. Adv., K. V. Balakrishnan, S. M. Sundram, Ravi Raghunath, K. V. Mohan, Advs. for the appellant.

Mr. Tushar Mehta, ASG, Mr. Shyam Divan, Sr. Adv., Anoop Dawar, Rajesh Ranjan, Sumit Teterrwal, Pratap Venugopal, Ms. Surekha Raman, Ms. Niharika, Ms. Kanika Kalaiyarasan, M/s. K. J. John and Co., Bharat Singh, Arvind Kumar Sharma, Ms. Swati Ghildiyal, Mukesh Kumar Maroria, Advs. for the respondents.

The Judgment of the Court was delivered by

R. F. NARIMAN, J. 1. The present case discloses a very sordid state of facts.

2. The appellant before us is a resident of Punjab, and had acquired in all 903 equity shares in the respondent No. 1-Company. This acquisition took place way back in the year 1994-95.

3. It appears that sometime in 2012, another Ms. Adesh Kaur, who is a resident of Mumbai impersonated the appellant and requested respondent No. 2 to change the address from Punjab to Mumbai. It is not disputed before us that the standard procedure to be followed was not followed by respondent No. 2, and the aforesaid change of address

A was despite the requirements of Circular No. 1 dated 09.05.2001. The impersonator then went on to execute an indemnity bond by forging the appellant's signature for issue of duplicate share certificates of the 903 equity shares mentioned above. This being done, on 28.09.2012, Respondent No. 2 issued duplicate certificates in favour of the impersonator who, in turn, on 10.12.2012, transferred the said shares to one Vikas Tara Singh, respondent No. 8, resident of Malad, Mumbai by using the forged signature of the appellant. At this stage, it is important to note that respondent No. 8, though served in the present proceedings, has not appeared either before the Tribunal or before the Appellate Tribunal and has not appeared before us. The appellant, sometime in 2014, came to know through the Company Secretary of Respondent No.1 that duplicate share certificates had been given to somebody else who had subsequently transferred them to a third party. As soon as she became aware of the fraud that was perpetrated on her, the appellant requested the Company to issue revalidated fresh share certificates for the said 903 equity shares on 17.09.2014. Since this was not done, despite repeated reminders for the same, a Company Petition was filed on 31.07.2015 before the Company Law Board, which was then taken up under the Amended Act by the National Company Law Tribunal. In a significant order that was passed by the NCLT on 09.11.2016, the NCLT recorded that it was acknowledged, both by the Company as well as by the SEBI, that procedural aspects and due care were not adhered to in the process of issuance of duplicate shares, as otherwise such fraud would easily have been unearthed. In the order passed by the NCLT, the NCLT adverted to the aforesaid facts and afforded relief to the appellant in the following terms:

F “The objection of Respondent No. 1 that the case in hand cannot be adjudicated by the Tribunal is a frivolous attempt to escape any liability and or grant relief to the petitioner. This Bench fails to understand why the petitioner should resort to a civil court in order to prove her title. Apart from her oral testimony and her original share certificates, there is little else to be adduced in evidence even in a Civil Suit. She has her original certificates in hand. The respondents are aware of the fraudulent acts perpetuated on her and have even initiated criminal proceedings. There is no reason for the petitioner to be deprived of her assets for the outcome of the criminal investigation or wait for the criminal

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to be brought to book. Her documents and her entitlement are not denied to by the respondents. Under such circumstances, vague denial to escape any liability and to suggest that the petitioner initiates a Civil Suit is viewed as an attempt not to redress the grievance which has primarily arisen out of the fraud played by the employees of the Respondent Company or their Agents. Apart from guidelines of Respondent No. 3 that unequivocally make the Respondent Company liable for the acts of their Register cum Share Transfer Agents, the law on the point is clear that the Principals are liable for the acts of their agents.”

4. The NCLT then went on to state that the original share certificates, which were still in physical form with the appellant, could get demated after due confirmation from the register which would be carried out pursuant to the aforesaid order. In appeal to the Appellate Tribunal, the Appellate Tribunal referred to the fact that a criminal complaint and SEBI investigation were both pending, as a result of which it would not be correct for the Tribunal to exercise its powers to rectify the register under Section 59 of the Companies Act. The aforesaid judgment of the NCLT was, therefore, set-aside and the appellant was relegated to a suit.

5. Shri K.V.Vishwanathan, learned senior appearing for the appellant, has commended for our acceptance the order of NCLT, together with its reasoning. Learned senior counsel has stated that there is really no contest in the present proceedings inasmuch as respondent No. 8, who would be affected by the NCLT order, has chosen not to appear in the proceedings throughout. He has also referred to and relied upon a RTI Circular No. 1 dated 09.05.2001 and the fact that SEBI has, in its application to delete itself from the array of parties stated, on 20.05.2016, that respondent No. 2 has issued duplicate shares without following the proper procedure and without exercising due care and diligence.

6. Shri Pratap Venugopal, learned counsel appearing on behalf of SEBI reiterates this position and also agrees with Shri Vishwanathan that the NCLT order should be reinstated.

7. Shri Shyam Divan, learned senior counsel appearing for the Company, when faced with the fact that there is no real contest in the present case, has further submitted that this Court should be careful in

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- A reinstating the Tribunal's order inasmuch as it is not at all clear as to whether respondent No. 8 has, in fact, been entered on the register or not. It is his further submission that since the shares are now demated, it is not his client that should be directed to put the appellant back on the share register but the concerned depository.
- B 8. We are of the view that the Tribunal was absolutely correct in not relegating the appellant to any further proceedings inasmuch this is an open and shut case of fraud in which the appellant has been the victim, and Respondent No. 2 the perpetrator.
- C 9. Equally, it is clear that the due procedure that has been outlined in paragraph 23 of the RTI Circular dated 09.05.2001 has not been followed. When the duplicate shares were issued, stock exchanges were not informed and neither was an advertisement in a widely circulated newspaper issued as the value of the shares were far greater than Rs. 10,000/-.
- D 10. We are, therefore, of the view that the Appellate Tribunal in relegating the appellant to a further proceeding was not correct. We, therefore, set-aside the Appellate Tribunal's order and reinstate that of the Tribunal dated 20.03.2017. It goes without saying that if respondent No. 8 does not happen to be on the register at all, then there would be no difficulty whatsoever in restoring the appellant back to its original position. Even if respondent No. 8 has been entered on the Register, his name will have to be deleted in view of the fact that the transfer to him has been declared to be void in law.
- E 11. We, therefore, direct the Company to rectify its register, insofar as the physical share certificates are concerned, and the concerned depository to rectify the demat records in accordance with this order.
- F 12. The appeals are allowed in the aforesaid terms.
13. Pending applications, if any, shall stand disposed of.