M/S DOVE INVESTMENTS PVT. LTD. AND ORS. A

v.

M/S GUJARAT INDUSTRIAL INV. CORPORATION AND ANR.

FEBRUARY 2, 2006

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.] B

Companies Act, 1956:

Section 108(1c)—Transfer of shares—Registration of—Delay in filing application for—Registration of transfer allowed—High Court affirming the order—Held, Section 108 requires the applicant desiring to obtain registration of transfer of shares in its favour to comply with the provisions contained therein—Even if a statute is directory in nature, the same should be substantially complied with—What would satisfy the requirements of substantial compliance would depend upon facts of each case—On facts, appellants not prejudiced by act of respondent No.1 in not filing application for registration of transfer of shares within prescribed period—With a view to do complete justice no interference with order of High Court called for—Constitution of India, Articles 136 and 142. C D

Appellants took a loan of Rs.4.5 crores from respondent No.1. By way of security respondent Nos.2 to 4 pledged 25,92,800 shares in favour of respondent No.1. On 2.1.2001 respondent No.1 lodged the said share certificates along with share transfer forms with the appellants for transferring the same in its name on the ground that there had been delay in repayment of the loan. Upon compliance of requisite formalities as envisaged by Section 108 of the Companies Act, 1958, respondent No.1 was to present the said shares with the appellants by 8.12.1999. Respondent No.1 raised a grievance that the appellant, though had registered a transfer of 2,99,800 shares pledged by respondent Nos.2 to 4, they failed to effect registration of transfer in respect of the remaining shares, that the shares were freely transferable and the conduct of appellant in not effecting the transfer was mala fide and without sufficient cause. On an application filed by respondent No.1, the Company Law Board directed the appellants to register transfer of the remaining shares in the name of respondent No.1. The appeals filed by the appellants and respondent Nos.2 to 4 were dismissed by the High Court. E F G

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A The judgment of the High Court was challenged in the present appeals.

It was contended for the appellants that since the provisions of s.108 of the Act, in so far as the obligations for registration of the shares, were not complied with by respondent No.1 within the time stipulated, the appellants had discretion in registering the shares in terms of Section 108; and that B the Company Law Board and the High Court erred in exercising their jurisdiction. For respondent No.1 it was contended that provisions of Section 108 of the Act were directory and not mandatory.

Dismissing the appeals, the Court

C HELD: 1.1. Section 108 of the Companies Act, 1956 requires the applicant desiring to obtain the registration of transfer of shares in its favour to comply with the provisions contained therein. It is, therefore, ordinarily for the applicant to comply with all formalities. If it does not do so it cannot make the company bound to effect the transfer, unless sufficient and cogent D reasons are assigned. The time is specified for filing of such an application in the prescribed form and upon complying with the requirements prescribed therein. [1093-A, B]

1.2. Whether a statute would be directory or mandatory will depend upon the scheme thereof. Ordinarily a procedural provision would not be mandatory E even if the word "shall" is employed therein unless a prejudice is caused. However, even if a statute is directory in nature the same should be substantially complied with. What would satisfy the requirements of substantial compliance, however, would depend upon the facts of each case. [1093-C; 1095-D]

F *P.T. Rajan* v. *T.P.M. Sahir & Ors.*, [2003] 8 SCC 498; *Chandrakant Uttam Chodankar* v. *Dayanand Rayu Mandrakar and Ors.*, [2005] 2 SCC 188; *Mohan Singh and Ors.* v. *International Airport Authority of India and Ors.*, [1997] 9 SCC 132; *Kailash* v. *Nankhu and Ors.*, [2005] 4 SCC 480 and *Salem Advocate Bar Association, T.N.* v. *Union of India*, [2005] 6 SCC 344, relied on.

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Crawford on Statutory Construction, p. 539, referred to.

1.3. The appellants do not state as to how they would be prejudiced by the act of respondent No.1 in not filing the application for registration of transfer of shares within the prescribed period. In fact, they had no objection H in registering the shares. The only objection was with regard to the value

thereof. It is also not in dispute that they, in fact, registered 2,99,800 pledged shares, although they were also presented after a period of two months without any demur whatsoever. The appellants, therefore, must be held to have waived their right. [1095-E, F] A

1.4. Furthermore, by reason of the impugned judgment no injustice as such has been done to the appellants and, in that view of the matter, this Court in exercise of its jurisdiction under Article 136 of the Constitution of India may not interfere with the impugned order, even if it may be lawful to do so. No case has been made out for exercise of jurisdiction under Article 136 of the Constitution. With a view to do complete justice to the parties, no interference with the High Court judgment is called for. B

[1095-G, H; 1096-H, G] C

Taherakhatoon (D) by LRs **v.** *Salambin Mohammad,* **[1999] 2 SCC 635;** *Chandra Singh and Ors.* **v.** *State of Rajasthan and Anr.,* **[2003] 6 SCC 545;** *Inder Parkash Gupta* **v.** *State of J & K & Ors.,* **[2004] 6 SCC 786 and** *Transmission Corporation of A.P. Ltd.* **v.** *Lanco Kondappali Power (P) Ltd.,* **[2006] 1 SCC 540, relied on.** D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 942 of 2006.

From the Judgment and Order dated 30.12.2004 of the Madras High Court in CMA Nos. 3188 and 3223 of 2004. E

WITH

C.A. No. 943 of 2006.

M.N. Krishnamani and Praveen Kumar for the Appellants. F

Soli J. Sorabjee, K.K. Mani, V.M. Shiva Kumar and Tekraj Vasandi for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted in both the special leave petitions. G

These appeals arising out of a common judgment and order dated 30.12.2004 passed by the High Court of Madras in C.M.A. Nos. 3188 and 3223 of 2004, were taken up for hearing together and are being disposed of by this common judgment. H

A The factual matrix of the matter, however, would be noticed from Civil Appeal arising out of S.L.P. (Civil) No.5260 of 2005.

The Appellant herein took a loan of a sum of Rs.4.5 crores from Respondent No.1 in the year 1996. By way of security, Respondent Nos. 2 to 4 pledged 25,92,800 shares in favour of Respondent No.1. Respondent No.1 B on or about 02.01.2001 lodged the said share certificate pledged by Respondent Nos. 2 to 4 along with the share transfer forms with the Appellant for transferring the said shares in its name on the ground that there had been delay in repayment of the said loan. A winding up petition also came to be filed by Respondent No.1 against the Appellant in terms of Section 434(1)(a) C and 439(1)(b) of the Companies Act, 1956 (for short, 'the Act') in the High Court of Judicature at Madras. Respondent Nos. 2 to 4 had also filed suits being O.S. Nos. 3742, 3740 and 3741 of 2003 respectively for permanent injunction restraining the Respondent No.1 and the Appellant from effecting the transfer of the equity shares in favour of Respondent No.1.

D It is not in dispute that upon compliance of the requisite formalities, as envisaged under Section 108 of the Act, Respondent No.1 was to present the said shares with the Appellant by 08.12.1999. However, it did so only on 02.01.2001. Respondent No.1 raised a grievance that the Appellant although had registered a transfer of 2,99,800 shares pledged by Respondent Nos.2 to 4, but failed to effect registration of transfer in respect of the remaining E 22,93,000 shares. According to Respondent No.1, the said shares are freely transferable and the conduct of the Appellant in not effecting registration thereof is *mala fide* and without sufficient cause. Respondent No.1 filed an application before the Company Law Board. The Company Law Board by a judgment and order dated 23.08.2004 allowed the said application holding :

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(i) The civil suits filed by the Respondents 2 to 4 in the absence of any restraint order against the Appellant and Respondent No.1 for not giving effect to the transfer of shares, do not have any bearing on the prayer made by Respondent No.1 herein.

G (ii) The other averments raised in the counter statement are neither argued nor found to be germane to the issue in question.

(iii) The Appellant is hereby directed to register the transfer of 22,93,000 shares in the name of Respondent No.1 herein within 30 days of receipt of this order.

H An appeal thereagainst was preferred by the Appellant herein before

the High Court of Judicature at Madras in terms of Section 10F of the Act. An appeal was also preferred by Respondent Nos.2 to 4 herein. By reason of the impugned judgment, the appeals preferred by the Appellant herein as also Respondent Nos. 2 to 4 came to be dismissed.

Mr. M.N. Krishnamani, learned Senior Counsel appearing on behalf of the Appellants, raised a short question in support of the appeals. It was submitted that if the provisions of Section 108 of the Act are read as a whole, it would be evident that the time specified therein is mandatory in character. It was argued that Appellant had discretion in registering the shares in terms of Section 108 (1C) of the Act, and if the same was not done, *inter alia,* on the ground that the provisions of the Act had not been complied with insofar as the obligations for registration of shares were not complied with within the time stipulated, the Company Law Board and consequently the High Court must be held to have committed an error in exercising their jurisdiction. It was submitted that the High Court also erred in distinguishing the decision of this Court in *Mannalal Khetan and Ors.* v. *Kedar Nath Khetan and Ors.,* [1977] 2 SCC 424, *inter alia* relying on or on the basis of the decision of a learned Single Judge of the Karnataka High Court in *Mukundlal Manchanda and Anr.* v. *Prakash Roadlines Ltd. and Ors.,* [1991] 72 CC 575.

It was submitted that the principle of waiver which had been relied upon by the High Court was not available, inasmuch as if on an earlier occasion, the Appellant registered 2,99,800 shares in ignorance of law, it cannot be expected to commit the same mistake over again.

Mr. Soli J. Sorabjee, learned Senior Counsel appearing on behalf of the Respondents, on the other hand, would submit that the decision of this Court in *Mannalal Khetan* (supra) is distinguishable inasmuch as the said provisions were couched in negative language whereas Sections 108 (1A) and 108 (1C) are structured differently and have a different scheme besides having not used such negative language. The provisions of Sections 108 (1A) and 108 (1C) of the Act, Shri Sorabjee would contend, do not provide for any penalty or consequences in the event of failure to comply therewith and in that view of the matter, the said provisions must be held to be directory in nature. In any event, the fact that the Company can move the Central Government for extension of time itself indicates that the provisions are directory and not mandatory.

In any event, the learned counsel urged that having regard to the fact

A that at no point of time, the Appellant had taken objection of non-compliance of the provisions Section 108 (1C) of the Act, it cannot now turn round and contend that the obligation for registration of transfer of shares in the name of Respondent No.1 was beyond the time stipulated under Section 108 (1C) of the Act.

B Section 108 (1) prohibits registration of transfer of shares except on production of the instrument of transfer and unless the conditions precedent therefor are complied with. Section 108 (1A) provides that every instrument of transfer of shares shall be in such form as may be prescribed, and shall, before it is signed by or on behalf of the transferor, be presented to the C prescribed authority for the purpose of stamping or otherwise endorsing thereon the date on which it is so presented and after it is executed by or on behalf of the transferor and the transferee and completed in all other respects be delivered to the company within two months from the date of such presentation. Section 108 (1C) provides for a *non obstante* clause stating, *inter alia*, that any share deposited by any person, *inter alia*, with a financial D institution by way of security for the repayment of any loan or advance to, or for the performance of any obligation undertaken by such person, if, *inter alia*, the financial institution stamps or otherwise endorses on the form of transfer of such shares, if it intends to get such share registered in its own name, the date on which the instrument of transfer relating to such share is E executed by it and the instrument of transfer of such form duly completed in all respects is delivered to the company within two months from the date so stamped or endorsed. Section 108 (1D) again provides for a non obstante clause whereby the Central Government has been conferred with the power to extend the period mentioned in those sub-sections by further time as it may deem fit, if it is of the opinion that it is necessary so to do to avoid hardship F in any case. Section 111 empowers the Company to refuse registration upon assigning reasons therefor. Sub-section (3) of Section 111 provides for an appeal to the Company Law Board against such an order.

A company may refuse to register shares for various reasons. In this case, however, the shares being freely transferable refusal for transfer can be G made only on limited grounds. Some such grounds may be that the transfer is *mala fide* or transferee is not a *bona fide* investor or transfer is not permissible in terms of one or the other provisions of the Articles of Association or the same is otherwise prohibited in law e.g. sub-section (3) of Section 22A of the Securities Contract (Regulation) Act, 1956. However, before the company H can be asked to perform its duties in terms of the said provisions, the

procedural requirements contained in Section 108 are required to be complied with. Section 108 requires the applicant desiring to obtain the registration of transfer of shares in its favour to comply with the provisions contained therein. It is, therefore, ordinarily for the applicant to comply with all formalities. If it does not do so it cannot make the company bound to effect the transfer, unless sufficient and cogent reasons are assigned. The time is specified in the aforementioned provisions for filing of such an application in the prescribed form and upon complying with the requirements prescribed therein.

Whether a statute would be directory or mandatory will depend upon the scheme thereof. Ordinarily a procedural provision would not be mandatory even if the word "shall" is employed therein unless a prejudice is caused. [See *P.T. Rajan* v. *T.P.M. Sahir and Ors.*, [2003] 8 SCC 498]

In *Chandrakant Uttam Chodankar* v. *Dayanand Rayu Mandrakar and Ors.*, [2005] 2 SCC 188, this Court observed :

> "74. In this case it is not necessary for us to go into the question as to whether Section 83 is imperative in character or not inasmuch it is settled law that even where the expression "shall" is used, the same may not be held to be mandatory. Even a mandatory provision having regard to the text and context of the statute may not call for strict construction.
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> 75. In *U.P. SEB* v. *Shiv Mohan Singh*[15] this Court stated the law in the following terms: (SCC p. 440, paras 96-97)
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> > "96. Ordinarily, although the word 'shall' is considered to be imperative in nature but it has to be interpreted as directory if the context or the intention otherwise demands. (See *Sainik Motors* v. *State of Rajasthan*)
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> 97. It is important to note that in *Crawford on Statutory Construction* at p.539, it is stated:
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> '271. *Miscellaneous implied exceptions from the requirements of mandatory statutes,* in general.—Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their jurisdiction in considerations of justice. It is a well-known fact that often to enforce the law to its letter produces manifest

A injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient calibre to excuse or justify a technical violation of the law."

In *Mohan Singh and Ors.* v. *International Airport Authority of India* B *and Ors.*, [1997] 9 SCC 132, this Court observed :

"17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment C of power. In the present context, 'may' does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is D prescribed for non-performance of the duty. In *Craies on Statute Law* (7th Edn.), it is stated that the court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of E the statute and consideration of policy at times may, however, create exception showing that the legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is F necessary to ascertain the intention. The word 'shall' is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court G to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration..."

Recently, a 3-Judge Bench in *Kailash* v. *Nankhu and Ors.*, [2005] 4 SCC 480 while interpreting Order 8, Rule 1 of the Code of Civil Procedure was of H the opinion :

"33. As stated earlier, Order 8 Rule 1 is a provision contained in CPC and hence belongs to the domain of procedural law. Another feature noticeable in the language of Order 8 Rule 1 is that although it appoints a time within which the written statement has to be presented and also restricts the power of the court by employing language couched in a negative way that the extension of time appointed for filing the written statement was not to be later than 90 days from the date of service of summons yet it does not in itself provide for penal consequences to follow if the time schedule, as laid down, is not observed. From these two features certain consequences follow."

[See also *Salem Advocate Bar Association, T.N.* v. *Union of India,* [2005] 6 SCC 344].

However, even if a statute is directory in nature the same should be substantially complied with. What would satisfy the requirements of substantial compliance, however, would depend upon the fact of each case.

The Appellants do not state as to how they would be prejudiced by the act of Respondent No.1 in not filing the application for registration of transfer of shares within the aforementioned period. The Appellants have, indisputably, filed suits. In para 10 of the plaint filed by Appellant No.1, in O.S. No.3742 of 2003, it was categorically stated :

"....Even though the plaintiff cannot have an objection on the transfer, the plaintiff is concerned about the value at which the second defendant is attempting to transfer the equity shares in its favour"

On their own saying, thus, they were not prejudiced. In fact, they had no objection in registering the shares. The only objection was with regard to the value thereof. It is also not in dispute that they, in fact, registered 2,99,800 pledged shares, although they were also presented after a period of two months without any demur whatsoever. The Appellants, therefore, must be held to have waived their right. The pledge of shares is not in dispute.

The fact that the Appellant had taken a loan of Rs.4.5 cores is also not in dispute. Furthermore, we are of the opinion that by reason of the impugned judgment no injustice as such has been done to the Appellants and in that view of the matter this Court in exercise of its jurisdiction under Article 136 of the Constitution of India may not interfere with the impugned order, even if it may be lawful to do so.

A In *Taherakhatoon (D) By LRs.* v. *Salambin Mohammad,* [1999] 2 SCC 635, this Court observed

> "20. In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not bound to go into merits and even if we do so and declare the law or point out the error—still we may not interfere if the justice of the case on facts does not require interference or if we feel that the relief could be moulded in a different fashion"

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In *Chandra Singh and Ors.* v. *State of Rajasthan & Anr.,* [2003] 6 SCC 545, it was held :

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> "...Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done. [See *S.D.S. Shipping (P) Ltd.* v. *Jay Container Services Co. (P) Ltd.*[17]] Such a relief can be denied, *inter alia,* when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one"

D

The said principle was reiterated in *Inder Parkash Gupta* v. *State of J & K & Ors.,* [2004] 6 SCC 786 in the following terms :

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> "In ordinary course we would have allowed the appeal but we cannot lose sight of the fact that the selections had been made in the year 1994. A valuable period of 10 years has elapsed. The private respondents have been working in their posts for the last 10 years. It is trite that with a view to do complete justice between the parties, this Court in a given case may not exercise its jurisdiction under Article 136 of the Constitution of India. (See *Chandra Singh* v. *State of Rajasthan...*"

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[See also *Transmission Corporation of A.P. Ltd.* v. *Lanco Kondappali Power (P) Ltd.,* [2006] 1 SCC 540]

Following the aforementioned decisions, we are of the opinion that with a view to do complete justice to the parties, no interference with the High Court's judgment is called for.

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For the foregoing reasons, we are of the opinion that no case has been made out for exercise our jurisdiction under Article 136 of the Constitution of India. The appeals are dismissed. No costs.

H R.P. Appeals dismissed.