

THE HIGH COURT OF SINDH, KARACHI
[COMPANY BENCH]

J.C.M. No. 24 of 2019

[Syed Saeed Ahmed versus M/s. Mehran Oils (Pvt.) Ltd., and others]

Petitioner : Syed Saeed Ahmed son of late Syed Junaid Ahmed through Ms. Fareeda Mangrio, Advocate.

Respondents 1-2 : M/s. Mehran Oils (Pvt.) Ltd., and Shabbir Ahmed son of late Syed Junaid Ahmed through M/s. Shahenshah Hussain, Muhammad Hanif Faisal Alam and Syed Arshad Ali, Advocates.

Respondents 3, 5-8 : Nemo.

Respondent 4 : S.S.A.M. Qadri (Ex-Company Secretary) son of S.S. Mustafa Qadri, present in person.

Respondent 9 : Syed Saad Ahmed son of late Syed Junaid Ahmed through Mr. Saiyed Younus Saeed, Advocate.

Dates of hearing : 13-03-2025, 06-05-2025, 15-05-2025 & 29-05-2025.

Date of order : 05-11-2025

ORDER

Adnan Iqbal Chaudhry J. - This is an application under section 126 of the Companies Act, 2017 [Act] for rectification of members register maintained by Mehran Oil Mills (Pvt.) Ltd. [the Company - Respondent No.1] under section 119 of the Act. In addition, the Applicant is also aggrieved with delay in repayment of a loan advanced by him to the Company. As creditor of the Company, he prays for a declaration that affairs of the Company are being conducted unlawfully by Respondent No.2 (the CEO), and for an order to restrain him from acting so. However, these additional prayers are beyond the scope of section 126 of the Act. Therefore, I entertain this JCM only to the extent of prayers that fall under section 126 of the Act.

The dispute:

2. The Applicant was shareholder and director of the Company along with his brothers, the Respondents 2 and 9, and their father Junaid Ahmed who was Chairman of the Board. It is accepted by the Applicant that as regards shares held by him in his own right, those were transferred by him. However, upon the death of Junaid Ahmed, the Applicant inherited certain shares from him, as did the Applicant's siblings *i.e.* the Respondents 2, 5-9. Those shares were not transmitted by the Company to the Applicant or to any other legal heir of late Junaid Ahmed due to a dispute between the Applicant and Respondent No.2 over the number of shares held by the deceased.

3. It is contended by the Applicant that late Junaid Ahmed held 1500 shares in the Company; that after his death, the Respondent No.2 fraudulently cancelled 600 of the deceased's shares to reduce his shareholding to 900, and at the same time increased his own shareholding by 600.

Pleadings:

4. It is not disputed between the parties that up till 28.09.2012, shareholding in the Company was as follows:

Syed Junaid Ahmed (deceased) -	900 shares
Applicant, Syed Saeed Ahmed -	600 shares
Respondent No.9, Syed Saad Ahmed -	600 shares
Respondent No.2, Syed Shabbir Ahmed -	300 shares
Others -	300 shares

5. The events after 28.09.2012, as averred by the Applicant are as follows:

- (i) that by transfer deeds dated 23.10.2012, the Applicant and Respondent No.9 transferred 300 shares each (total 600 shares) to their father Junaid Ahmed, thereby increasing the latter's shareholding to 1500 and reducing the formers' shareholding to 300 shares each, which transfers was duly entered in the members register;

- (ii) that in 2012, the Applicant resigned as director of the Company as he could not get along with the way Respondent No.2 was managing the affairs of the Company as CEO;
- (iii) that Junaid Ahmed passed away on 02.09.2014;
- (iv) that in 2015, Respondent No.2 requested the Applicant to sell his remaining 300 shares (held in his own right) to Respondent No.2 on the promise of a fair price; that the Applicant did so in good faith by executing transfer deed dated 08.06.2015, however, he was paid only a paltry sum for those shares;
- (v) that in 2017, the Applicant discovered that Form-A filed by the Company for the period upto 25.10.2013, had concealed share transfers already made by the Applicant and Respondent No.9 to late Junaid Ahmed; and that Form-A filed on 09.03.2015, had fraudulently reported that the Applicant and Respondent No.9 had instead transferred those shares to Respondent No.2;
- (vi) that against the false Form-A's filed by the Company, the Applicant made a complaint to the SECP in 2018; that after procuring a reply from the Company, the SECP provided the Applicant with copies of the members register, which revealed that after the death of Junaid Ahmed, the Company and Respondents 2 and 9 acting in collusion, had cancelled transfer entries of 600 shares standing in the name of late Junaid Ahmed and entered those shares in the name of Respondent No.2 on 30.09.2014;
- (vii) that in such facts, the SECP disposed of the Applicant's complaint and advised him to invoke section 126 of the Act, hence this petition.

6. The application is contested by the Company. A counter-affidavit was filed by Mr. Mumtaz Ali Khan as Company Secretary. He averred that transfer deeds dated 23.10.2012 executed by the Applicant and Respondent No.9 in favor of Junaid Ahmed for 600 shares, were of no legal effect because said parties had already transferred those very shares to Respondent No.2 by earlier transfer deeds dated 26.03.2013; therefore, the Board of Directors did not approve transfer of said shares in favor of Junaid Ahmed; that the erstwhile Company Secretary [**Respondent No. 4 - Mr. S.S. Qadri**]

nonetheless entered those 600 shares in the members register in favor of Junaid Ahmed; that since such act was unauthorized, the Board of Directors terminated his services on 27.09.2013, which resolution was also signed by the Applicant himself as director, thereby acknowledging that said shares were wrongfully transferred to Junaid Ahmed; thereafter, to undo unauthorized entries in the members register, the 600 shares entered in the name of Junaid Ahmed were cancelled and entered in the name of Respondent No.2; that in this manner, the shareholding of Junaid Ahmed in the Company remained 900 shares only.

7. It was thus admitted by the Company that entries had been made in the members register on 23.10.2012 to register the transfer of 600 shares by the Applicant and Respondent No.9 to Junaid Ahmed; and that, such entries were subsequently cancelled, and fresh entries were made to reflect that those shares were transferred to Respondent No.2.

8. *Per* counter-affidavit of Respondent No.4 (erstwhile Company Secretary), there was a dispute between Junaid Ahmed who was Chairman of the Board, and Respondent No.2 who was the CEO, over the manner in which the latter was running the Company; that Respondent No.2 also tried to stop Respondent No.4 from registering the 600 shares transferred by the Applicant and Respondent No.9 to Junaid Ahmed, and had put pressure on him to make fake share transfers in favor of Respondent No.2; that when Respondent No.4 refused to oblige, the Respondent No.2 terminated him from service.

9. In the rectification application, and again by affidavit-in-rejoinder, the Applicant denied executing the transfer deed dated 26.03.2012 in favor of Respondent No.2. He averred that his signature thereon is forged by Respondent No.2, and that even Respondent No.9 did not execute the transfer deed dated 26.03.2012 in favor of Respondent No.2.

10. Both, Respondents 2 and 9, were represented in these proceedings, but did not to file any counter-affidavit. However, by a statement dated 06.05.2025, Respondent No.9 adopted the counter-affidavit of the Company.

11. Heard learned counsel and perused the record.

Whether application for rectification is time-barred ?

12. Mr. Shahenshah Husain, learned counsel for the Company and Respondent No.2, submitted that this rectification application is time-barred. He relied on *Bentonite Pakistan Ltd. v. Bankers Equity Ltd.* (2023 SCMR 1353) to submit that all applications under the Companies Act are governed by Article 181 of the Limitation Act, 1908, which prescribes a period of three years from the date the right to apply accrues. He submitted that in this case the three-year period commenced from 23.10.2012 when the Applicant transferred his shares to Junaid Ahmed; that even counting such period from 30.09.2014, when the impugned changes were made in the members register, or from 09.03.2015, when Form-A to report those changes was filed with the SECP, this application presented on 30.08.2019 was still time-barred.

On the other hand, Ms. Farida Mangrio, learned counsel for the Applicant relied on *Naila Naeem Younus v. Indus Services Ltd.* (2022 SCMR 1171) to submit that Article 181 of the Limitation Act does not apply to an application for rectification of members register under section 126 of the Act. She submitted that in any case, time had to be reckoned from the date the Applicant acquired knowledge of fraudulent entries made in the members register, which was in 2018, and therefore there was no delay.

13. Seemingly divergent views in *Bentonite* and *Naila Naeem* on the applicability of Article 181 of the Limitation Act to applications under the Companies Act, were reconciled by this Bench in the case of *Muhammad Ziaullah Khan Chishti v. TRG Pakistan Limited* by order

dated 20.06.2025 in JCM No. 12/2025. The discussion and conclusion arrived is reproduced under:

“23. In *Bentonite Pakistan Ltd. v. Bankers Equity Ltd.* (2023 SCMR 1353), a three-member Bench of the Supreme Court agreed with the High Court that Article 181 of the Limitation Act applies to applications under the Companies Act. It was observed:

“4. It is to be noted that subsection (2) of section 1 of the Limitation Act, 1908 (the Act of 1908) provides that it extends to the whole of Pakistan. Thus, by virtue of said provision, all the proceedings under the Act of 2017 are subject to the Act of 1908, except where any proceeding is expressly brought out of the purview of the said Act. The only provision in this regard in the Act of 2017 is section 410, which speaks only about limitation regarding filing of suit by a liquidator for the recovery of any debt due to the company. Thus, the exclusion is only to the extent of the said suit; however, for all other applications and proceedings, the Act of 1908 would be applicable. It is to be noted that there is no specific provision in the Act of 1908 which deals with the applications or proceedings filed under the Act of 2017, except Article 112 thereof, which deals with "a call by a company registered under any Statute or Act"; therefore, the general provision dealing with the applications would be applicable to the applications filed under the Act of 2017. The general provision, which deals with the applications, where no period of limitation is provided in the Act of 1908, etc., is Article 181 thereof which reads as under:

.....

It is apparent from the above provision that all the applications, for which no period of limitation is provided elsewhere in this Schedule to the Act of 1908 or by section 48 of the Code of Civil Procedure, 1908, would be governed by Article 181 *ibid*. Thus, any application filed under the Act of 2017 would be governed by Article 181 *ibid* and there would be a period of limitation of three years for such applications.”

24. On the other hand, in *Naila Naeem Younus v. Indus Services Ltd.* (2022 SCMR 1171) a two-member Bench of the Supreme Court held that Article 181 of Limitation Act does not apply to an application under section 152 of the Companies Ordinance, 1984. It was held that:

“11. Neither the Limitation Act nor the Ordinance mentions an application for the rectification of the company's register of members or denture-holders nor prescribes a particular period within which such an application is to be filed. Article 181 of the First Schedule to

the Limitation is in respect of, 'Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908 (V of 1908)', and for such applications prescribes a three years period. Therefore, the question to be considered is whether Article 181 also applies to an application for the rectification of the register of a company.

12. The Ordinance (substituted by the Companies Act, 2017) is a self-contained law and attends to all matters pertaining to companies, including the maintenance of the register of members and debenture- holders and provides the mechanism to rectify if a fraud is committed or omission made therein. The Ordinance does not prescribe any period within which an application for rectification may be submitted. Therefore, it would not be appropriate to do so on account of a tenuous connection with Article 181 of the Limitation Act. Section 152 of the Ordinance does not distinguish between rectification necessitated on account of a fraud having been committed and rectification required to correct an omission in the register of members. Fraudulent changes made to the register and omissions therefrom are both categorized as offences. There is no limitation period in Pakistan to prosecute and punish a crime; unlike some countries where there are statutes of criminal limitations. A fraudster, who had illegally transferred shares of another into his own name commits a crime and could be convicted for this offence. However, if the impugned order is upheld, the one defrauded could not get back his/her shares, if the application to rectify the company's register was filed after a period of three years. But this irreconcilable contradiction does not arise if Article 181 is held not to apply to an application to rectify the company's register. SECP is quite correct to state that when section 152 of the Ordinance is read with the section following it (section 153) it removes all doubts, if there were any, that the legislative intent was not to prescribe a period of limitation in filing a rectification application, or to make it subject to Article 181, or to any other provision of the Limitation Act.

.....

17. In a number of precedents this Court has also held that there is no limitation period in respect of inheritance claims, which would include the right to shares owned by someone who has died. It would be anomalous if a shareholder could not seek rectification of the register of members to assert his/her ownership to shares after three years, but after his death his/her heirs could do so.

18. Significantly, Article 181 of the Limitation Act does not state that it also applies to applications filed under the company law. Article 181 is a saving clause, and states, in general terms, that it applies to - applications for which no period of limitation is provided elsewhere. To extinguish proprietary rights without a clear and definite provision

mandating this, by applying a general clause/ provision of the Limitation Act, would be unconscionable.”

25. In arriving at the aforesaid conclusion, *Naila Naeem* drew support from *Naeem Finance Ltd. v. Bashir Ahmed Rafiqi* (PLD 1971 SC 8), where a three-member Bench of the Supreme Court observed that the consensus of judicial opinion was that Article 181 of the Limitation Act applies only to applications under Code of Civil Procedure. A view to the contrary taken by a two-member Bench of the Supreme Court in *M. Imam-ud-Din Janjua v. Thal Development Authority* (PLD 1972 SC 123) was distinguished by *Naila Naeem* with the opinion that such view was expressed for applications under the Arbitration Act, 1940 for which limitation was specifically provided in Articles 158 and 178 of the Limitation Act. However, these cases are not noticed in *Bentonite*.

26. Though *Bentonite* is a leave refusing order, Mr. Tayebaly is correct that it enunciates a principle of law as to the applicability of Article 181 of the Limitation Act to applications under the Companies Act. As held in *Muhammad Tariq Badar v. National Bank of Pakistan* (2013 SCMR 314), a leave refusing order that enunciates a principle of law is binding authority under Article 189 of the Constitution of Pakistan. It is also settled law that in the event of a conflict between two judgments of the Supreme Court, the High Courts are to follow the view expressed by a Bench of greater numerical strength. Having said that, the question is what is the conflict between *Bentonite* and *Naila Naeem*. To examine that, I am inclined towards the approach recently propounded by the Supreme Court of India in *A.P. Electrical Equipment Corporation v. The Tahsildar* (2025 INSC 274, judgment dated 25.02.2025) that:

“If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in *Quinn v. Leathern*, 1901 AC 495 at p.506 and reiterated by the Privy Council in *Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore* AIR 1940 PC 230:

“..... every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be

found.” and follow that decision whose facts appear more in accord with those of the case at hand.”

27. The application subject matter of *Naila Naeem* was under section 152 of the Companies Ordinance, 1984 for rectification of members register. The applicants had contended that their shares had been transferred fraudulently which was evident from the fact that there was no transfer deed in favor of the transferee. The High Court was of the view that the transfer was apparent from the Form A filed by the company with the SECP long ago, hence the rectification application was time-barred under Article 181 of the Limitation Act. The Supreme Court, however, agreed with the petitioners that the Companies Ordinance itself did not prescribe limitation for a rectification application and allowed the same to restore the applicants’ shares to them. The *ratio decidendi* of the judgment is in para 12 *viz.* that section 152 of the Companies Ordinance had to be read with section 153, and upon construing them together it was apparent that the Limitation Act was not intended to apply to an application under section 152.

28. In contrast, the application subject matter of *Bentonite* was under section 310 of the Companies Act for leave of the High Court to sue Bankers Equity Ltd. in liquidation after the previous banking suit had been consigned to record in 2002 as the plaintiff had not sought leave of the High Court to continue with that suit. The application to the High Court was made after 17 years of the first suit, thus perceived by the Court as an application to frustrate liquidation proceedings and held to be time-barred under Article 181 of the Limitation Act. The petitioners before the Supreme Court did not dispute the applicability of the Limitation Act, rather their case was that their application was for leave to file a fresh suit, not for leave to revive the previous suit, and therefore the application was not time-barred. It appears that Article 181 of the Limitation Act was not an issue in contention in *Bentonite*.

29. The view respectively taken in *Naila Naeem* and *Bentonite* on the applicability of Article 181 of the Limitation Act are based on different provisions of the Companies Act/Ordinance. Further, the view in *Naila Naeem* is on a contention raised to the applicability of the Limitation Act, whereas there was no such contention in *Bentonite*. Mr. Tayebaly submitted that *Bentonite* nonetheless holds that “all proceedings” under the Companies Act are subject to the

Limitation Act. However, that observation is qualified by the words “**except where any proceeding is expressly brought out of the purview of said (Limitation) Act**” and that is the exception drawn there.

30. In my humble view, the *ratio decidendi* in *Bentonite* is that where the provision of the Companies Act under which an application is made does not suffice for the purposes of limitation, only then will Article 181 of the Limitation Act come into play. Such finding does not conflict with *Naila Naeem* where section 152 of the Companies Ordinance was construed as excluding limitation.”

14. Having concluded as aforesaid that the case of *Bentontie* does not conflict with *Naila Naeem*, the case of *Naila Naeem* is binding precedent for the proposition that the Limitation Act did not apply to an application for rectification of members register under section 152 of the erstwhile Companies Ordinance, 1984. That precedent holds good also for the succeeding provision in section 126 of the Companies Act, 2017, and therefore, Article 181 of the Limitation Act, 1908 is not applicable here.

15. I am, however, informed that a larger Bench of the Hon’ble Supreme Court is presently seized of the question whether Article 181 of the Limitation Act is applicable to all applications under the Companies Act. Therefore, I may observe here that even if Article 181 is held to be applicable to an application under section 126 of the Companies Act, the instant JCM would not be time-barred as discussed *infra*.

16. The period of three years in Article 181 of the Limitation Act begins from the date “when the right to apply accrues”. In *B and T Ag v. Ministry of Defence* (2023 SCC OnLine SC 657), while dealing with the *pari materia* Article 137 of the Indian Limitation Act, 1963, the Supreme Court of India observed that:

“This being a residuary Article to be adopted to different classes of applications, the expression ‘the right to apply’ is an expression of

a broad common law principle and should be interpreted according to the circumstances of each case.”

Thus, the applicability of Article 181 is a mixed question of law and fact.

17. It is an admitted fact that the 600 shares transferred by the Applicant and Respondent No.9 to Junaid Ahmed, were entered by the Company in the members register on 23.10.2012 to reflect Junaid Ahmed's shareholding as 1500. It is also admitted by the Company that such entry was cancelled by it on 30.09.2014 and a fresh entry of those shares was made in favor of Respondent No.2 after Junaid Ahmed had passed away. It is these change in the members register made on 30.09.2014 that are impugned and sought to be rectified under section 126 of the Act. Therefore, if Article 181 of the Limitation Act is applicable, the right to apply for rectification of members register could not have accrued to the Applicant before 30.09.2014.

18. Article 181 in the First Schedule to the Limitation Act is of course subject to section 18 of said Act. That follows from section 3. Section 18 excludes the time during which a person having a right to make an application has, by means of fraud, been kept from the knowledge of such right, or where any document necessary to establish such right has been fraudulently concealed from him. It is pleaded by the Applicant that the impugned changes in the members register made on 30.09.2014, were suppressed by the Company; and that, he came to know of them in 2018 when copy of the members register reflecting those changes was provided to him by the SECP after procuring the same from the Company. That averment is supported by the record. Form-A of the Company reporting the increased shareholding of Respondent No.2 after the impugned changes, was not registered with the SECP until 09.03.2015. Admittedly, the Applicant was not director of the Company at that time, and it cannot be argued that knowledge of that Form-A should be presumed. In any case, that Form-A did not indicate that

shareholding of Respondent No.2 had increased by way of cancelling shares of late Junaid Ahmed.

19. Mr. Shahenshah Husain had submitted that Applicant's consent for making the impugned changes should be presumed from the minutes of the meeting of directors held on 27.09.2013, which was also signed by him to ratify termination of Respondent No.4 for making wrongful entries in favor of Junaid Ahmed in the members register. The submission has no force. Assuming that the Applicant had signed the minutes dated 27.09.2013, those minutes do not discuss that wrongful entries had been made in the members register, nor was any Board resolution passed for making the impugned changes in the members register. The impugned changes were made by the Company much later on 30.09.2014. It was then argued that the Applicant's knowledge of the impugned changes should be presumed when he transferred the last of his 300 shares to Respondent No.2 on 08.06.2015. But then, there is nothing to support that presumption. In fact, from the complaint made by the Applicant to the SECP on 18.10.2018, it appears that at such time he was unaware of the impugned changes in the members register, and that he came to know of the same when SECP provided him with copies of share certificates and members register under cover of letter dated 28-12-2018. By virtue of section 18 of the Limitation Act, the period during which the Respondents 1 and 2 kept the Applicant from knowledge of the impugned changes in the members register, will be excluded. *Ergo*, even if Article 181 of the Limitation Act is applied, this application for rectification presented on 30.08.2019 is within limitation.

Facts established from undisputed documents:

20. To recap, the Applicant and Respondent No.9 had executed transfer deeds dated 23.10.2012 to transfer 300 shares each (total 600 shares) to their father Junaid Ahmed. Those share certificates were deposited with the Company to register the transfer. Both, on the

share certificates and in the members register, entries were made on 23.10.2012 by the Company to record transfers in favour of Junaid Ahmed, thereby concluding the transaction as per section 76 of the erstwhile Companies Ordinance, 1984. As a result, Junaid Ahmed's shareholding increased to 1500; shareholding of Applicant and Respondent No. 9 was reduced to 300 each; and shareholding of Respondent No.2 remained at 300.

21. The record produced by Respondent No.4 reflects that around 23.10.2012, when aforesaid transfer was made in favor of Junaid Ahmed, he and Respondent No.2 were at loggerheads over the way the latter was running the Company. In that background, Respondent No.2 tried to stop Respondent No.4 (erstwhile Company Secretary) from entering share transfers in favor of Junaid Ahmed in the members register. Irrked by the latter's refusal, on 27.08.2013, the Respondent No.2 terminated his services. On 23.09.2013, Junaid Ahmed wrote a letter to Respondent No.2, complaining of mismanagement, his attempt to block transfer of 600 shares already made in his favor, termination of Respondent No.4 as Company Secretary, calling meetings without specifying agenda, and so on. By such letter, Junaid Ahmed categorically asserted his ownership over 1500 shares in the Company. As per the record produced by the SECP, a complaint against Respondent No.2 (CEO) was made by Junaid Ahmed through his legal advisor also to the SECP on 30.10.2013. It was additionally averred in that complaint that minutes of the meeting dated 27.09.2013 relied upon by Respondent No.2 could not have been signed by the Applicant who had ceased to be Director of the Company. These documents were not disputed by the Company or Respondent No.2. Therefore, the submission of Mr. Shahenshah Husain that late Junaid Ahmed had not claimed ownership of 1500 shares in the Company during his lifetime, is contradicted by the record.

22. On 07.01.2014, the Company filed with the SECP Form-A made upto 25.10.2013 under signatures of Respondent No.2. This Form-A

concealed that 600 shares had been transferred by the Applicant and Respondent No.9 to Junaid Ahmed.

23. On 02.09.2014, Junaid Ahmed passed away. Right thereafter, on 30.09.2014, the Company made the following changes [**impugned changes**]:

- (i) cancelled entries of 600 shares standing in the name of late Junaid Ahmed in the members register and share certificates, which had been entered on 23.10.2012 pursuant to transfers made by Applicant and Respondent No.9;
- (ii) entered the aforesaid 600 shares in favor of Respondent No.2 in the members register and share certificates to reflect that those had been transferred to him by Applicant and Respondent No.9;
- (iii) entered an additional 600 shares in favor of Respondent No.2 in the members register as having been transferred to him by late Junaid Ahmed.

24. To report changes in the members register as on 30.09.2014, the Company first submitted Form-A to the SECP on 10-10-2014. Such Form-A, of course, did not reveal that the Company had cancelled 600 shares of late Junaid Ahmed because, the preceding Form-A had never reported transfer of those shares to Junaid Ahmed. Thus, SECP's record continued to reflect Junaid Ahmed's shareholding as 900. Nevertheless, said Form-A dated 10.10.2014 was not registered by the SECP because it portrayed that on 30.09.2014 Junaid Ahmed had transferred 600 shares to Respondent No.2 even though he had died on 02.09.2014. These objections are in SECP's letter dated 13-10-2014. Against that, the Company contended before the SECP that late Junaid Ahmed had executed a transfer deed in favour of Respondent No.2 prior to his death. However, the SECP rejected that contention *vide* letter dated 08.01.2015. The Respondent No.2 did not contest the same. Therefore, for the period up to 30.09.2014, the Company filed a revised Form-A on 09.03.2015, dropping the alleged transfer made by late Junaid Ahmed to Respondent No.2 but retained the alleged transfer made by Applicant and Respondent No.9 to Respondent

No.2. Again, these facts are borne from the record produced by the SECP which was undisputed. The fact that after Junaid Ahmed's death, the Respondent No.2 attempted to transfer the deceased's shares to himself, is also highlighted by the SECP in its comments.

25. On 08.06.2015, the remaining 300 shares held by the Applicant in his own right, were transferred by him to Respondent No.2. However, as discussed above, the Applicant was unaware at that time of the impugned changes already made by the Company in the members register.

Opinion of the Court:

26. The central challenge in this case is to the Company's act of 30.09.2014 in cancelling 600 shares standing in the name of late Junaid Ahmed in the members register and share certificates, which had been entered on 23.10.2012 pursuant to transfers made by Applicant and Respondent No.9. Ms. Farida Mangrio, learned counsel for the Applicant, correctly submitted that if that cancellation was unlawful, then those shares were not available for transfer to Respondent No.2.

27. To justify the making of aforesaid entries of cancellation in the members register and share certificates on 30.09.2014, the Company's contention is two-fold. Firstly, that when those entries were made on 23.10.2012, those were without a valid resolution of the Board of Directors, thus unauthorized. Secondly, that the Applicant and Respondent No.9 had already transferred those very shares to Respondent No.2 by earlier transfer deeds dated 26.03.2012.

The first contention is belied by the record. The Board Resolution dated 23.10.2012 passed to approve transfer of said shares to Junaid Ahmed, was signed by four out of five Directors and attested by the Company Secretary. Only the Respondent No.2 did not sign the same. Though it was a Board Resolution by circular, it was passed by majority of the Directors and therefore valid.

The Company's second contention, that the Applicant and Respondent No.9 had already executed transfer deeds dated 26.03.2012 for those shares in favor of Respondent No.2, that is clearly a contention at the behest of Respondent No.2. However, Respondent No.2 himself did not file any counter-affidavit to take that plea even though the Applicant had denied his signature on the alleged transfer deed dated 26.03.2012. While Respondent No.9 did file a statement at the cusp of the hearings to adopt the Company's counter-affidavit, that statement too was not on oath. Nonetheless, after Respondent No.9 adopted the Company's defense, which acknowledged that he had executed transfer deed dated 23.10.2012 in favor of late Junaid Ahmed, it will be contradictory for Respondent No.9 to say that he had also executed transfer deed dated 26.03.2012 for same shares in favor of Respondent No.2. In circumstances where beneficiary of alleged transfer deeds dated 26.03.2012 i.e. Respondent No.2, chose not to come forward to claim those shares, the argument of Mr. Shahenshah Husain that the case requires regular evidence to determine execution of those transfer deeds, is to no avail. The veracity of those transfer deeds will have to be assessed on the basis of the record.

28. The transfer deeds dated 26.03.2012 alleged to be executed by the Applicant and Respondent No.9 in favor of Respondent No.2, were never submitted by anyone to the Company for registration under section 76 of the erstwhile Companies Ordinance. Those deeds were also not produced by Respondent No.2 before the Board of Directors on 23.10.2012 when it approved transfer of those very shares in favor of Junaid Ahmed. Admittedly, the alleged transfer deeds dated 26.03.2012 were submitted by Respondent No.2 to the Company for the first time on 30.09.2014, after the death of Junaid Ahmed. That date is mentioned on those deeds under the signature of the new Company Secretary. It is implausible that the Respondent No.2 simply held on to those transfer deeds for two years without challenging the transfer of those very shares to Junaid Ahmed. There

is also no evidence of any consideration paid by Respondent No.2 in lieu of those transfers. As regards the Respondent No.9, it appears that he was won over by Respondent No.2 afterwards. Therefore, transfer deeds dated 26.03.2012 alleged to be executed by Applicant and Respondent No.9 in favor of Respondent No.2, appear to be fabricated documents.

29. In any case, even if the alleged transfer deeds dated 26.03.2012 had been executed, the fact of the matter remains that on 02.09.2014, when Junaid Ahmed passed away, the members register reflected that he held 1500 shares. On that date his shares devolved on his legal heirs as per Muhammadan Law. Even if the Company or Respondent No.2 disputed such shareholding of late Junaid Ahmed, they could not have cancelled that shareholding without an order of the Court under section 152 of the Companies Ordinance, 1984 (now section 126 of the Companies Act, 2017). The impugned changes made by the Company to the members register on 30.09.2014 were clearly fraudulent.

30. In view of the foregoing, this application for rectification of members register is allowed with the following order :

- (i) It is declared that on 02.09.2014 when Junaid Ahmed passed away, he held 1500 shares in the Company, and each of the Applicant, Respondent No. 2 and Respondent No.9 held 300 shares in the Company; and that, on the demise of Junaid Ahmed, his shares devolved on his legal heirs *viz.* the Applicant and Respondents 2, 5-9 as per Muslim personal law;
- (ii) It is declared that the impugned changes made by the Company in the members register and share certificates on 30.09.2014, mentioned in para 23 *supra*, were fraudulent and unlawful. The Company is directed to reverse/rectify those changes in the members register and share certificates forthwith. Any shares transferred to Respondent No.2 after 30.09.2014 are not in issue;

- (iii) Upon rectification of the members register as aforesaid, the Company shall transmit shares of late Junaid Ahmed to his legal heirs as aforesaid;
- (iv) Under sub-section (2) of section 126 of the Act, the Applicant is awarded cost of Rs. 500,000 (Rupees Five Hundred Thousand only), payable by the Company and Respondent No.2 personally @ Rs. 250,000 each;
- (v) While issuing a caution to Respondent No.2 (CEO of the Company) and Mr. Mumtaz Ali Khan (Company Secretary), the Court refrains from making a reference against them for adjudication of an offence under section 127 of the Act.

The office shall forward a copy of this order to the Company, and the Company shall within 15 days file notice of rectification of the members register with the Registrar of Companies.

JUDGE

Karachi:
Dated: 05-11-2025