



damages for the loss they have caused to the plaintiffs. It is further averred that at the time of inductions of present directors in the plaintiff no. 1 company, the directors were Mr. Rakesh Kumar Sinha & Mr. Kashi Nath Shukla. They have resigned from the post of director on 08.03.2021, which was duly reflected in the MCA records as is apparent from the Form DIR 12 filed by the company. It is further averred that Mr. Rakesh Kumar Sinha and Mr. Kashi Nath Shukla were the directors of the company, and present directors shown their interest to take over the management of the company, accordingly, they approached to one Mr. Santosh Kumar Chaubey-defendant no.3 and thereafter, defendant no.3 introduced the defendant no.5 who is also the statutory auditor of the company namely Mr. Pradeep Kumar Manglik with present directors, and introduced the necessary formalities for handing over the complete control, ownership and the management of the company. It is further averred that plaintiff no. 2 & 3 met with the defendant no.5 i.e. CA Pradeep Kumar Manglik, statutory auditor of plaintiff company at the registered office of the plaintiff company situated at 2FS-505, School Block, Shakarpur, Delhi-92, which is also the office of Defendant no.5 on 02.03.2021 to discuss the modalities and proposal for taking over the management of Company as well as for transfer of the shares of plaintiff company. It is further averred that defendant no.3 claimed to be owner of 74,500 shares of the plaintiff company and also offered 5000 shares held by his wife namely Ms. Ranjana Malviya i.e. defendant no.4. The total consideration for take over the management of the company was agreed between as Rs.171 lakhs out of which Rs. 75 lakhs was for purchase of equity shares of the defendant no. 3 and 4 and balance Rs. 96 lakhs was

to be introduced as unsecured loan to repay the unsecured loans of defendant no. 1 & 2 to the tune of Rs. 107.22 lakhs and Rs.43.79 lakhs respectively aggregating to Rs. 151.01 lakhs. Thereafter plaintiff no.2 requested to defendant no. 3 and 5 to share the relevant documents of the plaintiff company for verification purposes by his Chartered Accountant & Company Secretary for final decision making. Sh. Pradeep Kumar Manglik provided the copies of the company documents like Form DIR 12, Memorandum & Article of Association. Defendant no.5 Pradeep Kumar Manglik, CA of the company informed that the annual returns of the company for FY 18-19 & FY 19-20 have not been filed & confirmed that they would be filed shortly. The transfer of shares from erstwhile shareholders to the plaintiff no. 2 & 3 took place on 08.03.2021. Board of Directors in its meeting held on 05.03.2021 took notice of the transfer of shares of Mr. Santosh Kumar Chaubey & Ranjana Malviya in favour of plaintiff no.2 who was appointed as a director of the plaintiffs no.1-company. It is further averred that Board of Directors of Company again met on 08.03.2021 at 11.00 a.m., wherein they unanimously approved, the transfer of shares of defendant no.3 & 4 in favour of plaintiffs. The share transfer was signed by erstwhile Directors of the plaintiff company namely Mr. Rakesh Kumar Sinha and Kashi Nath Shukla. The Board of Directors of plaintiff company again met on 08.03.2021 at 11 a.m. wherein the share transfers of defendant no.3 & 4 were approved in favour of plaintiffs. The share transfer register was signed by two the then directors Mr. Rakesh Kumar Sinha & Mr. Kashi Nath Shukla. It is further averred that in line with the agreed method of sale of shares and transfer of ownership, control and management of the plaintiff company,

based on the information given, plaintiff no.2 made the payment from his individual account to tune of Rs.74,50,000/- to defendant no. 3 & Rs. 50,000/- to defendant no.4 for 5000 shares of the plaintiff no.1. Plaintiff no.2 also transferred Rs. 96 lakhs on 22.04.2021 to the bank account of plaintiff company for clearing the unsecured loan as agreed between the parties for onward settlement of alleged unsecured loans standing in favour of the defendant no. 1 & 2 in the books of accounts of the plaintiff no.1 company. It is further averred that defendant no.1,2 and the defendant no. 5 through his firm i.e. defendant no. 6 are unlawfully and wrongfully trying to control the plaintiff no.1 company under the garb of frivolous and fabricated accounting entries as well as misconceived litigation. Defendant no. 1,2 and 5 are further liable to pay an amount of Rs.10 lakhs as damage. It is further averred that cause of action and right to sue firstly arose in the first week of November 2021 when defendant no.5 Mr. Manglik disclosed the existence of fictitious accounting entries in the books of accounts of plaintiff no.1 created through his firm i.e. defendant no.6. Further cause of action arose on 16.12.2021 when bank entries were provided by Bank of Maharashtra, and further when the plaintiffs have received the notice in company petition no. 205 (ND) of 2021 (SRC Realtors Pvt. Ltd. & another Vs. Ganga Kaveri Construction Pvt. Ltd. issued by hon'ble National Company Law Tribunal at New Delhi), whereby the defendant companies setup a claim of being shareholders of the plaintiff no.1, which claim is adverse to plaintiff no. 2 & 3. It is further averred that this hon'ble court has territorial jurisdiction to entertain and decide the present suit as cause of action to file the present suit has accrued within the territorial jurisdiction of this court.

Hence, the plaintiffs prays for a decree of declaration thereby declaring that the entries in the books of accounts of plaintiff no.1 as filed by the defendant no.5 pertaining to defendant no. 1 & 2 are false and fictitious, and do not bind the plaintiff no.1 company. Plaintiff further prays a decree of declaration declaring that the defendant no.1 & 2 have not paid any subscription money, received any share certificates and are not shareholders of the plaintiff no.1 company.

Summons were issued to defendants and upon service of summons, defendant no. 1 & 2 have appeared and filed the written statement. Defendant no. 3 to 5 have not appeared before the court and they were proceeded ex-parte vide order dated 29.11.2024.

Defendant no. 1 & 2 have filed their joint written statement. It is submitted by the defendants that the present suit is not maintainable for being barred by Section 430 of the Companies Act 2013, the suit is also not maintainable since the plaintiffs do not have any cause of action in view of the Company Petition No. 205 of 2021 filed by the defendants before Hon'ble National Company Law Board. The suit also deserves to be dismissed as the plaintiffs has not approached before the court with clean hands and have suppressed material facts. It is further submitted that suit is barred u/s 430 of Companies Act 2013 since the prayers sought in the suit are under the exclusive jurisdiction of the Hon'ble NCLT. It is further submitted that Company could have revised the books of accounts after seeking approval from the Hon'ble NCLT u/s 131 r/w section 129 and section 134 of Companies Act, 2013. It is further submitted that plaintiffs could have opted to file application for the specific rectification of registers of members/ shareholders before the

Hon'ble NCLT if they had any grievance. The aforesaid is already covered u/s 59 of the Companies Act, 2013. It is further submitted that section 241 of the Companies Act, 2013 permits an action to be brought in the company's interests including in respect of operations of the company and it is a settled law that hon'ble NCLT exercise wide range of powers available under Section 242, such as those that give the hon'ble NCLT the power to make an order to bring to an 'end the matters complained of'. Therefore other subsequent prayers as sought by the plaintiffs which are dependant upon prayer 1 & 2 which comes under the purview of Section 241-242 of the Companies Act, 2013 are also barred u/s 430 of the Companies Act, 2013. It is further submitted that prior filed proceedings before the Hon'ble NCLT in Company Petition No. 205 of 2021 between similar parties cover all the issues raised by the plaintiffs before this court and the issues in the present suit and issues pending before NCLT are inextricably intertwined. It is further submitted that when the defendants itself have challenged illegal shareholding of the plaintiff no. 2 and 3 in the plaintiff no.1 company, all the consequential illegal and oppressive acts will be rendered void-ab-initio. It is further submitted that there is no cause of action as the plaintiff no.2 is not a legitimate shareholder of plaintiff no. 1 company. In view of above, it is therefore requested that present suit is not maintainable before this court and same be dismissed.

Arguments heard. Record perused and considered.

Having perused the submissions and material available on record, the following issue arise for consideration in the present suit:-

*“Whether the present suit is maintainable before this court to decide the reliefs as sought by the plaintiffs or not”.*

The plaintiffs have made allegations against the defendant in their plaint stating that the defendant no.5 / Auditor of plaintiff no. 1 company with the collusion of one Sh. Purushottam Kumar Chobey/ director and promotor of defendant no.1 & 2 companies created false and frivolous entries in the books of plaintiff no.1 company. These entries are indicating that the defendant no.1 and 2 companies are share holders of plaintiff no.1 company, however, the defendant no.1 & 2 have never paid any subscription money /consideration price for purchasing the shares of plaintiff no.1 company.

It is argued by Id. Counsel for plaintiff that in case the facts averred in the plaint are based on fraud committed by the defendants, the jurisdiction of civil court is not barred. Hence, the suit of the plaintiff is maintainable and this court has jurisdiction to try the present matter.

To support his arguments, Id. Counsel for plaintiff relied upon following rulings:

1. Chalasani Udaya Shankar & ors. Vs. M/s Lexus Technologies Pvt.Ltd. & ors. Civil Appeal No.5735-5736/2023.
2. Srimanta Kumar Tripathy and Anusuya Tripathy Vs. S.S. Mining and Infra Pvt. Ltd. CP (B) No.38/CB/2022 DD 15.05.2023.
3. Mukesh Jaiswal Vs. Pool Chand Gupta & ors. 2022 SCC Online Cal 3957.

Ld. Counsel for defendant argued that the plaintiff no.2 & 3 has no locus standi to file the present suit since the defendant no.1 & 2 has already filed a company petition before Hon’ble National Company Law

Tribunal to challenge their membership and directorship. It is further argued that the prayer clause (a) of plaint is vague as there is no particulars of entries mentioned which are being sought to be declared as null and void. It is further argued that other prayers in the plaint are related to consequential relief which cannot be granted if this court has no jurisdiction to grant main relief. To support his arguments, ld. Counsel for defendant has relied upon rulings in **Dhulabhai & ors. Vs. The State of Madhya Pradesh & Anr. (April 5, 1968 DOD)**.

On perusal of plaint, it is clear that the plaintiff has categorically mentioned the fraudulent act of the defendants in para no.5 (xvii) to 5 (xxxii) of the plaint. The plaintiffs have also prayed for other relief with regard to permanent injunction related to the disturbance created by defendant no.1 to 5 in the peaceful functioning of plaintiff no.1 company. Section 58 and 59 of The companies Act 2013 deals with the refusal by company to transfer of share but in this case amount allegedly given by the plaintiff no.2 & 3 to the plaintiff no.1 for clearing unsecured loan of defendant no.1 & 2 and the existence of entries in the name of defendant no. 1 & 2 in the books of plaintiff no.1 company without any subscription paid is under dispute, therefore, before transfer of management in favour of plaintiff no.2 & 3, it is to be declared that the recording of shares in the name of defendant no.1 & 2 have been made fraudulently. The specific case of the plaintiffs is of fraud and the said fraud is to be adjudicated upon adducing evidence by both the parties before the civil court. The present case is related to the issue which involves issuance of shares / creation of entries by the Auditor of the company in derogation of his fiduciary with the company and whether

the said act of the auditor/ defendant no.5 is in contravention of the provisions of companies act 2013 or not is to be decided by the civil court. In view of the above, this court finds that the civil court is not barred to inquire into the allegation of fraud specifically when the plaintiff has prayed for declaration of recording the name of defendant no.1 & 2 as share holder in the books in the register of plaintiff no.1 company fraudulently. Accordingly, the suit filed by the plaintiff is maintainable.

Typed to the dictation directly,  
corrected and pronounced in  
open court on 20.02.2025

(Pooja Jain)  
District Judge-03/NB,  
East/KKD Courts, Delhi.