

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**F.A. No.16 of 2012
With
CAN 1 of 2011
(Old No: CAN 825 of 2011)
With
CAN 7 of 2020
(Old No: CAN 1197 of 2020)
With
CAN 8 of 2024**

**Deeplok Financial Services Limited
Vs.
The Tata Iron & Steel Company and Others**

For the appellant : Ms. Somali Mukhopadhyay

For the respondent no.4 : Ms. Jyoti Singh

For the
respondent nos.5(i) to 5(vii) : Mr. Mukul Lahiri, Sr. Adv.,
Mr. Ranjit Kumar Rath,
Mr. Asish Chakraborty

For the respondent no.6 : Mr. Asis Kumar Laha

Heard on : 04.03.2025,
06.03.2025

Judgment on : 13.03.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the plaintiff in a suit for declaration and permanent injunction. By the impugned judgment and

decree, the suit was dismissed on contest against some of the defendants and *ex parte* against the rest. The primary relief sought was declaration that the plaintiff is the owner of 2290 equity shares of Rs.10/- each of the defendant no.1-Company and for permanent injunction restraining the defendant no.1-Company and the defendant no.2 (the share registry agency of the defendant no.1) from transferring the subject-equity shares, for mandatory injunction directing the defendant nos.1 and 2 to re-transfer 1550 shares as detailed in Schedule-A of the suit in the name of the plaintiff and issue duplicates of the remaining 740 shares or issue duplicate shares *in lieu* of the 2290 shares as per distinctive numbers given in the first prayer.

- 2.** The plinth of the plaint case is that the plaintiff is the title holder in respect of the 2290 shares which are the subject-matter of the suit. All the shares having been lost, the plaintiff sought for issuance of duplicate shares. Subsequently, it was intimated by the defendant nos.1 and 2 (respondent no.1 and 2) that out of those, the 1550 shares detailed in Schedule-A had been transferred in the meantime in favour of third party-defendants.
- 3.** Learned counsel appearing for the appellant submits that valid transfer in favour of the defendants in respect of any of the disputed shares was never proved by the defendants and as such, the learned Trial Judge erred in law in dismissing the suit.
- 4.** It is submitted that initially the share certificates were issued in the name of one Gaylord Textile Industries Limited. Consequently, the name of the plaintiff was changed from its said earlier name to its

present name, Deeplok Financial Services Limited. The plaintiff duly sent the 2290 shares in June 9, 1994 to the defendant no.2, the Registrar of the defendant no.1-Company, for being transferred in the name of plaintiff-Company, accompanied by duly filled-up transfer deeds and the new certificate of incorporation. However, according to the plaint case, the shares were lost or wrongfully intercepted.

- 5.** On February 13, 1995, the plaintiff received a letter dated January 12, 1995 from the defendant no.2 intimating it that out of the 2290 shares, the defendant no.3 had lodged with the defendant no.2 for transfer 50 shares having distinctive numbers as specified in the plaint. By the said letter, the defendant no. 2 advised the plaintiff to obtain an injunction order restraining the defendant no.1 and 2 from transferring those shares. A photocopy of the transfer deed was also sent to the plaintiff, on a perusal of which it appeared to the plaintiff that the rubber stamp and the signature of the plaintiff's Director were forged and fabricated.
- 6.** Subsequently, the plaintiff having coming to know of further transfers, the defendant nos.4, 6 and 7 were also added.
- 7.** Insofar as respondent no.4, it was impleaded on its own prayer in the capacity of a broker who allegedly dealt with some of the 1550 shares-in-dispute.
- 8.** Learned counsel for the appellant contends that the defendant nos.1 and 2 never appeared or contested the suit and as such, the allegations in the plaint against those defendants have been proved to be true by application of the doctrine of non-traverse. Since the defendant nos.1

and 2, respectively the Company whose shares are in dispute and the share registry of the said Company did not contest the suit and/or disprove the plaint case, which was substantiated by evidence, the learned Trial Judge ought to have granted a decree on such ground alone. Since the other defendants claim rights of transfer through defendant nos.1 and 2, the absence of defendant nos.1 and 2 and lack of any contest on their part vitiates the defence of the other defendants as well.

- 9.** It is submitted that even on October 21, 1993, the defendant no.2 issued a letter to the plaintiff/appellant indicating that dividend warrant for Rs.4309/- dated July 23, 1993 was duly changed in the name of the present appellant as per its request. The change of name from Gaylord Textile Industries Limited to the present appellant Deeplok was also intimated duly by a letter dated October 1, 1993 to the plaintiff/appellant. Thus, till date, the share certificates stand in the name of the present appellant, under its previous name.
- 10.** As per learned senior counsel for the respondent no.5-series, the share certificates in respect of the shares transferred to the said respondents' predecessor-in-interest have been duly produced with the signature of the authorised signatory of the broker as well as the authorised signatory of defendant no.2, the Share Registrar of the defendant no.1-Company on their reverse sides, thereby sufficiently proving the transfer of the shares in favour of the defendant/respondent no.4.

11. It is submitted that a presumption of correctness should be attached to such official acts done by the respondent no.2, particularly in view of the good repute that the respondent no.1-Company has in the market.
12. Learned counsel appearing for the respondent no.4 submits that the share certificates in favour of Nilesh Shah, to whom some of the subject-shares were transferred via the brokerage of the original respondent no.5, have been produced. The share certificates themselves indicate that the defendant no.2, through its authorised signatory, had signed the reverse thereof.
13. Although subsequently the defendants/respondent no.2 wrote to Nilesh Shah, the transferee, that the specimen signature of the authorised signatory of the appellant did not tally with those appearing in the transfer deeds produced in favour of Nilesh, learned counsel argues that by market practice, the title of the shares ought to revert back to respondent no.4, the broker.
14. Learned counsel for the respondent no.6, M/s. Unit Trust of India, submits that some of the share certificates with endorsements on the reverse in its favour, similar to that of the respondent no. 5-series were produced by it in evidence.
15. As such, *prima facie* evidence of authenticity of the transactions in favour of the respondent no.6 ought to be inferred.
16. Before entering into an assessment of the materials on record, two relevant provisions of the Companies Act, 1956 (hereinafter referred to as “the 1956 Act”), which was the governing statute during the relevant period when the suit was adjudicated, are to be looked into.

- 17.** The first such provision is Section 84, relating to certificate of shares. Sub-section (1) thereof, inserted by the 1999 amendment with effect from October 31, 1998, provides that a certificate, under the common seal of the Company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to such shares.
- 18.** The rest of the sub-sections of Section 84 deal with issuance of renewed or duplicate certificates in case of loss, destruction, defacement or mutilation, etc., of the shares. However, nothing in the said provision deals with any situation where a transfer of the shares takes effect in favour of a third party or speaks about issuance of fresh certificates in respect of such transferees.
- 19.** The relevant provision governing transfer of shares is Section 108 of the 1956 Act. Sub-section (1) of Section 108 categorically provides that a company shall not register a transfer of shares of the company unless a proper instrument of transfer, duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee specifying the name, address or occupation, if any, of the transferee has been delivered to the company along with the certificate relating to the shares or, if no such certificate is in existence, along with the letter of allotment of the shares.
- 20.** The first proviso thereto stipulates that where, on an application in writing made to the company by the transferee and bearing the stamp required for instrument of transfer, it is proved to the satisfaction to the Board of Directors of the Company that the instrument or transfer signed by or on behalf of the transferor and by or on behalf of the

transferee has been lost, the company may register the transfer on such terms as to indemnity as the Board may think fit.

- 21.** The second proviso stipulates that nothing in the Section shall prejudice any power of the company to register as shareholder, any person to whom the right to any shares of the company has been transmitted by operation of law. The rest of the Section speaks about the modalities and form of the instrument of transfer of shares and ancillaries as well as exceptions.
- 22.** Thus, a transfer of a share is completed only on the company registering such transfer upon delivery to the company of a *proper instrument of transfer duly stamped and executed by or on behalf of the transferor* and by or on behalf of the transferee.
- 23.** Section 84(1), read in conjunction with Section 108(1) of the 1956 Act, makes it amply clear that the primary presumption of title would be in favour of the certificate holder in whose name the certificate stands. In the present case, from the exhibits of all the parties, it is evident that the share certificates stand in the previous name of the appellant-Company. Upon the transfer of name in favour of Deeplok Financial Services Limited, that is, the present name of the appellant, there is no manner of doubt that the share certificates standing in its previous name create a *prima facie* presumption of title of the appellant.
- 24.** The defendants/respondents admit such initial title but claim that subsequent transfers were effected in their favour. In order to substantiate such transfer, in the teeth of categorical denial thereof by the appellant, it was incumbent upon the defendants/respondents to

prove that a proper instrument of transfer executed by the transferor was produced with the defendant no.2, the Registrar of the defendant no.1-Company and upon production of the same, the transfer of shares was duly registered.

- 25.** We find from the defence case that none of the shares allegedly transferred in favour of the defendants were registered by the defendant no.1-Company. No document or extracts of the register has been called for from the defendant no.2 by any of the other defendants to prove such transfer. Conspicuously, no authorised person was called from the defendant no.1-Company or the defendant no.2, its share registry, to prove that the specimen signature of the transferor as lying on the records of the defendant/respondent no. 2, was even compared with the transferor's signature on the transfer deeds, if any, handed over to the defendant no.2.
- 26.** Further, the defendant nos.1 and 2 never contested the suit; as such, the allegations made against them are proved by the doctrine of non-traverse.
- 27.** Thus, the onus shifted on the other defendants to prove valid transfer in their favour in respect of the 1550 shares which are part of Schedule-A of the plaint, since the plaintiff could not be expected to adduce negative proof on such count.
- 28.** Learned senior counsel for the respondent no.5-series has argued that since the plaintiff relied on a photocopy of a transfer deed, the falsity of the signatures thereof ought to have been proved by the plaintiff by calling for experts. However, such contention cannot be accepted,

since a photocopy cannot be the premise of comparison of signatures. Since the purported deed of transfer stood in favour of the predecessor-in-interest of the respondent no.5-series, it was the incumbent duty of the said respondents to prove the execution of the same by calling for proper witnesses and/or at least to call authorised persons from the defendant no.2/registry to substantiate that the specimen signature of the Directors of the appellant-Company lying in the records of the defendant no.2 were compared with the purported signatures on the transfer deed(s).

- 29.** In fact, the cloud shrouding the execution of the shares gains further currency in view of the shares alleged to be transferred in favour of one Nilesh Shah by the respondent no.4/broker having been disputed by the share registry/defendant no.2 in writing by way of a communication to the said Nilesh Shah. In view of at least some of the 1550 shares-in-question having been disputed in respect of the specimen signatures of the transferor not tallying with that on the purported transfer deed, it was all the more obligatory on the part of the other defendants to prove the valid execution of their respective transfer deeds and/or that the signatures of the transferor on the said transfer deeds tallied with the specimen signatures available in the records of defendant no.2.
- 30.** In the absence of any such endeavour on the part of the defendants, adverse inference has to be drawn against them, by presuming that if such evidence was produced, the same would demolish the defence case.

- 31.** Insofar as defendant no.4 is concerned, it has no *locus standi* whatsoever to defend the suit. Although they were impleaded to the suit as defendants on their own prayer, such addition *per se* does not confer any title on them. Even as per the case of the said respondent no.4, it was merely a broker and there is nothing within the four corners of the Companies Act which provide that if the transfer in favour of a third party transferee by such broker is disputed by the Company, the title of the shares automatically vests in the broker. Such a proposition, in fact, is absurd and contrary to Section 108 of the 1956 Act. No amount of “market practice” (as per the version of the respondent no. 4) could validate such transfer in contravention of the law in that regard.
- 32.** The defendants/respondents heavily rely on purported business practices to claim their title. The court very well appreciates that the business practice, to facilitate easy transfer of shares, particularly in the pre-DEMAT era, was that the broker had the reverse of the share certificates signed by the authorised signatories of the share registry of the company. However, such practice was merely to facilitate market transfer of shares but did not, even if prevalent, operate to create title or effect a valid transfer of title in the event there is no such actual transfer in accordance with Section 108 of the 1956 Act.
- 33.** It is noteworthy that Section 108(1) is couched in a negative language and as such, the defendant no.1-Company was justified in not registering the 1550 shares in the name of third parties in the absence of any valid transfer deed, duly executed by the transferor, being produced.

- 34.** Either before the Trial Court or this Court (by way of Order XLI Rule 27 of the Code of Civil Procedure), the respondents did not make any endeavour to call for any evidence from the defendant no.2-share registry to prove at least that a valid transfer deed was produced in consonance with Section 108(1) before the respondent no. 2-share registry and that the signature of the transferor on the same was tallied with the specimen signature of the transferor's authorised signatory available in the records of the defendant no.2-Registry and found to be proper. In the absence of such evidence, we cannot lend any credence to the claims of transfer in favour of the defendants.
- 35.** Learned senior counsel for the respondent no.5-series heavily relies on a purported photocopy of a share transfer form, which according to him was a part of Exhibit-M in the suit. However, we carefully went through the original trial court records and found that Exhibit-M was merely a single advocate's letter dated September 18, 1997. The same appears from the actual stamp of marking as an exhibit on the said letter as well. There is no indication from the records that the document lying with the trial court records immediately after Exhibit-M was ever marked as an exhibit. Apparently, the said document, being a purported share transfer form by the appellant, was merely produced before the court. Being a photocopy, there was, in any event, no scope of such document being exhibited. Nor is there any proof from the oral evidence of the parties that the said document was tendered to any of the witnesses and formally marked as an exhibit.

- 36.** The said respondents, that is, respondent no.5-series, also seek to place reliance on Exhibit-J-series, which are a number of share certificates carrying the previous name of the appellant only.
- 37.** The reliance sought to be placed on the purported signatures on the reverse of the said share certificates by the authorised signatory of the defendant/respondent no.2 (share registry), unfortunately, is misplaced, since such purported signatures were not proved by calling any competent witness of defendant no.2, nor were the extracts of the records maintained by the defendant no.2 produced or sought to be produced by the defendants, the positive case of whom regarding transfer of title in their favour was to be proved by the said defendants only.
- 38.** Not a single witness was called from the defendant no.2 to prove at least that a valid transfer deed/document was furnished with the defendant/respondent no.2 in respect of any of the 1550 disputed shares, duly signed by the transferor/appellant, or that the signatures therein were compared with the specimen signatures of the authorised signatories of the transferor-Company by the defendant/respondent no.2.
- 39.** In the absence of the same, we find that the primary requirements of Section 108 of the Companies Act, 1956 Act were not complied with. Hence, adverse inference is drawn against the defendants/respondents with regard to the alleged transfers of the 1550 shares in their favour.

- 40.** Insofar as other 740 shares are concerned, there is no allegation of those having been transferred in favour of any third party and as such in the absence of any of any contest by the defendant/respondent nos. 1 and 2, we do not find any justification on the part of respondent no. 1 for not issuing duplicate shares in favour of the appellant with regard to those 740 shares, as described in Paragraph No. 2 of the last-amended plaint and Reliefs (a) and (b) thereof.
- 41.** Accordingly, F.A. No.16 of 2012 is allowed on contest against the respondent nos.4, 5-series and 6 and *ex parte* against the other respondents, thereby setting aside the impugned judgment and decree dated October 6, 2010 passed by the learned Judge, Third Bench, City Civil Court at Calcutta in Title Suit No.1087 of 1995 and granting a decree in terms of Prayers (a), (b) and (c) of the plaint.
- 42.** Hence, the plaintiff/appellant do get a decree of:
- (a) Declaration that the plaintiff/appellant is the owner of 2290 equity shares of Rs.10/- each in the defendant/respondent no.1-Company bearing Distinctive Numbers 21298121 – 9170 (1050), 21299871 – 9970 (100), 16678601 – 8640 (40), 16677501 – 8600 (1100);
 - (b) Permanent injunction restraining the defendants/respondent nos.1 and 2 from transferring equity shares bearing Distinctive Numbers 21298121 – 9170; 21299871 – 9970; 16678601 – 8640; 16677501 – 8600, in the name of anyone else then the plaintiff.
 - (c) Mandatory injunction directing defendants/respondent nos.1 and 2 to re-transfer the 1550 shares as detailed in Schedule-A (given hereinbelow) of the Title Suit No.1087 of 1995 and issue duplicates

of the remaining 750 shares in lieu of all 2290 shares as per distinctive numbers as given in Prayer (a).

SCHEDULE – “A”

Seller Folio	Transfer No. and Date	No. of shares	Distinctive Nos.	Transferees name and address
D111008 Deeplok Financial Services Ltd.	801895 dt. 8.7.94	900	21298121 – 8870 21298971 – 9120	G71522 Govardhan Dass Kajriwal 1 st floor, Room No.20, 16, India Exchange Place, Calcutta – 700 001
-do-	609953/54 dt.2.6.94	100	21298871 – 8920 21298921 – 8970	U18595 Unit Trust of India, 13, Vithaldas Thackersy Marg, New Marine Lines, Bombey – 400 020
-do-	966128 dt. 16.1.95	50	21299121 – 9170	A172113 Atul Lokhandwala 12/3031 Rani Talao Parsishari Surat – 395 003.
-do-	965841 dt.8.7.94	500	166777552 – 8000 166778201 – 8250	T41616 The Peerless Gen. Finance Co. Ltd. Investment Department part Centre 3 rd floor, 24, Park Street, Calcutta – 700 016.

Total : 1550

- 43.** There will be no order as to costs.
- 44.** A formal decree be drawn up accordingly.
- 45.** CAN 1 of 2011 (Old CAN No. 825 of 2011), CAN 7 of 2020 (old CAN No. 1197 of 2020) and CAN 8 of 2024 stand disposed of in view of the above.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)