

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 188 of 2017

IN THE MATTER OF :

D.R. Sharma **Appellant**

v.

Roshanlal Duneja ... **Respondent**

Present: For Appellant: Mr Nakul Mohta, and Mr Johnson
Subba, Advocates.

O R D E R

14.7.2017 - This appeal has been preferred by the Appellant against order dated 15th March 2017 passed by National Company Law Tribunal, Ahmedabad Bench (hereinafter referred to as Tribunal) in a petition under Section 58 and 59 of the Companies Act, 2013 dismissing the petition with following observation: -

“14. Section 58(4) of Companies Act, 2013 says that if a public company refuses to register transfer of shares without sufficient cause within a period of 30 days from the date on which the instrument of transfer was delivered to the company, the transferee shall file appeal within a period 60 days from the date of refusal or within 90 days where no intimation has been received from the company.

15. Section 111 of Companies Act, 1956 says that appeal shall be filed within 2 months of the refusal or where no notice was sent by the company appeal shall be filed within four months from the date on which the instrument of transfer was delivered to the company.

16. Section 59 of the Companies Act, 2013 did not specify any period of limitation. Section 111A of the Companies Act, 1956 says that if the company without sufficient cause refuse to register transfer of shares within two months from the date on which the instrument of transfer was delivered to the company, the transferee may appeal to the tribunal.

No specific period of limitation is provided in section 111A of the Companies Act, 1956.

17. *The present case of the petitioner comes under the section of 58 of new Act which is corresponding to Section 111 of the old Act. In the case on hand the date of first refusal of the transfer of impugned shares is not clear from Annexure A-1, but the second refusal of transfer of shares was on 6th January 1995. It continued upto 12th July 1996.*

Admittedly, petitioner filed Civil Suit O.S 6 of 2000 on the file of the Civil Court Delhi on 3.1.2000 and it was dismissed on the ground of jurisdiction. Petitioner did not chose to give the date of dismissal of the Civil Suit but as can be seen from Exhibit A-21, which was a letter dated 23.2.2012 addressed by the petitioner to the Company Secretary of 2nd Respondent wherein it is stated that the Civil Suit was dismissed by Court of law in Delhi on the ground not maintainable in Civil Court. That means the Civil Suit was dismissed before 23.2.2012. Therefore, in view of the finding that the grievance of the petitioner comes under section 58 of the New Act/ 111 of Old Act, the petition is not within the time contemplated in the above said section. Hence the reliefs claimed by the petitioner in the appeal is barred by limitation.

b) in view of finding on point A, there is no need to discuss point B.

18. *In the result TP 63 of 2016 (Company Appeal No. 16 of 2014) is disposed of as dismissed. No order as to cost."*

Ld. Counsel for the Appellant tried to justify the delay and place reliance on decisions of Hon'ble Supreme Court, to suggest that there were no latches on the part of the Appellant. However, we do not subscribe to such submission in view of the fact that the Appellate sold the impugned shares initially to SBI Capital Market Limited on 5th April 1991 along with the share transfer deed. The said application for transfer was rejected by the transferor agency with remarks "*signature differs*".

After three years thereafter, the Appellant on 27th December 1994 addressed another letter to transfer agency stating BSE has granted permission to the Appellant. The transfer agency vide its letter dated 6th January 1995 replied that "transfer will be rejected until the signature tallied with their recorded specimen signature". Being aggrieved, the Appellant complained to BSE vide letter dated

22nd March 1995 and the 2nd Respondent was asked to clarify the position. The objection was sent by transfer agency on 17th July 1995 and the registration was refused.

We find that the petition under Section 58 and 59 of the Companies Act, 2013 was filed by the Appellant after 19 years in the year 2014, after raising the matter in civil court, and after a large number of correspondences with the Respondents. From the aforesaid fact, we find that there is unexplained long delay and latches on the part of the Appellant. For the reason aforesaid, if the Tribunal has refused to grant relief, we find no reason to interfere with the impugned order. The appeal is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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