A DANKHA DEVI AGARWAL (DEAD) THROUGH LRS.

v.

TARA PROPERTIES PVT. LIMITED AND ORS.

AUGUST 17, 2006

B [B.P. SINGH AND ALTAMAS KABIR, JJ.]

Companies Act, 1956—Sections 286, 397 and 399—Fradulent transfer of shares belonging to a majority shareholder by minority shareholders with a view to wrest control over the management and affairs of the company— C *Board of Directors allotted unsubscribed authorised capital with a view to regain control over the company—Minority shareholders were removed from Directorship of the company by passing a Resolution in an Extra-ordinary General Meeting of the Company—Suit filed by the majority shareholder allegedly to declare the purported transfer of shares to the minority* D *shareholders as null and void—Minority Shareholders forged the signature of the majority shareholder and withdrew the suit by filing an application—Application filed by the majority shareholder for recalling the order of withdrawal of the suit was dismissed by the High Court—Correctness of—Held, on facts, there are certain suspicious circumstances under which the suit has been withdrawn—Hence, High Court is directed to decide the* E *application for recalling the order afresh.*

Application by minority shareholders for setting aside the Board Resolution of removing them from Directorship of the company and the issue of remaining unsubscribed shares was allowed by High Court—Correctness F *of—Held, since the decision of the High Court has not been seriously contested on behalf of the company, the appeal is dismissed.*

A company was incorporated with appellant, her husband and her two sons as shareholders by allotting 10 shares to each to them. They became the first Directors of the Company. The appellant was allotted 3000 additional G **shares for leasing out her land in favour of the company and thereby became a majority shareholder. The appellant transferred part of her shares to the wives and children of her two sons and retained the remaining shares with her maintaining herself as a majority shareholder. The elder son, with a view to wrest control over the management and affairs of the company, is alleged to have forged the signatures of the appellant and transferred her shares to**

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himself and his wife. On discovery of the fraud and other irregularties, the Board of Directors passed a Resolution and allotted the unsubcribed shares of the authorised share capital to appellant's husband and her younger son. The company held an Extra-ordinary General Meeting in which the elder son and his wife were removed from Directorship of the company by passing a Resolution.

The appellant filed a suit before High Court for a declaration that the purported transfer of her shares to her elder son and his wife-respondent-was null and void and that she was the sole and absolute owner of the shares of the company. The husband of the appellant died. The respondents forged the signatures of the appellant and got the suit dismissed by the High Court without her knowledge. When the appellant came to know that her suit has been dismissed as withdrawn based on her forged signatures, she filed an application before the High Court for recalling the orders. Single Judge dismissed the application and the appeal preferred by her was also dismissed by the Division Bench of the High Court. Hence an appeal filed by the appellant before this Court against the respondents.

During the pendency of the Civil appeal before this Court, the appellant died. The respondents filed an application before High Court for setting aside the Board Resolution of removal from Directorship of the Company and the allotment of remaining unsubscribed shares. A Company Judge of the High Court allowed the application. The Company preferred an appeal which was dismissed by the Division Bench of the High Court. Hence an appeal filed by the company against the respondents.

The appellant contended that the respondents had forged her signature and illegally transferred her shares to themselves without her knowledge with a view to wrest control over the management and affairs of the company; that respondents also forged her signature and filed an application for withdrawal of her suit without her consent; and that the advocate of the respondents represented falsely as the advocate of the appellant before the High Court and withdrew her suit by mentioning before the Court on a day when the application was not listed before the Court for hearing.

Respondent contended that the appellant transferred her shares to him and his wife on her own volition; that the appellant withdrew the suit on her own as she did not want to pursue it after the death of her husband; and that the Company Judge rightly struck down the Board Resolutions of removing them from the Directorship of the company and allotment of remaining shares

A of the authorised share capital of the company.

Disposing of the appeals, the Court

HELD : 1. There are certain unusual circumstances in which the suit filed by the appellant was withdrawn as also the manner in which the B application filed by her for recalling the order of dismissal of the suit was dismissed by the Single Judge of the High Court. The manner in which the advocate, who was earlier the advocate of her elder son, assumed charge of the proceedings on behalf of the appellant in the suit generates an impression that all was not above board. The withdrawal of the suit soon afterr the advocate took over the proceedings heightens the said suspicion. Added to the above C circumstances, is the fact that the suit was mentioned for the purpose of withdrawal thereof on a day when the same was not even listed for the said purpose. The developments after the filing of the application by the appellant for a declaration that the purported transfer of her shares in favour of her elder son and his wife was null and void, leading to the withdrawal of the suit, D has not been properly dealt with by the High Court. The events leave a lingering doubt as to whether the appellant had really instructed her Advocate on Record to give a change in favour of another advocate, who was the advocate of the elder son against whom the suit had been filed, particularly when it was to his interest that the suit stood withdrawn. The High Court is directed to rehear the application and decide afresh after taking into consideration E the manner in which the change was obtained by the advocate and the mentioning of the matter *ex-parte* for non-proseuction of the suit on a date when the matter was not listed for such purpose. [591-H; 592-A-G]

2. It has not been seriously argued on behalf of the appellant-company F that the Single Judge had erred in holding that the removal of respondents from the Board of Directors of the company was illegal on the ground that the meetings of the company were without due compliance with the provisions of Section 286 of the Companies Act. Similar is the case as far as the issuance and allotment of unsubscribed shares in favour of the appellant's husband and her younger son is concerned. The Division Bench has affirmed the view G of the Single Judge that the story of notice having been given to the elder son, of the meeting in which his directorship was in question, and his staying away from such meeting, was difficult to accept. The decision of the Single Bench or the Division Bench has not been seriously contested on behalf of the appellant. In the facts of the case, it is difficult to take a view which is different from that taken both by the Single Judge and the Division Bench of H

the High Court. [592-H; 593-A-C] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1015 of 2000.

From the Judgment and Order dated 13.9.1999 of the High Court of Calcutta in A.P.O.T. No. 1452/1999.

B

With Civil Appeal No. 6535 of 2004.

Vijay Hansaria, Rana Mukherjee Siddharth Gautam, Goodwill Indeevar and D. Mahesh Babu for the Appellants.

R.F. Nariman, Ranjit Kumar, Bijan Kumar Ghosh, R.D. Upadhyay and Sumita Ray for the Respondents. C

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. Dankha Devi Agarwal (since deceased) is the appellant in Civil Appeal No.1015/2000. She was the mother of Bhagirath Agarwal (respondent No.2 in the appeal) and Smt. Leela Agarwal (respondent No.3) is the wife of the respondent No.2. D

Tara Properties Private Limited and three others are the appellants in Civil Appeal No.6535/2004. It may be mentioned that the appellant in this appeal is the respondent No.1 in the earlier appeal and respondent No.1 in this appeal is also the respondent No.2. in the earlier appeal and the other parties are common. E

Since the two appeals arise out of the same set of facts between the same parties, they have been taken up together for hearing and disposal and are being disposed of by this common judgment. F

Tara Properties Private Limited (hereinafter referred to as 'the Company') was incorporated on 28th December, 1962, as a family company with Tara Chand Agarwal (since deceased), Dankha Devi Agarwal, his wife (since deceased), their elder son, Bhagirath Agarwal and younger son Chandra Prakash Agarwal. Each of them was allotted 10 shares each in the newly-formed company. On 2nd March, 1963 Dankha Devi Agarwal granted a lease of the land at 13, Camac Street, Calcutta, to the Company and in lieu of premium of Rs.3 lakhs, 3000 shares of the Company were allotted in favour of Dankha Devi Agarwal. By virtue of such allotment, Dankha Devi Agarwal came to hold 3010 shares and the rest continued to hold 10 shares each. All G H

A the share holders were indicated as the first Directors of the Company.

On account of transfer of shares by Dankha Devi Agarwal during her life time, the share holding pattern as on 28th June, 1977, was as follows:-

	Dankha Devi	- 1660 shares
B	Tara Chand Agarwalla	- 10 shares
	Bhagirath Agarwal	- 10 shares
	Chandra Prakash Agarwal	- 10 shares
	Smt. Lila Agarwalal wife of Bhagirath Agarwal	- 200 shares
C	Smt. Rekha Agarwal wife of Chandra Prakash Agarwal	- 300 shares
	Rajesh S/o Bhagirath Agarwal	- 200 shares
D	Vandana D/o Chandra Prakash Agarwal	- 300 shares
	Anita D/o Bhagirath Agarwal	- 350 shares

The aforesaid share-holding will indicate that the company was a family company.

E As will appear from the materials on record, Tara Chand Agarwal moved to New Delhi in 1978 along with his wife and younger son leaving the family company in the sole charge of his elder son Bhagirath Agarwal. Subsequently, the family returned to Calcutta and from a public notice issued by the Calcutta Municipal Corporation on 25th September, 1989, in the Calcutta Edition of the Daily Statesman, it came to light that the tax liability of the F company in so far as the property leased to the company was concerned was to the tune of Rs.23,06,748/- which was outstanding. On coming to learn of the said outstanding dues, a meeting of the Directors of the company was convened by Tara Chand Agarwal where the agenda was for production of relevant records by Bhagirath Agarwal for the inspection of the other Directors. G However, as the records were not produced by Bhagirath Agarwal on the plea that the same had been misplaced, Tara Chand Agarwal caused an investigation to be made by a Chartered Accountant from whose report it transpired that on or about 17th May, 1983 out of the share holding of 1660 shares held by Dankha Devi Agarwal, 1150 shares were purported to have been transferred by her to Bhagirath Agarwal and a further 500 shares were H purported to have been transferred in favour of his wife. By the said process,

Bhagirath Agarwal and his wife increased their share holding from 10 to 1410 and from 200 to 700 respectively while reducing the share holding of late Dankha Devi Agarwal from 1660 shares to only 10 shares. On discovery of the aforesaid facts and other irregularities alleged to have been committed by Bhagirath Agarwal, the Board of Directors decided to issue a balance of 1960 equity shares out of the authorized share capital which had remained unsubscribed at the meeting of the Board of Directors held on 20th October, 1989. The Company decided to allot 1500 shares out of the said 1960 equity shares to Tara Chand Agarwal and to allot the remaining 450 shares to his younger son, Chandra Prakash Agarwal.

On 24th October, 1989, a special notice was given for calling an extra-ordinary general meeting. A copy of the said notice was duly served on Bhagirath Agarwal, and a copy was also sent to the Registrar of Companies. Despite receipt of notice, Bhagirath Agarwal did not attend the meeting and the Board of Directors took a Resolution to remove both Bhagirath Agarwal and Smt. Leela Agarwal from the Directorship of the company. The decision of the Board of Directors was conveyed to the Registrar of Companies and the requisite forms were also deposited with him.

Simultaneously, with the notice for holding the extra-ordinary general meeting of the company, Dankha Devi Agarwal also filed a suit, being No.874 of 1989, in the Ordinary Original Civil Jurisdiction of the Calcutta High Court for a declaration that the purported transfer of 1650 shares in the name of the plaintiff to Bhagirath Agarwal and his wife were null and void and without any effect and for a further declaration that Dankha Devi Agarwal was the sole and absolute owner of 1660 shares in the defendant-company. She also claimed a decree against the said Bhagirath Agarwal, to deliver up and cancel the relevant shares in connection with the transfer of the said 1650 shares in favour of Bhagirath Agarwal and his wife who were made defendant Nos. 2 and 3 in the suit. On 6th November, 1989 itself, an ad interim order of injunction was passed in the suit restraining the defendant Nos. 2 and 3 from transferring or otherwise dealing with the shares in question and also from exercising any voting right or from receiving dividends in respect of the said 1650 shares.

Bhagirath Agarwal filed a Company Petition No.290/1990 on 18th June, 1990, before the Calcutta High Court against the company, Tara Chand Agarwal, Smt. Dankha Devi Agarwal, Chandra Prakash Agarwal and others *inter alia* under Sections 397 and 399 of the Companies Act. The same was

A admitted and an order of status quo was passed by the learned Single Judge on 18th June, 1990 and an additional interim order was also passed to the effect that no Board meeting or any General Meeting were to be held. The matter was duly contested and ultimately on 20th March, 1992 the Company Application was disposed of by the learned Single Judge with a direction for settlement of all the family assets in three equal shares of Tara Chand
B Agarwal and Dankha Devi Agarwal, Bhagirath Agarwal and Chandra Prakash Agarwal. The said order was, however, stayed by the Division Bench on 15th July, 1993 in an appeal filed by Bhagirath Agarwal. Subsequently, in March 1995, Tara Chand Agarwal died. Subsequent to his death, on or about 28th July, 1995, the suit filed by Dankha Devi Agarwal was sought to be withdrawn,
C purportedly without the knowledge of Smt. Dankha Devi Agarwal.

On 2nd September, 1998 upon discovering that her suit had been dismissed as withdrawn, Smt. Dankha Devi Agarwal made an application for recalling of the orders dated 20th June, 1995 and 28th July, 1995 on the ground that she had not withdrawn her suit and that the application for withdrawal
D was based on her forged signatures obtained by Shri Bhagirath Agarwal. The said application was contested by Shri Bhaghirath Agarwal and was ultimately dismissed by the learned Single Judge on 4th August, 1999. An appeal preferred from the said order dated 4th August, 1999, was dismissed by the Division Bench on 13th September, 1999. In the first of the two appeals
E being heard by us, this Court granted leave to appeal to Smt Dankha Devi Agarwal against the aforesaid order of the Division Bench of the High Court dated 13th September, 1999. While the said appeal was pending in this Court, Smt. Dankha Devi Agarwal died in January, 2001.

Simultaneously with the aforesaid proceedings Shri Bhagirath Agarwal
F also filed an application for setting aside the resolution adopted by the Board of Directors of the Company removing him and his wife from the Directorship of the Company. On 6th August, 2001, the said application was allowed by the learned Single Judge and the removal of the said respondents from the Board of Directors and the allotment of 1960 shares to Tara Chand Agarwal and Chandra Prakash Agarwal were struck down. Further, the appointment
G of the respondents 1 to 5 as Directors of the Company in the Board meeting of 5th September, 1998, was upheld.

Aggrieved by the said Judgment and Order of the learned Single Judge, the appellant filed an appeal, being APOT No. 594 of 2001, and filed an
H application therein for appointment of Receiver and other reliefs. On 6th

August, 2003, the Division Bench dismissed the appeal leaving the interim application, being ACO No. 19 of 2002, undecided. Civil Appeal No. 6535 of 2004 is directed against the said judgment and order of the Division Bench of the Calcutta High Court.

Appearing for the appellant, Mr. Vijay Hansaria sought to highlight the case of the appellant that Bhagirath Agarwal had forged the signatures of Smt. Dankha Devi Agarwal to illegally and wrongfully transfer 1650 shares belonging to Smt. Dankha Devi Agarwal to himself and his wife in a bid to wrest control of the management and affairs of the respondent-Company, which had been founded by Shri Tara Chand Agarwal. Mr. Hansaria, also highlighted subsequent facts involving the withdrawal of the suit filed by Smt. Dankha Devi Agarwal questioning the transfer of the aforesaid shares in the name of Shri Bhagirath Agarwal and his wife. He emphasized that even for the purpose of withdrawing the suit the signature of Smt. Dankha Devi Agarwal had been forged and the advocate appearing on her behalf in the said application was changed and another advocate was appointed. The changed advocate appeared before the Court on a day when the matter was not listed and upon mentioning, the application was treated to be listed on that day's list and was allowed to be withdrawn.

Mr. Hansaria submitted that despite the unusual facts brought to notice of the learned Single Judge and the fraud perpetuated in withdrawal of the application for restoration of the suit, the learned Single Judge dismissed the application for revival of the suit and even the appeal filed by Smt. Dankha Devi Agarwal against the said order of the learned Single Judge was dismissed by the Division Bench at the ad-interim stage leaving her deprived of her assets.

Mr. Hansasria submitted that the second of the two appeals before us, is an off-shoot of the facts relating to the first appeal and a decision therein will be dependent on the out-come of the first of the said two appeals.

Mr. Hansaria submitted that under unavoidable circumstances Shri Tara Chand Agarwal had moved to Delhi along with his wife, Smt. Dankha Devi Agarwal and second son, Shri Chandra Prakash Agarwal, leaving the family business in the care of their elder son, Shri Bhagirath Agarwal but on coming to learn of the manner in which the affairs of the company were being managed by Shri Bhagirath Agarwal, Smt. Dankha Devi Agarwal, his own mother, was compelled to file a suit to undo the fraudulent activities of Shri Bhagirath Agarwal. Mr. Hansaria submitted further that the learned Single

A Judge of the Calcutta High Court decided Smt. Dankha Devi Agarwal's application for restoration of her suit in a completely injudicious manner and based his decision on a comparison of Smt. Dankha Devi Agarwal's signatures on the different documents in the case without taking into consideration the passage of time and the age of Smt. Dankha Devi Agarwal.

B The defence set up by Shri Bhagirath Agarwal is one of denial of all the allegations made on behalf of the appellant. In fact, it is his specific case that Dankha Devi had no role to play in the events subsequent to the transfer of 1650 shares by her in his and his wife's favour. It was contended that the transfers had been effected by Dankha Devi Agarwal in favour of her elder C son on her own volition as far back as in 1983-84 and returns were filed before the Registrar of Companies on 15th June, 1984 where such transfer of shares was recorded. Nothing was done in respect of the transfer of the said shares till 6th November, 1989, when Smt. Dankha Devi Agarwal allegedly filed the suit for cancellation of the transfer documents relating to the said 1650 shares. An interim order was passed in the suit restraining Shri Bhagirath Agarwal D and the group represented by him from disposing of the said shares or exercising their right to vote on the basis thereof. It was urged that the subsequent steps taken for withdrawal of the suit after the death of her husband was also at the instance of Smt. Dankha Devi Agarwal who obviously did not wish to pursue the matter further. It was submitted that only upon being satisfied that Smt. Dankha Devi Agarwal did not wish to proceed with E the suit was an order passed therein permitting her to withdraw the suit.

Appearing for Shri Bhagirath Agarwal, Mr.R.F. Nariman, learned senior counsel, pointed out that an extra-ordinary general meeting had been convened on 5th September, 1998, as per the orders passed by the Calcutta High Court F in which Smt. Dankha Devi Agarwal was brought in a wheel-chair. According to the report of the Chairman of the meeting appointed by the High Court, she had been completely reduced to a vegetable existence and did not respond to any question or realize what was happening around her. The Chairman expressed the opinion that although Dankha Devi Agarwal was in the meeting room, she did not have the slightest notion of what was going on there and G she did not cast her vote in the meeting.

Mr. Nariman further contended that the Special Leave Petitions which have been filed did not contain the left thumb impression of Dankha Devi Agarwal, as has been made out, and that the same was forged for the purpose of presenting the Special Leave Petitions. It was further contended that after H

the death of Dankha Devi Agarwal, Shri Chandra Prakash Agarwal has substituted his name and the name of his wife as appellants in place of Dankha Devi Agarwala and it was, therefore, quite clear that the entire matter had been engineered by Shri Chandra Prakash Agarwal to prevent Shri Bhagirath Agarwal and his group from enjoying the benefits of the profits and income from the business of the company which comprised of house properties as well as two tea gardens.

Regarding the allotment of 1960 shares by Shri Tara Chand Agarwal in his own favour and in favour of Shri Chandra Prakash Agarwal, Mr. Nariman submitted that it had been rightly decided by the learned Company Judge that the removal of Shri Bhagirath Agarwal and his wife from the Board of Directors of the company was unlawful as was the allotment of the said 1960 shares. Both the decisions said to have been adopted by the Board of Directors at the meeting held on 22nd November, 1989 were struck down and the appointment of the respondent Nos. 1 to 5 as Directors of the company at the Board meeting held on 5th September, 1998, was upheld.

From the facts as disclosed, it is quite clear that there were differences within the family with Shri Tara Chand Agarwal and his younger son, Shri Chandra Prakash Agarwal, on one side and his elder son, Shri Bhagirath Agarwal on the other, and that Smt. Dankha Devi Agarwal was merely used as a front for the parties to further their individual gains.

As has been revealed from the materials on record, the transfer of the 1650 shares of Smt. Dankha Devi Agarwal in favour of Shri Bhagirath Agarwal and his wife was effected some time in 1983-84 at a time when Shri Tara Chand Agarwal and Smt. Dankha Devi Agarwal along with the family of Chandra Prakash Agarwal had shifted to Delhi. It was after Shri Tara Chand Agarwal and others returned to Calcutta in 1985 that a Board Meeting of the Company was convened by Tara Chand Agarwal on 26th May, 1989, when Shri Bhagirath Agarwal was requested to produce the minute book of the Board's meetings. It was thereafter that CS No.874/1989 was filed by Smt. Dankha Devi Agarwal against the respondents in the Calcutta High Court *inter alia* praying for a declaration that she was the sole and absolute owner of 1660 shares and that the transfer of 1650 shares in favour of respondents Nos. 2 and 3 be declared null and void.

Be that as it may, there are certain unusual circumstances in which the aforesaid suit filed by Smt. Dankha Devi Agarwal was withdrawn as also the manner in which the application filed by her for recalling the order of dismissal

A of the suit was dismissed by the learned Single Judge. The manner in which Smt. Anjali Agarwal, who was Shri Bhagirath Agarwal's Advocate, assumed charge of the proceedings on behalf of Smt. Dankha Devi Agarwal in the suit filed by her against Bhagirath Agarwal, generates an impression that all was not above board. The withdrawal of the suit soon after Smt. Anjali Agarwal took over the proceedings heightens the said suspicion. Added to the above B circumstances, is the fact that the suit was mentioned by the learned counsel briefed by Smt. Anjali Agarwal for the purpose of withdrawal thereof on a day when the same was not even listed for the said purpose.

The developments after the filing of the application by Smt. Dankha C Devi Agarwal for a declaration that the purported transfer of 1650 shares in favour of Bhagirath Agarwal and his wife was null and void, leading to the withdrawal of the suit, has not been properly dealt with either by the learned Single Judge or the Division Bench which merely followed the order of the learned Single Judge. Both the Single Judge and the Division Bench appear to have been influenced by the affidavit said to have been sworn by Shri D Chandra Prakash Agarwal on 24th July, 1995, wherein it had been stated that Smt. Dankha Devi Agarwal was unable to hear, speak, read or write and that she was leading a vegetable existence and her mind had gone completely blank. The events, as disclosed leave a lingering doubt as to whether Smt. Dankha Devi Agarwal had really instructed her Advocate on Record to give E a change in favour of Smt. Anjali Agarwal, who, as indicated hereinabove, was the advocate of Shri Bhagirath Agarwal against whom the suit had been filed, particularly when it was to his interest that the suit stood withdrawn.

In such circumstances, we allow the appeal and set aside the order passed by the Division Bench of the High Court dated 13th September, 1999, F dismissing the appeal against the order dated 4th August, 1999, passed by the learned Single Judge dismissing the application filed by Smt. Dankha Devi Agarwal for recalling the orders passed by the learned Single Judge dated 20th June, 1995 and 28th July, 1995. We also set aside the said order of the learned Single Judge dated 4th August, 1999 and direct the aforesaid application to be re-heard and decided afresh after taking into consideration the manner G in which the change was obtained by Smt. Anjali Agarwal and the mentioning of the matter *ex-parte* for non-prosecution of the suit on a date when the matter was not listed for such purpose.

As far as Civil Appeal No.6535/2004 is concerned, it has not been H seriously argued on behalf of the appellant that the learned Single Judge had

erred in holding that the removal of Shri Bhagirath Agarwal and his wife from the Board of Directors of the company was illegal, on the ground that the meetings of the company held on 26th October, 1989 and 21st November, 1989 were without due compliance with the provisions of Section 286 of the Companies Act. Similar is the case as far as the issuance and allotment of 1960 shares in favour of Shri Tara Chand Agarwal and Shri Chandra Prakash Agarwal is concerned. The Division Bench has affirmed the view of the learned Single Judge that the story of notice having been given to Shri Bhagirath Agarwal of the meeting where his directorship was in question, and his staying away from such meeting, was difficult to accept. The decision of the Single Bench or the Division Bench has not been seriously contested on behalf of the appellant. In the facts of the case, it is difficult to take a view which is different from that taken both by the Single Judge and the Division Bench of the High Court.

The aforesaid appeal, therefore, fails and is dismissed.

Consequently, we are not convinced that any order is required to be passed as prayed for in the application filed on behalf of Shri Bhagirath Agarwal under Section 340, Code of Criminal Procedure being I.A.No. 10/2006 and the same is also dismissed.

Let a copy of this order in so far as it relates to Civil Appeal No.1015/2000 be communicated to the High Court.

B.S. Appeals disposed of.