

THE JUDICIAL TREATMENT OF SCOPE AND LIMITS OF JURISDICTION TO RECTIFY THE REGISTER OF MEMBERS

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INTRODUCTION

Register of members is discussed under S.88 of the companies Act, 2013ⁱ that every company must maintain these registers in prescribed manner but the Rectification of register of members has been explained in (Section) S.59 of the companies Act, 2013.ⁱⁱ which basically means the person who claims to be the members of the company and when his rights is being violated as a member like – his name been omitted or added without any sufficient cause etc then he can take action for rectification accordingly. Membership is a very important right which includes lots of rights like- voting, name, extent of shareholding etc so it is often contested by the members for ratification and considered to be an important right. But prior to S.59, 2013 act, this right was being filled under S.155 under sub-section 2(11) and Section 10 of the company court of the 1956 Actⁱⁱⁱ. Later this section 155 was amended and repealed in the year 1988 and just after 1991 Company Law Board (CLB) was formed and this right was filled under S.111 and also S111A was introduced in the year of 1997^{iv} regarding the rectification of members. But for as of now it is administered by S.59 of the 2013 Act, which confers most of the power to the National Company Law Tribunal (NCLT) to look after the rectification of the register of members.

To answer the question related to the jurisdiction of the rectification of the register of members. First we need to look at the progression of the case laws and how it developed over time and

came down to what it is today. This essay will mainly focus on two cases Firstly *Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers^v* (Ammonia supplies case) and Secondly *Shashi Prakash Khemka v. NEPC Micon^{vi}* (Khemka case). Khemka case is a recent development in the matter and is a very debatable case as it has overruled Ammonia case (its predecessor) and we will try to dissect both the cases to answer our research questions .

RESEARCH QUESTIONS

1. Whether NCLT has wider jurisdiction to decide over the rectification of register of members than the CLB OF 1956?
2. Whether under the 2013 Act, the civil court being devoid of hearing the issues related to rectification of register of members is justifiable or not?

HYPOTHESIS

1. Only after giving a cursory look over the matter, one can clearly see the extensive Scope of jurisdiction enjoyed by the NCLT today as in contrast to the restrictions imposed by the Ammonia Case on NCLT's predecessors (CLB).
2. If we look at the recent pronouncement of the Khemka judgment it is clear that the judges meant to provide exclusive jurisdiction to the tribunal and specifically mention S.430 of the company Act, 2013^{vii} to exclude the jurisdiction of the Civil Court in matters of ratification of register of members to save time of the parties for a speedy justice system, as these cases would often go to the civil court, which would take a lot of time. On the face of it this looks like a justifiable reason to take away civil court's jurisdiction.

SCOPE

We will specifically look at the Khemka case judgment as it is the most recent and important case in the matter at hand also its validity is very debatable and might need reconsideration in

regards to the jurisdiction of the rectification of register of members. So the research question regarding validity will mostly be answered through that.

METHODOLOGY

This essay will mostly use Qualitative, Critical and Comparative analysis to answer our questions and critically evaluate the material to give out the analysis.

AMMONIA SUPPLIES CASE

This was the case which was precedent to the scope of rectification of register of members under 1956 Act. In this case the Supreme Court was hearing a pre- 1991 case under S.155 before the Company board but the case was pretty even in comparison to the post 1991 law which would come under S111 and S111A of the CLB. Here the court stated that the process of rectification was of a “summary nature” and that the company court would have an exclusive jurisdiction to decide on the matter and also “any question raised within the peripheral field of rectification”.^{viii} So it was basically held that there was an implied bar on the jurisdiction of the civil courts but in case where the dispute was of a civil rights nature, denial or title, basically any dispute regarding any fact which would be the basis for the right of a member, the company court would have a choice to send the matter to the civil court first to seek relief and get adjudicated by the civil court.

The court also said that the company court should look into the material of the case that whether it is complicated or not, if the dispute can be seen on the face of it and can be easily resolved like of a fraud, then it should be decided by the company court and not dismissed just because it was held as fraud.

So from the rational of Ammonia case we can infer that basically there are two types of claims- Firstly those which can be easily rectified, let us call them as ‘solid claims’ and ‘Secondly’ we have claims which are not really within the ambit of rectification like those in cases of dispute of title or civil rights or basic facts etc, let us call them as ‘serious claims’. Thus, in the case the court said that there will be an implied bar on the jurisdiction of civil courts in rectification

related to 'solid claims' and the company court's jurisdiction was exclusive under S.155 and S.111 of the 1956 Act. But in case of the serious claims the company court has jurisdiction to transfer the claim to a civil court to decide the issue first.^{ix}

Therefore to give the claimant an option to go to the civil court in case of a 'serious claim' shows a two-fold process Firstly where "summary nature" of a dispute shows that it was a much more complicated issue and needed more evidence for its ratification thus sending it to a civil court, Secondly the limited understanding and meaning of the word ratification. Thus, in case of a serious claim where the adjudication is more than of ratification, so it falls outside the purview or scope of company court's jurisdiction.^x

KHEMKA CASE

In this case the Supreme Court came across a claim where the claimant had gone to the CLB under S111A of the 1956 Act to get a rectification, but the CLB had refused his request and stated to hear the matter on merits. This was challenged under the Madras High Court and the court had reversed the decision and sends it to the civil court. But later it was challenged under the Supreme Court and the court reversed the judgment of the High Court and said that if it was to be adjudicated under the scope of S.155 then it could have wider approach, and could be rerouted to the civil court as stated in the Ammonia case but since further legal developments have been made, this old approach would cause hindrance to the present case as now it is adjudicated by the S.59 of the companies Act, 2013 and the power of adjudication lies completely in the hands of NCLT and also S.430 of the Act clearly bars the jurisdiction of the civil court.

The approach taken by the court in this case is very simple and superficial; it only looks at the law as it is mentioned on the paper. Yes, S.59 says that NCLT has complete power to adjudicate the matter related to rectification and S. 430 excludes the jurisdiction of the civil court but they had to also look at the underlying principle and ratio of the Ammonia judgment and do a comparative analysis of the 1956 Act and 2013 Act then they would have probably understood the reasoning behind the rerouting to the civil court in case of a 'serious claim' rather they said that "S.430 of the Act is widely worded".

If you look at the 1956 Act and 2013 Act both of them talk about rectification and deal with the same type of claims but the only deference is related to ouster of the jurisdiction of civil court i.e. earlier it was an implied bar but now it is an express bar on the jurisdiction as mentioned in S430 of the 2013 Act but it does not do anything new so in essence S430 is of no use. This judgment also fails to answer a key point regarding the meaning of the word 'rectification' which was mentioned in the Ammonia case and does not clarify the doubt regarding the summary nature of the claim under S.59.

CONCLUSION

If we look at the Khemka's judgment it puts heavy emphasis on S.430 of the 2013 Act, which expressly bars the jurisdiction of the civil court but if we analyze the Ammonia judgment then it will be clear that "the civil court jurisdiction is reduced only to the extent that the NCLT has been given power". So to answer our first research question that whether NCLT has a wider jurisdiction to decide over the rectification of register of members than the CLB of 1956? No it does not confer more power rather NCLT has less jurisdiction in comparison to CLB of 1956 as we have seen above that the meaning of rectification is almost identical and nothing new has been added under S.59 of the 2013 Act and how S.430 was almost redundant. It also does not shed light upon the summary nature of the proceedings under S.59 and finally it does not even talk about S.111(7) and S.111A(7) under ^{xi}the 1956 Act which gives power to the CLB regarding "question of power" and "any question which is necessary in connection with the application of rectification" and despite of such great provisions it still reroutes the claims towards the civil jurisdiction but S.59 completely omits such great provisions and as a result shrinks NCLT's jurisdiction in comparison to CLB.

The answer to our next research question that whether under the 2013 Act, the civil court being devoid of hearing the issues related to rectification of register of members is justifiable or not? No it is not as it has been wrongly inferred in the Khema case by the judges in regards to S.430 of the 2013 Act, which they say have a strict application but failed to acknowledge the underlying principle in the Ammonia case as explained in the above section. But it is also well known that if a wrong has been proved and proper remedy has not been provided to the claimant then they might still get to represent in the civil court in accordance with the principle of natural

justice. Similarly to understand the real essence S.430 of the 2013 Act, it must be read in consonance with S.9 of the Code of Civil procedures^{xii}, 1908 and Company act, 1956. So just by changing an express bar to an implied bar does not mean that jurisdiction of the civil court has been excluded. Therefore, giving NCLT a blanket approval under S.430 to all the claims that arise out of S.59 of the 2013 Act seems unreasonable and not what the legislature would have intended.

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ENDNOTES

ⁱ The Companies Act, 2013, §88.

ⁱⁱ The Companies Act, 2013, §59.

ⁱⁱⁱ The Companies Act, 1956, §155.

^{iv} The Companies Act, 1956, §111.

^v (1998) 7 SCC 105.

^{vi} (2019) SCC OnLine SC 223a.

^{vii} The Companies Act, 2013, §430.

^{viii} *Supra* note 5.

^{ix} Goutham Shivshankar, ‘The New Law On Rectification Of Register Of Members Of Companies – A Need To Reconsider The SC Judgement In Shashi Prakash Khemka V. NEPC’, <https://livelaw-in.nujs.remotlog.com/columns/need-to-reconsider-the-sc-judgement-in-shashi-prakash-khemka-v-nepc-153063> (last visited on 1 September 2021).

^x *Id.*

^{xi} The Companies Act, 1956, §111(7).

^{xii} The Code of Civil Procedure, 1908, §.9.