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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010561722019**

\+ FAO 28/2019

VEENA SOLANKI & ORS .....Appellants

Through: Mr. Manuj Aggarwal, Advocate

versus

KARUNA SINGH & ORS .....Respondents

Through: Mr. Ajit Singh, Mr. Aditya Singh, Ms. Yashvi Sood, Advocates for respondent no.5.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **03.08.2026**

1. By way of the present appeal filed under Section 43 Rule 1 of the Code of Civil Procedure, 1908, the appellants seek to assail the order dated 09.10.2018 passed by the learned Additional District Judge-03, South District, Saket Courts, New Delhi in M. No.72/2018 arising out of CS No.206231/2016, whereby the application filed by respondent Nos.1 to 4 under Order XXXIX Rule 2A read with Section 151 CPC came to be allowed.

2. The dispute arises out of CS(OS) No.1611/2005, subsequently numbered as CS No.206231/2016, instituted by respondent Nos.1 to 4 against the appellants and respondent Nos.5 and 6 in relation to their claim concerning the equity shareholding and management of M/s Moral Properties (Pvt.) Ltd. The suit, inter alia, concerns the plaintiffs' claim to the equity shares of appellant No.3-company and consequential reliefs in respect

of the company's property, including its land situated at Village Chhawla, New Delhi.

3. During the pendency of the suit, respondent Nos.1 to 4/plaintiffs had filed an application under Order XXXIX Rules 1 and 2 CPC. Vide order dated 29.11.2005, this Court directed that the defendants be restrained from selling, alienating, mortgaging, creating any third-party interest or parting with possession of the movable assets and immovable properties of appellant No.3-company till the next date of hearing.

4. During the subsistence of the aforesaid order, the Board of Directors of appellant No.3-company passed a resolution dated 28.06.2017 whereby 964 fresh equity shares were allotted. Out of the said shares, 737 shares were allotted to appellant No.1/Smt. Veena Solanki, 27 shares to Smt. Om Wati, 100 shares to Smt. Eti Solanki and 100 shares to Sh. S.S. Jauhar. Consequent thereto, the company filed Form PAS-3 with the Registrar of Companies along with the requisite documents.

5. Prior to the aforesaid allotment, the company had 36 issued shares, out of which appellant No.1 held 35 shares and appellant No.2 held one share. After the allotment of the additional 964 shares, the issued share capital stood increased to 1000 shares, with appellant No.1 holding 772 shares, Smt. Om Wati 28 shares, Smt. Eti Solanki 100 shares and Sh. S.S. Jauhar 100 shares.

6. Respondent Nos.1 to 4 thereafter filed the application under Order XXXIX Rule 2A read with Section 151 CPC, alleging that the aforesaid allotment amounted to a deliberate violation of the order dated 29.11.2005. It was contended that the issuance of fresh shares had altered the existing shareholding pattern and had introduced new shareholders, thereby creating

third-party rights and changing the position which existed on the date of the interim order.

7. The appellants contested the application. Their principal submission before the learned Trial Court, and also before this Court, is that shares held by shareholders constitute their personal property and are not the assets of the company. It was thus contended that the allotment of fresh shares could not amount to sale, alienation, mortgage, creation of third-party interest or parting with possession of any movable or immovable asset of the company. Reliance was placed upon the settled principle that a company is a juristic person distinct from its shareholders.

8. The learned Trial Court, after considering the rival submissions, framed the issue as to whether there was any violation/disobedience of the order dated 29.11.2005 by the defendants. The learned Trial Court noted that, pursuant to the resolution dated 28.06.2017, the issued share capital had increased and the existing shareholding pattern had undergone a substantial change, resulting in dilution of the percentage held by the existing shareholders and introduction of new shareholders.

9. The learned Trial Court accordingly held that the aforesaid alteration in the shareholding pattern had the effect of creating third-party rights and adjusting the rights of the existing parties, which was contrary to the restraint contained in the order dated 29.11.2005. Consequently, the application under Order XXXIX Rule 2A CPC was allowed and the appellants were directed to restore the shareholding pattern of appellant No.3-company to the position existing as on 28.11.2005

10. Learned counsel for the appellants has reiterated the submissions made before the learned Trial Court and contended that the impugned order

proceeds on an erroneous understanding of the scope of the order dated 29.11.2005. It is submitted that the said order operated only in respect of the movable and immovable assets and properties of appellant No.3-company and did not impose any restraint upon the issuance or allotment of shares. According to the appellants, shares held by a shareholder constitute property of the shareholder and cannot be equated with the assets of the company. It is, therefore, contended that the allotment of fresh shares could not amount to sale, alienation, mortgage or parting with possession of any asset of appellant No.3-company or creation of any third-party interest in its properties.

11. It is further contended that the allotment of 964 shares was undertaken for the purposes of meeting the requirements of the company and its working capital needs and that, even after the allotment, appellant No.1 continued to hold the majority of the issued share capital. On this basis, it is submitted that there was neither any transfer of the company's assets nor any change in its effective control and, consequently, the allotment could not be construed as a violation of the order dated 29.11.2005.

12. Per contra, learned counsel appearing for respondent Nos.1 to 4 supports the impugned order and submits that the issue before the learned Trial Court was not whether the newly allotted shareholders acquired any proprietary interest in the assets of appellant No.3-company. Rather, the grievance was that, during the subsistence of the restraint order, the appellants altered the very shareholding structure which forms the subject matter of the pending suit. It is submitted that the allotment of 964 fresh shares, including 200 shares in favour of persons who were not shareholders earlier, materially altered the existing position and thereby created third-

party rights in the subject matter of the proceedings. It is further submitted that the appellants could not have unilaterally altered the position during the subsistence of the Court's order without first seeking appropriate clarification or modification from the Court.

13. I have heard learned counsel for the parties and perused the record.

14. It is well settled that a shareholder does not, by virtue of holding shares in a company, acquire any right, title or interest in the property of the company. The company is a juristic person distinct from its shareholders and it is the company which owns its property. In *Bacha F. Guzdar v. Commissioner of Income Tax, Bombay*[1], the Supreme Court held that the interest of a shareholder, whether individually or collectively, does not amount to ownership of the property of the company and that a shareholder, on acquiring shares, becomes entitled to participate in the profits of the company and, upon winding up, in the assets remaining thereafter.

15. The question before this Court is not whether the allotment of shares resulted in transfer of ownership of any movable or immovable asset of appellant No.3-company. The question is whether, having regard to the nature of the dispute pending between the parties and the restraint contained in the order dated 29.11.2005, the appellants could have altered the existing shareholding structure by issuing 964 fresh shares during the subsistence of the said order.

16. The distinction is significant. The subject matter of the suit is not confined to the physical assets of appellant No.3-company. The pleadings and the reliefs sought in the suit concern, inter alia, the rights asserted by respondent Nos.1 to 4 in relation to the shareholding and management of the

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[1] (1954) 2 SCC 563

company. In such circumstances, the effect of the impugned allotment has to be examined not merely from the standpoint of whether any company asset was alienated, but also from the standpoint of whether the existing position between the parties was altered in a manner which affected the subject matter of the pending proceedings.

17. In the present case, the position obtaining prior to the allotment was that appellant No.3-company had 36 issued shares, of which appellant No.1 held 35 shares and appellant No.2 held one share. By virtue of the resolution dated 28.06.2017, 964 additional shares were allotted. Consequently, the issued share capital was increased to 1000 shares and the shareholding pattern underwent a substantial alteration. Further, 100 shares each came to be allotted to Smt. Eti Solanki and Sh. S.S. Jauhar, who were not shareholders under the earlier arrangement. Thus, the act complained of was not a mere change in the internal records of the company; it resulted in the creation of new rights in favour of persons who did not have any shareholding prior thereto.

18. The contention that appellant No.1 continued to hold the majority of the shares also does not advance the case of the appellants. The issue is not confined to whether there was a change in the ultimate majority control of the company. The relevant consideration is whether the shareholding position, which itself formed part of the subject matter of the pending dispute, was altered during the subsistence of the restraint order. A substantial increase in the issued share capital from 36 shares to 1000 shares necessarily had the effect of altering the relative shareholding of the existing shareholders. The fact that appellant No.1 continued to hold a majority thereafter cannot, by itself, render such alteration permissible.

19. The submission that the allotment was necessitated by regulatory requirements or the working capital requirements of the company also does not justify the course adopted by the appellants. Even assuming that the company had genuine commercial or regulatory requirements necessitating an increase in its share capital, the appellants were required to have regard to the subsisting judicial restraint. If any doubt existed as to whether the proposed allotment was permissible under the order dated 29.11.2005, the appropriate course was to seek clarification or modification of the said order before proceeding with the allotment. The appellants, however, proceeded to alter the shareholding structure without obtaining any such permission.

20. The subsequent filing of Form PAS-3 with the Registrar of Companies also assumes significance. The allotment was not merely proposed or contemplated; it was acted upon and the altered share capital was formally reported to the statutory authority. The appellants, therefore, cannot contend that the act was tentative or inconsequential. The fact that the allotment was duly implemented reinforces the finding of the learned Trial Court that the existing position stood altered.

21. The next question is whether such conduct constitutes wilful disobedience so as to attract the jurisdiction under Order XXXIX Rule 2A CPC. It is correct that proceedings under Order XXXIX Rule 2A are quasi-penal in nature and that every technical or inadvertent breach of an injunction would not necessarily warrant action under the provision. In ***U.C. Surendranath v. Mambally's Bakery***[2], the Supreme Court reiterated that the Court must be satisfied that the disobedience was wilful.

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[2] (2019) 20 SCC 666

22. In the present case, however, the act complained of cannot be characterised as an inadvertent or technical departure from the order. The allotment was preceded by a formal resolution of the Board of Directors dated 28.06.2017, pursuant to which as many as 964 fresh shares were allotted and the share capital was increased from 36 to 1000 shares. The appellants were thus conscious of the nature and effect of the transaction. The subsequent filing of the requisite statutory form further demonstrates that the alteration was deliberate and was intended to be given legal effect.

23. This Court is also unable to accept the submission that no third-party rights were created merely because the newly allotted shareholders acquired shares and not any direct interest in the company's immovable properties. The expression "third-party interest" has to be considered in the context in which the interim order came to be passed and the subject matter of the suit. The allotment conferred enforceable rights as shareholders upon persons who had no such rights prior to the allotment and correspondingly altered the rights and percentage holding of the existing shareholders. The consequence was, therefore, a change in the legal and factual position which existed when the restraint order was passed.

24. The direction issued by the learned Trial Court to restore the shareholding pattern existing prior to the impugned allotment is also consequential to the finding of disobedience. Once the Court found that the subsequent allotment had been undertaken in violation of the subsisting restraint, restoration of the position which existed immediately prior to such violation was necessary to ensure the rights of the other parties were protected during pending adjudication of the suit.

25. In view of the foregoing discussion, this Court finds no infirmity in the impugned order dated 09.10.2018 passed by the learned Additional District Judge-03, South District, Saket Courts, New Delhi. The appellants have failed to demonstrate that the learned Trial Court either misdirected itself in appreciating the scope of the order dated 29.11.2005 or erred in holding that the allotment of 964 shares amounted to disobedience thereof.

26. The appeal is, accordingly, dismissed.

27. Pending application, if any, also stands disposed of.

MANOJ KUMAR OHRI, J

AUGUST 3, 2026/*rd*