

A

H.V. JAYARAM

v.

THE INDUSTRIAL CREDIT AND INVESTMENT CORPN.
OF INDIA LTD. AND ORS. ETC.

B

DECEMBER 15, 1999

[K.T. THOMAS AND M.B. SHAH, JJ.]

Companies Act, 1956 :

C

Sections 53 and 113 (2)—Failure to deliver share certificates within the statutory time limit—Summons issued on the criminal complaint filed by the appellant—Applications seeking discharge rejected by the trial court on the ground of lack of territorial jurisdiction—High Court held cause of action arose at the place where the registered office of the respondent company is situated—On appeal, Held: Where documents sent by post, service

D

deemed to be effected by properly addressing, prepaying and posting the letter—Cause of action would arise at the place where the registered office of the company is situated—Posting of certificates within the stipulated time amounts to compliance of Section 113.

E

Sections 205(5) (b) and 207—Dividend warrant addressed to the registered address of the shareholder—Post Office becomes the agent of the shareholder—Loss of dividend warrant is at the risk of the shareholder—Offence of not posting dividend warrant within 42 days would occur at the registered office of the company.

F

The appellant was a purchaser of shares of the respondent company. As the respondent company failed to deliver shares to the appellant within the time limit stipulated under Section 113 (2) of the Companies Act, 1956, the appellant lodged criminal cases before the Special Court for Economic Offences at Bangalore. Respondents' applications for discharge were rejected by the trial court on the ground of lack of territorial jurisdiction which was

G

challenged before the High Court. In view of the fact that documents were sent to the respondent by post, as requested by himself, the High Court held that the cause of action would arise only where the head office of the respondent company is situated. Hence the present appeals.

H

The appellant contented that being a purchaser of shares and a resident

of Bangalore, he was entitled to receive the share certificates at Bangalore and therefore, the cause of action would also arise at Bangalore. A

Dismissing the appeals, this Court

HELD 1.1. Section 113 of the Companies Act, 1956 *inter alia* requires that within three months after the allotment of any shares and within two months after the application for registration of the transfer of any such shares, every company shall deliver, in accordance with the procedure laid down in Section 53 of the Companies Act, 1956, the certificates of all the shares allotted or transferred. Sub-section (2) provides punishment if default is made in complying with Sub-section (1). Reading Sections 113 and 53 together, share certificates are to be delivered in accordance with the procedure laid down in Section 53. A document is to be served either personally or by sending it by post at registered address within India. Sub-section (2) specifically mentions that where a document is sent by post, such service thereto shall be deemed to be effected by properly addressing, prepaying and posting the letter containing the document. Hence, once there is a statutory mode of delivering the document by post and deeming provision of such delivery, the place where such posting is done is the place of performance of statutory duty and the same stands discharged as soon as the document is posted. Hence the cause of action for default of not sending the share certificates within stipulated time would arise at the place where the registered office of the company is situated as from that place the share certificates can be posted and are usually posted. If the addressee is available in the same locality where the registered office of the company is situated, it is reasonable to think that service of document may be effected by personally delivering to him. But if the addressee is residing at a distant place it is unreasonable to expect the company to depute somebody to travel upto that distance to personally deliver it to him. The only usual mode which any company would then adopt is to send to him by post. For such default, as contemplated under Section 113 (1) of the Act, there is no question of any cause of action arising at the place where complainant was to receive postal delivery. Non-delivery of share certificates within the prescribed time limit in accordance with the provisions laid down under Section 53 of the Act is punishable under Section 113(2) of the Act. So, if the documents are posted within stipulated time, there would be compliance of Section 113 and there would not be any offence. B C D E F G

[341-C, D, E, F, G, H; 342-A]

1.2. Section 205 (5) (b) of the Act, which is similar to Section 53, *inter alia* provides that any dividend payable may be paid by cash or a cheque or H

- A** a warrant sent by post directed to the registered address of the shareholder entitled to the payment of the dividend. When the company posts the dividend warrant at the registered address of the shareholder, the post office becomes the agent of the shareholder and the loss of a dividend warrant during the transit thereafter is at the risk of the shareholder. The place where the dividend warrant would be posted is the place where the company has its registered office and the offence under Section 207 of the Act would also occur at the place where the failure to discharge that obligation arises, namely, the failure to post the dividend warrant within 42 days. Same would be the position for the offence punishable under Section 113 of the Act. Cause of action for failure to deliver the share certificates or documents within prescribed time would arise where the registered office of the company is situated. [342-C, D, G]

H.P. Gupta v. Hiralal, [1970] 1 SCC 437, relied on.

- D** *Ranbaxy laboratories limited v. Smt. Indra Kala*, (1994) 24 CLA 203 (Raj.), distinguished.

Upendra Kumar Joshi v. Manik Lal Chatterjee and Ors., (1982) 52 Com Cas 177 (Patna), affirmed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1353-57 of 1999.

E

WITH

Criminal Appeal Nos. 1358-62 of 1999.

- F** From the Judgment and Order dated 28.7.98 of the Karnataka High Court in Crl. P. Nos. 240, 1485, 1548, 1848-1849 of 1996.

N.L. Ganapathi and Abhijit Sengupta for the Appellant.

Ashok H. Desai, R. Sasiprabhu and Ms. Anjali Chandurkar with for the Respondents Nos. 2, 3, 7, 8 and 9.

- G** Dalip Kumar Malhotra and Rajesh Malhotra for the Respondent No. 1.
Parijat Sinha for the Respondents Nos. 5-6.

R. Santhana Krishnan and D. Mahesh Babu for Respondents Nos. 1, 5, 7, 12, in Crl. A. Nos. 1358-62/99.

- H** The Judgment of the Court was delivered by

SHAH, J. Leave granted. A

The only question involved in these appeals is whether the complaint for the offence punishable under Section 113 (2) of the Companies Act, 1956 could be filed only where the registered office of the company is situated or where the complainant is residing.

The appellant had lodged criminal cases before the Special Court for economic offences in Karnataka at Bangalore on the allegation that the respondent companies had committed offences punishable under Section 113(2) of the Companies Act. Criminal Petition Nos. 240, 1485, 1548, 1848 and 1849 of 1996 before the High Court of Karnataka at Bangalore challenged the order passed by the trial court rejecting applications for the discharge on the ground that the Magistrate had no territorial jurisdiction to try the alleged offences. In some cases, companies straightway approached the High Court questioning the order passed by the learned Magistrate issuing summons to them after taking cognizance of the offence. It was pointed out that admittedly the registered offices of the respondent companies are not located in the State of Karnataka but are located either at Bombay or at Gujarat. As against this, the appellant who is a practising advocate contended that he was a permanent resident of Bangalore and letters requesting the company to transfer the shares and to send memorandum, articles of association, balance sheets etc., were sent from Bangalore to the registered offices of the companies and, therefore, cause of action also arose at Bangalore. The High Court after considering the various decisions relied upon by the learned counsel for the parties arrived at the conclusion that under the provision of Section 53 of the Companies Act two modes are prescribed for serving the documents, one to serve personally and the other by post. As the documents were sent to the respondent by post, as requested by him, the cause of action would arise only where the head office is situated. The Court, therefore, arrived at the conclusion that having regard to Section 201 of the Cr.P.C., the Magistrate is required to return the complaint for presentation before the proper court with an endorsement to that effect. B
C
D
E
F

The learned counsel appearing on behalf of the appellant (complainant) strenuously contended that the order passed by the High Court is, on the face of it, erroneous because admittedly the appellant is residing at Bangalore. Being purchaser of the shares, he was entitled to get the share certificates at Bangalore and, therefore, cause of action would arise at Bangalore also. For this purpose, he relied upon the decision rendered by Rajasthan High Court in *Ranbaxy Laboratories Ltd. v. Smt. Indra Kala*. (1997) 24 CLA 203 (Raj.). G
H

A As against this, learned senior counsel, Mr. Desai submitted that the order passed by the High Court is in accordance with the provision of Section 113 read with Section 53 of the Companies Act. He referred to the decision rendered by the Patna High Court in *Upendra Kumar Joshi v. Manik Lal Chatterjee and Others*, (1982) Vol. 52 Company Cases 177 (Patna). He submitted that the litigation is frivolous and it should be discouraged.

B

For appreciating the contention raised by the learned counsel for the parties, we would refer to the relevant parts of Sections 53 and 113 of the Companies Act, which are as under:

C

“53. Service of documents on members of company.—(1) A document may be served by a company on any member thereof either personally, or by sending it by post to him to his registered address, if any, within India supplied by him to the company for the giving of notices to him.

D

(2) Where a document is sent by post—

E

(a) service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, provided that where a member has intimated to the company in advance that documents should be sent to him under a certificate of posting or by registered post with or without acknowledgement due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member; and
(Emphasis added)

F

(b)

(3)

(4)

(5)

G

113. Limitation of time for issue of certificates.—(1)—[Every company, unless prohibited by any provision of law or of any order of any court, tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver,

H

in accordance with the procedure laid down in section 53, the certificates of all shares, debentures and certificates of debenture stocks allotted or transferred;

Provided.....]

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(3)"

Section 113 *inter alia* requires that within three months after the allotment of any shares and within two months after the application for the registration of the transfer of any such shares, every company shall deliver, in accordance with the procedure laid down in Section 53, the certificates of all shares allotted or transferred. Sub-section (2) provides punishment if default is made in complying with sub-section (1). Reading Sections 113 and 53 together, share certificates are to be delivered in accordance with the procedure laid down in Section 53. A document is to be served either personally or by sending it by post at registered address within India. Sub-section (2) specifically mentions that where a document is sent by post, such service thereof shall be deemed to be effected by properly addressing, prepaying and posting the letter containing the document. Hence, once there is a statutory mode of delivering the document by post and deeming provision of such delivery, the place where such posting is done is the place of performance of statutory duty and the same stands discharged as soon as the document is posted. Hence the cause of action for default of not sending the share certificates within stipulated time would arise at the place where the registered office of the company is situated as from that place the share certificates can be posted and are usually posted. If the addressee is available at the same locality where the registered office of the company is situated, it is reasonable to think that service of documents may be effected by personally delivering to him. But if the addressee is residing at a distant place it is unreasonable to expect the company to depute somebody to travel upto that distance to personally deliver it to him. The only usual mode which any company would then adopt is to send it to him by post. For such default, as contemplated under Section 113(1), there is no question of any cause of action arising at the place where complainant was to receive postal delivery. What is punishable under sub-section (2) of Section 113 is non-delivery, in accordance with the

A

B

C

D

E

F

G

H

A provision laid down under Section 53, of the certificates of shares within prescribed time. So, if the documents are posted within stipulated time, there would be compliance of Section 113 and that there would not be any offence.

In *H.P. Gupta v. Hiralal*, [1970] 1 SCC 437, the Court considered a similar provision of Section 207 of the Companies Act, which provides for payment of dividend within 42-days of its declaration by a company and its non payment within stipulated period is punishable. Section *inter alia* provides that where dividend is declared by the company but has not been paid, or warrant in respect of thereof has not been posted within 42-days from the date of its declaration, to any shareholder entitled to the payment of dividend, then it would be an offence punishable under Section 207. In that case, Court also considered Section 205(5)(b), which is similar to Section 53, which *inter alia* provides that any dividend payable may be paid by cash or a cheque or a warrant sent by post directed to the registered address of the shareholder entitled to the payment of the dividend. The Court held that when the company posts the dividend warrant at the registered address of the shareholder, the post office becomes the agent of the shareholder and the loss of a dividend warrant during the transit thereafter is at the risk of the shareholder. The Court further held that the place where the dividend warrant would be posted is the place where the company has its registered office and the offence under Section 207 of the Act would also occur at the place where the failure to discharge that obligation arises, namely, the failure to post the dividend warrant within 42-days. In the facts of that case, the Court observed thus: -

“.....The venue of the offence, therefore, would be Delhi and not Meerut, and the Court competent to try the offence would be that Court within whose jurisdiction the offence takes place, i.e., Delhi. This should be so both in law and common-sense, for, if held otherwise, the directors of companies can be prosecuted at hundreds of places on an allegation by shareholders that they have not received the warrant. That cannot be the intention of the Legislature when it enacted Section 207 and made failure to pay or post a dividend warrant within 42-days from the declaration of the dividend an offence.”

Same would be the position for the offence punishable under Section 113 of the Act. Cause of action for failure to deliver the share certificates or documents within prescribed time would arise where the registered office of the company is situated.

However, learned counsel for the appellant relied upon the decision of Rajasthan High Court in *Ranbaxy Laboratories Ltd. v. Smt. Indra Kala*, (1997) 24 CLA 203 (Raj.). In the said case, complaint was filed before the Judicial Magistrate at Jaipur in Rajasthan for the offences punishable under Section 113 of the Act against the directors and officers of the company alleging that the complainant had purchased 200 shares of the Company and had duly sent such shares to the head office of the company for registration of the transfer in its books, but despite repeated requests, reminders and efforts made by her, the Company did not register the transfer of the shares in her name. Registered office of the company was at Delhi. The High Court negatived the contention of the company that Judicial Magistrate at Jaipur did not have jurisdiction to deal with the case by holding thus: -

“Company collects money from the public at large by selling its shares and transactions of sale and purchase are governed by the provisions of the Companies Act. Registration of the transferred shares is one of the duties of the company in the course of conducting its business according to the provisions of law. Therefore, the interest of the members of the public transacting such business cannot be allowed to be defeated on the plea that relief to the aggrieved persons can be granted only at the place where the office of the company is located.”

In our view, it appears that the attention of the learned Judge was not drawn to the decision rendered by this Court in *H.P. Gupta v. Hiralal*, [1970] 1 SCC 437 and also to Section 113 of the Act, which *inter alia* provides that company shall deliver the documents, such as, certificates of shares, debentures and certificates of debenture stocks allotted or transferred in accordance with the procedure laid down in Section 53. Section 53 prescribes the mode of delivery *inter alia* by sending the document by post at registered address and sub-section (2) is the deeming provision for delivery of such letter. In *Upendra Kumar Joshi v. Manik Lal Chatterjee and Others*, (1982) (Vol. 52) Company Cases 177 (Patna), the Patna High Court has followed the decision rendered by this Court in the case of *H.P. Gupta* (Supra) and has rightly arrived at the conclusion that the cause of action would arise at the place where registered office of the company is situated.

In the result, the aforesaid appeals are dismissed.

R.C.K.

Appeals dismissed.