

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam.

COMPANY MATTER NO. 191 OF 2017.

An application under section 43 of the
Companies Act, 1994.

AND

IN THE MATTER OF:

Abu Taber and others.

----- Petitioners.

-Versus-

Newtex Group of Companies and others.

----- Respondents.

Mr. Shahjada Al Amin Kabir, Advocate

----- For the Petitioners.

Mr. Kazi Ershadul Alam, Advocate with

Mr. Ragib Kabir, Advocate

----- For the Respondent Nos.1,2.

Mr. Mejbahur Rahman, Advocate

----- For the Respondent Nos.3-5.

Judgment Delivered On 15.09.2026.

Md. Toufiq Inam, J.

This application has been filed under section 43 of the Companies Act, 1994 read with the relevant provisions of the Companies Rules, 2009, seeking rectification of the register of members of Respondent Nos. 1(a), 1(b), 1(c) and 1(d), by entering the names of the petitioners against the shares which, according to them, originally belonged to late Abul Qasem Babul and subsequently devolved upon the petitioners through late Haji Abul Khair.

The principal controversy, therefore, is not merely whether the petitioners have a claim of inheritance in respect of the shares of

late Abul Qasem Babul. The more fundamental question is whether, in the circumstances of the present case, the subsequent entries in the respective registers of members can be said to have been made without sufficient cause so as to attract the jurisdiction of this Court under section 43 of the Companies Act, 1994.

Background facts

The undisputed or substantially admitted factual background, insofar as relevant for disposal of the present application, is that late Abul Qasem Babul was a shareholder of the companies in question and died on 25.09.1999. According to the petitioners, he left his father, late Haji Abul Khair, his wife Rajia Qasem, two sons, namely Rajibul Qasem and Sajibul Qasem, and a daughter, Sabrina Qasem, as his heirs.

The petitioners contend that under the applicable law of inheritance late Haji Abul Khair inherited a share in the estate of his deceased son Abul Qasem Babul and that, upon the subsequent death of Haji Abul Khair on 19.02.2000, the said interest devolved upon the petitioners. In the meantime, Rajia Qasem and the children of late Abul Qasem Babul instituted Succession Case No. 240 of 2000 and obtained a succession certificate on 16.05.2000. It is the petitioners' case that Haji Abul Khair was not included in the said proceeding and that the petitioners came to know of the said succession certificate much later.

According to the petitioners, after learning of the said certificate, they instituted Revocation Miscellaneous Case No.1433 of 2008 and, by order dated 11.01.2012, the learned Joint District Judge, 3rd Court, Dhaka revoked the earlier succession certificate. Thereafter, on 08.02.2012, a fresh succession certificate was issued in favour of

the petitioners. The petitioners thereafter approached the concerned companies seeking recognition of their alleged inherited interest and rectification of the respective registers of members. According to them, despite production of the subsequent succession certificate, the companies neither recognised their claim nor rectified the registers.

The respondents, on the other hand, contend that after the death of Abul Qasem Babul, his wife and children were recognised on the basis of the succession certificate dated 16.05.2000 and that the shares were thereafter dealt with pursuant to a Memorandum of Understanding dated 08.07.2001 and the subsequent documents, including Form 117 dated 05.11.2001. It has further been stated that the MoU was entered into between the then Managing Director, Akram Khan, on the one hand and Rajia Qasem and the three children of late Abul Qasem Babul on the other, with petitioner No.3 also being associated with the arrangement. Arbitrators were appointed and an award was made in respect of the distribution of assets and liabilities. The amount initially determined at Tk.1,53,37,917/- was subsequently enhanced to Tk.1,65,00,000/-. The respondents' case is that the said amount was paid as consideration for the shares and that Respondent Nos.3-5 and their deceased father acquired the shares from Rajia Qasem and the children pursuant to the said arrangement. Their further case is that the companies acted upon the succession certificate then subsisting and the subsequent transfer documents in the ordinary course and in good faith.

Submissions of the petitioners

Mr. Shahjada Al Amin Kabir, learned Advocate appearing for the petitioners, submits that the petitioners are the lawful successors to

the shares in question and that the earlier succession certificate was obtained without impleading late Haji Abul Khair, who was one of the heirs of late Abul Qasem Babul. He submits that the said certificate having subsequently been revoked and a fresh certificate having been issued in favour of the petitioners, the foundation upon which the subsequent entries in the register were made has disappeared. He further submits that the children of late Abul Qasem Babul were minors when the MoU and Form 117 were executed and, therefore, their alleged transfer of the shares could not lawfully divest the petitioners of their inherited interest. Reliance has been placed, inter alia, on *Habib Bank Ltd. v. M/s K.M. Enterprise*, 10 ADC (2013).

It is further submitted that the persons responsible for the affairs of the companies were personally acquainted with late Haji Abul Khair and were aware of the family relationship and the death of Abul Qasem Babul. Consequently, according to the petitioners, the respondents cannot invoke the protection available to a person who has acted bona fide and without knowledge of the defect. He also submits that the arbitration proceedings arising out of the MoU cannot bind the petitioners, as they were not parties to the agreement or arbitration and the Articles of Association did not confer any authority to determine title to the shares by arbitration. It is further submitted that section 43 of the Companies Act confers a wide jurisdiction upon this Court to determine questions of title necessary for rectification and that the Court is not confined to the entries appearing in the register. Reliance has been placed upon *Haque Brothers v. Shamsul Haque*, 39 DLR 290 and *Abdur Rahman v. Swadesh Paribahan Ltd.*, 16 BLC 416.

Submissions of the respondents

Mr. Kazi Ershadul Alam, learned Advocate appearing for the respondents, submits that the application suffers from a fundamental defect in that a single proceeding has been brought in respect of four separate companies having separate registers, separate shareholdings and separate transactions. Reliance has been placed upon Order II Rule 3 of the Code of Civil Procedure and the decisions in *Jahanara Begum v. Hazera Khatun*, 9 BLC (AD) 27, *Afruz Miah v. Al-Haj Md. Siraj Miah*, 43 DLR (AD) 89, *Krishna Chandra Kabiraj*, AIR 1950 Cal 128 and *Inderpal Singh*, (2005) 140 PLR 696.

He further submits that the transactions complained of took place in 2001 whereas the present application was filed after a delay of about sixteen years. Even according to the petitioners' own case, they had knowledge of the earlier succession certificate in 2008 and obtained the subsequent certificate in 2012. No satisfactory explanation has been given as to why the alleged right was not pursued against the transferees or before the appropriate forum within a reasonable time. It is further submitted that the petitioners are, in substance, seeking to invalidate the MoU, the arbitral proceedings, the Form 117 and the subsequent transfers. Such reliefs involve cancellation, declaration, questions of contractual capacity, minority, authority, consideration and competing title and cannot properly be determined in a summary rectification proceeding under section 43.

He submits that third-party rights have accrued in favour of Respondent Nos.3-5, who allegedly paid substantial consideration and acquired the shares on the strength of the documents and succession certificate then available. Reliance has been placed upon

Shamsul Alam Bhuiyan v. Joint Stock Companies and others, 23 BLC (2018) 215 and *Sher Ali Amir Ali Virjee v. Eastern Industries (Bangladesh) Ltd.*, 43 DLR (1991) 54.

It is also submitted that the companies were entitled to rely upon the succession certificate and that sections 381 and 386 of the Succession Act, 1925 expressly protect good-faith payments and dealings made with the holder of a succession certificate. It is contended that shares fall within the expression "security" for the purposes of Part X of the Succession Act. He further submits that the original transferors have not been impleaded, although the petitioners seek, in substance, to invalidate transactions in which those persons participated. The petitioners have therefore failed to bring before the Court all persons whose rights and obligations would necessarily be affected by the relief sought.

Having heard the learned Advocates for the respective parties, considered their submissions and perused the materials placed before this court, it now proceeds to consider the issues arising for determination in the present application. For clarity and convenience, the issues and findings of this court thereon are discussed under the following heads:

Scope of section 43 of the Companies Act

Section 43(1) of the Companies Act, 1994 empowers the Court to rectify the register where the name of a person has, without sufficient cause, been entered in or omitted from the register, or where there has been default or unnecessary delay in recording the fact of a person having become or ceased to be a member. Sub-section (2) confers a discretion upon the Court either to refuse the application or to order rectification, together with consequential

relief as permitted by law. Sub-section (3) expressly empowers the Court to decide questions relating to the title of a person who is a party to the application and other questions necessary or expedient for rectification.

The jurisdiction under section 43 is, therefore, undoubtedly wider than a mere mechanical examination of the register. The Court may, where necessary, determine title and questions of law. At the same time, the existence of that power does not mean that every dispute relating to shares must necessarily be determined in a proceeding under section 43. The statutory question remains whether rectification is justified and whether the Court can appropriately and effectively determine the controversy within the framework of the proceeding before it. The distinction is important. Where the relevant title can be determined from the admitted documents or from a limited controversy directly connected with the register, the Court may decide it under section 43. Conversely, where the relief necessarily requires a determination of disputed contractual instruments, cancellation of documents, examination of the capacity of minors, determination of competing succession rights, adjudication of fraud, extensive oral evidence or determination of rights of persons who are not parties, the Court must consider whether rectification is an appropriate and effective remedy.

Although section 43 confers a substantive jurisdiction upon the Court, the jurisdiction is not intended to convert every complicated civil dispute concerning a company into a rectification proceeding. The nature of the controversy and the relief actually sought must, therefore, be examined rather than merely the form in which the application is presented.

The competence of the composite application.

This court has considered the objection that the instant application under section 43 of the Companies Act, 1994 is not maintainable as it seeks rectification of the registers of four separate companies on the basis of separate instruments of transfer. There can be no dispute that each company is a separate juristic person and maintains its own register of members, and that any order under section 43 must necessarily relate to the register of the particular company concerned. However, section 43 contains no express prohibition against adjudicating, in one proceeding, claims concerning more than one company. The fact that the shares were transferred through separate Forms 117 is therefore not, by itself, determinative of the procedural question of whether the claims may properly be heard together.

The question of joinder is required to be considered having regard to the principles contained in Order I Rules 1 and 3 and Order II Rule 3 of the Code of Civil Procedure, 1908, as may be applied by the Company Court in an appropriate case. The substance of the principle is whether the reliefs arise out of the same act, transaction or series of transactions and involve common questions of law or fact. In *Jahanara Begum and others vs. Hazera Khatun and others*, 9 BLC (AD) 27, the Appellate Division emphasised the relevance of such transactional connection and common questions. Similarly, in *Afruz Miah vs. Al-Haj Md. Siraj Miah*, 43 DLR (AD) 89, separate transactions were permitted to be considered together where a common foundational fact constituted the basis of the respective claims. Thus, the mere existence of separate instruments or transactions does not, in itself, conclusively require separate proceedings.

In the present case, the impugned transfers concerning the four respondent-companies are not alleged to be four wholly unrelated transactions. The petitioners' challenge is founded upon the same succession event and the same succession certificate pursuant to which the disputed shares in the respective companies were transferred. The validity and legal effect of that common succession foundation constitute a substantial question in relation to all the impugned transfers. Consequently, although the respective transfers are evidenced by separate Forms 117 and the companies maintain separate registers, the determination of the common foundational issue would substantially involve the same evidence and legal questions. Requiring separate proceedings would, in these circumstances, result in repetition of the same inquiry and may also give rise to inconsistent findings concerning the same succession foundation.

This court is therefore unable to accept the contention that the use of the expression “the register of a company” in section 43 necessarily prohibits the petitioners from bringing the connected claims in one proceeding. That expression identifies the particular register which may be rectified; it does not create an absolute procedural bar against the joint adjudication of claims concerning different companies where those claims arise out of a connected series of transactions and involve common questions of law or fact. At the same time, the separate corporate personality of each respondent-company remains unaffected, and any relief under section 43 must be separately directed to the register of the company concerned.

In the facts of the present case, therefore, the four claims are sufficiently connected by their common succession foundation to be conveniently and consistently adjudicated in the present proceeding. The objection that the proceeding is inherently incompetent for misjoinder of parties and causes of action merely because four companies and separate transfer instruments are involved is accordingly rejected. This finding, however, shall not dispense with the petitioners' obligation to independently establish, in respect of each respondent-company, the statutory grounds for rectification under section 43 of the Companies Act, 1994. The application needs to be considered on its substantive merits.

Nature and effect of the succession certificate

The central issue in the present case is the legal effect of the succession certificate dated 16.05.2000 and its subsequent revocation. A succession certificate under Part X of the Succession Act, 1925 is concerned with debts and securities of the deceased. Section 370(2) includes shares of a company within the expression "security". Thus, shares fall within the statutory field in respect of which a succession certificate may operate.

Section 381 is of particular importance. It provides that, with respect to the debts and securities specified in the certificate, the certificate is conclusive as against the persons owing such debts or liable on such securities and, notwithstanding any defect, affords full indemnity to such persons in respect of payments made or dealings had in good faith with the person to whom the certificate was granted. The significance of this provision cannot be overlooked in the present case. The companies were the persons maintaining the registers and dealing with the securities. The relevant question is therefore not simply whether the first

succession certificate was subsequently revoked, but whether, at the time when the companies acted upon it, they had sufficient reason to treat it as operative and whether the dealings were undertaken in good faith.

Section 386 is even more directly relevant to the subsequent consequence of revocation. It provides that where a succession certificate has been superseded or has become invalid by reason of revocation or otherwise, payments made or dealings had in respect of debts and securities specified in that certificate, to or with its holder, in ignorance of the supersession or invalidity, shall be held good against claims under another certificate.

The statutory scheme therefore makes an important distinction between the ultimate entitlement of heirs and the protection afforded to persons who, in good faith, dealt with the holder of a succession certificate. Revocation of a certificate may alter the position of the persons entitled as between themselves, but it does not automatically follow that every transaction previously undertaken by a person holding the certificate becomes void ab initio as against a person who acted in good faith.

This distinction is decisive in the present case. The petitioners cannot succeed merely by establishing that the succession certificate dated 16.05.2000 was subsequently revoked. They must further establish that the dealings upon which the present entries in the register are founded were not protected by the statutory scheme, or that the respondents acted with knowledge of the invalidity of the certificate or otherwise without good faith.

The companies' active participation in the unlawful transaction.

The petitioners contend that the officers of the companies knew the family circumstances of late Abul Qasem Babul and late Haji Abul Khair and, therefore, cannot claim good faith. Mere knowledge that Haji Abul Khair was a member of the family of late Abul Qasem Babul, however, is not equivalent to knowledge that the succession certificate dated 16.05.2000 was invalid or that the persons named therein had no authority to deal with the shares. A company may know the family relationship of a deceased shareholder without having knowledge of a competing legal claim which has not been reflected in the official succession proceeding.

The burden is therefore upon the petitioners to establish something more than personal acquaintance or knowledge of family circumstances. They must demonstrate circumstances from which a lack of good faith can properly be inferred. No sufficient material has been shown to this Court establishing that, at the material time in 2000-2001, the companies had actual knowledge that the succession certificate was defective, that late Haji Abul Khair had asserted a competing claim, or that the persons named in the certificate were legally incapable of dealing with the shares. The subsequent revocation of the certificate in 2012 cannot retrospectively supply such knowledge to the respondents in 2001.

The MoU, Arbitration and Form 117

The petitioners have challenged the MoU dated 08.07.2001, the arbitral proceedings and Form 117 dated 05.11.2001 on several grounds, including minority, want of authority and want of consent. It is necessary, however, to distinguish between two matters. First, whether the arbitral award is binding upon the

petitioners; and secondly, whether the subsequent entries in the register are liable to rectification.

This Court accepts the first proposition advanced by the petitioners to the limited extent that a person who was not a party to an arbitration agreement cannot ordinarily be treated as bound by an adjudication of his substantive rights merely because an award was made between other persons. That, however, does not dispose of the present application. The respondents do not derive their entire case solely from the arbitral award. Their case is founded upon the succession certificate then in force, the subsequent arrangement, the transfer documents and the consideration allegedly paid. Consequently, even if the arbitral award is not binding upon the petitioners, it does not follow automatically that the entries in the registers must be rectified in favour of the petitioners. The Court must independently examine whether the persons dealing with the shares had authority to do so and whether the companies were protected in acting upon the documents and succession certificate then available.

Alleged minority of the transferors

The petitioners have placed considerable reliance upon the alleged minority of the children of late Abul Qasem Babul at the time of the MoU and Form 117. There may well be questions as to the legal capacity of a minor, the authority of a guardian, the nature of the transaction, the benefit accruing to the minor, the effect of the MoU and the consequences of the subsequent transfer. Those are matters which may be material in an appropriate proceeding.

But a further question immediately arises- even if a transaction entered into by a minor is ultimately found to be legally ineffective

against that minor, does that conclusion, itself, establish the petitioners' present entitlement to the shares? In the facts of the present case, the answer is no. The petitioners do not claim through the alleged minor transferees. Their claim is founded upon an asserted inheritance through late Haji Abul Khair. The validity of the transaction between Rajia Qasem, her children and the subsequent purchasers is therefore not synonymous with the petitioners' proof of title. The alleged minority issue may consequently give rise to an independent claim of the minors or their successors against the persons who dealt with their property. It cannot, without a complete adjudication of the competing rights, be treated as clear proof that the petitioners are entitled to be entered in the registers.

Petitioners' title for the purpose of rectification

Section 43(3) permits the Court to determine the title of a person who is a party to the proceeding where such determination is necessary for rectification. The provision does not, however, dispense with the necessity of establishing the title itself. The petitioners must establish not only the devolution from Abul Qasem Babul to Haji Abul Khair and thereafter to themselves, but also that the title so devolved remained available to be entered in the registers at the time of the application.

The fresh succession certificate dated 08.02.2012 undoubtedly constitutes an important piece of evidence in favour of the petitioners. Nevertheless, a succession certificate is not, by itself, a final adjudication of every question of proprietary title between competing claimants. Section 387 itself preserves the right of parties to have substantive questions tried in an appropriate suit or proceeding. Thus, the subsequent certificate cannot be treated as

having the automatic legal effect of cancelling every transaction made during the period when the earlier certificate was operative, particularly where the statute expressly protects good-faith dealings undertaken in ignorance of the invalidity of that certificate.

Good faith and the statutory protection

The chronology assumes particular significance. The first succession certificate was issued on 16.05.2000. The impugned dealings took place in 2001. The challenge to the certificate was initiated only in 2008 and the certificate was revoked in 2012. There is no material before this Court to show that, at the time of the dealings in 2001, the companies had been served with any order restraining them from acting upon the certificate or had been informed of any subsisting adjudication declaring the certificate invalid. The fact that the certificate was later revoked cannot establish that the companies acted without good faith when they dealt with the persons named in the certificate.

This court is of the view that the statutory protection under sections 381 and 386 of the Succession Act cannot be brushed aside while considering the prayer for rectification. The Court is required to give effect to the legislative policy that dealings made in good faith with the holder of a succession certificate should not automatically be undone merely because the certificate is subsequently superseded or revoked.

Delay, acquiescence and accrued third-party rights

The respondents have raised the question of delay. The transactions complained of were completed in 2001. The petitioners' own case is that they acquired knowledge of the earlier succession certificate in 2008, instituted revocation proceedings thereafter, obtained the

fresh certificate in 2012 and yet approached this Court under section 43 only in 2017. It would not be appropriate to hold that a fixed period of limitation prescribed for a suit for cancellation automatically governs every application under section 43. Section 43 contains no express period of limitation. The question of delay must therefore be considered in the context of the equitable and discretionary nature of the relief of rectification and the particular circumstances of the case.

Delay becomes particularly material where, during the intervening period, third-party rights have been created, consideration has been paid, corporate records have been altered, and the persons who participated in the original transactions have acquired or changed their legal positions. Here, the transactions are more than two decades old. The respondents claim to have paid substantial consideration. The original parties to the MoU and transfers are not all before this Court. The petitioners seek to unsettle entries which have remained in the corporate records for a very substantial period.

The Court must therefore exercise considerable caution before directing rectification in a manner which would effectively undo long-completed transactions without a full adjudication of the rights and liabilities of all persons concerned. The principle is not that delay alone extinguishes the petitioners' substantive claim. Rather, the delay, coupled with the statutory protection afforded to good-faith dealings and the accrual of third-party rights, constitutes a compelling reason for refusing the discretionary relief of rectification in the present proceeding.

Rule 22 and notice to the transferees

The respondents have also relied upon Rule 22 of the Companies Rules, 2009, contending that an application for rectification ought to be brought upon notice to the company and, in the case of transfer, to the transferor or transferee. Since Respondent Nos.3-5, who claim through the impugned transactions, are before the Court and have had an opportunity to contest the petition, this Court is not inclined to dismiss the application solely for alleged non-compliance with the procedural requirement of notice.

Nevertheless, the absence of the original transferors remains relevant when the petitioners seek, in substance, to impeach transactions entered into by those persons. The Court should not make an order conclusively determining their rights without their presence where such determination is indispensable.

Question of clean hands

The respondents have further alleged that petitioner No.3 was associated with the MoU and the arrangement from which the impugned transactions arose and that the petitioners have therefore approached this Court without disclosing all material facts. The principle that a person seeking discretionary relief must make a full and candid disclosure is well established. At the same time, an allegation of want of clean hands cannot be accepted merely because a party participated in an earlier arrangement and subsequently asserted a different legal position. The Court must distinguish between an inconsistency in conduct and deliberate suppression or fraud.

In the present case, therefore, this Court does not consider it necessary to record any final finding that petitioner No.3 committed

fraud or deliberately misled the Court. Nevertheless, his alleged participation in the earlier arrangement is a circumstance which reinforces the need for caution before granting the sweeping relief of rectification sought by all the petitioners. The clean-hands principle, therefore, is not being applied as an independent bar to the statutory remedy. It is considered only as one of the circumstances relevant to the discretionary exercise of jurisdiction under section 43.

Alternative remedy

Section 387 of the Succession Act expressly preserves the right to have questions of substantive entitlement determined in an appropriate suit or other proceeding and also preserves the liability of a person who has received a debt or security to account to the person lawfully entitled thereto. The significance of this provision is that refusal of rectification in the present proceeding does not amount to a declaration that the petitioners have no substantive claim whatsoever against the persons who received the shares or consideration.

If the petitioners are able to establish, in an appropriate proceeding, that they had a substantive beneficial entitlement which was unlawfully defeated, the law may provide them with an appropriate remedy against the persons liable in accordance with law. Questions concerning cancellation or declaration relating to the MoU or transfer documents, minority, authority, fraud, accounting, recovery of consideration and the respective rights of all heirs can, where necessary, be adjudicated in a proceeding in which all necessary parties are before the Court and the appropriate evidence can be taken.

Finding on the section 43 application

Upon consideration of the entire matter, this Court is unable to hold that the names presently appearing in the registers of Respondent Nos.1(a)-(d) were entered "without sufficient cause" within the meaning of section 43 of the Companies Act. At the material time, the companies had before them a succession certificate dated 16.05.2000. The subsequent dealings took place in 2001. There is insufficient evidence to establish that the companies knew at that time that the certificate was invalid or that another person had a superior enforceable claim to the shares. The subsequent revocation of the certificate in 2012 is a material development but, having regard to sections 381 and 386 of the Succession Act, it does not retrospectively render all dealings undertaken in good faith during the currency of the certificate invalid.

Further, the relief sought would necessarily require this Court to adjudicate the validity and effect of the MoU, the arbitral proceedings, the alleged transfer by minors, the authority of the persons who executed the documents, the rights of the original transferors and the competing claims arising from the succession proceedings. Those questions go substantially beyond a straightforward rectification of the register. In the circumstances, this Court is not satisfied that rectification under section 43 is an appropriate remedy for resolving the entirety of the controversy raised in this application.

This court is of the considered view that -

- i) A composite application under section 43 of the Companies Act, 1994 is not rendered incompetent merely because it concerns the registers of different companies and the impugned transfers are evidenced by separate

instruments, where the claims arise from a connected series of transactions and involve common questions of law or fact founded upon the same underlying transaction or event. While the relief under section 43 must be separately directed to the register of each company, the connected claims may, in appropriate circumstances, be adjudicated in one proceeding where separate proceedings would substantially involve the same evidence and foundational issues or risk inconsistent findings.

- ii) Section 43 of the Companies Act, 1994 confers a wide jurisdiction upon the Court to rectify the register and, where necessary, to determine the title of a party to the proceeding; however, the jurisdiction is directed towards determining whether rectification is justified and does not require the Court to finally adjudicate every complex dispute concerning contracts, succession, minority, fraud and competing proprietary claims. A succession certificate relating to shares operates within the statutory scheme of Part X of the Succession Act, 1925, and shares constitute securities for the purposes of that Part.
- iii) Where a company deals with the holder of a succession certificate in good faith, sections 381 and 386 of the Succession Act afford statutory protection to such dealings, notwithstanding the subsequent revocation or supersession of the certificate, where the statutory conditions are satisfied. Subsequent revocation of a succession certificate does not, by itself, retrospectively establish that every transaction undertaken while the

certificate was operative was void or that the register of members must consequently be rectified.

- iv) The absence of a fixed limitation period in section 43 does not make delay irrelevant. Where substantial delay is accompanied by the accrual of third-party rights and long-standing corporate entries, such circumstances may legitimately weigh against the discretionary relief of rectification.
- v) Where the relief sought under section 43 substantially depends upon cancellation or invalidation of old instruments and upon the determination of complicated questions involving persons who are not parties to the proceeding, the Court may appropriately decline rectification without adjudicating those substantive claims finally.
- vi) Refusal of rectification under section 43 does not, by itself, extinguish any independent substantive right which a claimant may have against a person who has unlawfully received property or consideration. Such rights remain subject to determination in an appropriate proceeding in accordance with law, consistent with section 387 of the Succession Act.

Conclusion

For the reasons stated above, this Court finds that the petitioners have failed to establish that the names presently appearing in the registers of members of Respondent Nos.1(a), 1(b), 1(c) and 1(d) were entered without sufficient cause or that the respondents

committed any default or unnecessary delay which would warrant rectification under section 43 of the Companies Act, 1994. The petitioners have also failed to establish, within the scope of the present proceeding, that the dealings of the companies in 2001 were undertaken otherwise than in good faith or that the statutory protection available under sections 381 and 386 of the Succession Act is unavailable to the respondents.

The subsequent succession certificate dated 08.02.2012 may establish or support the petitioners' claim of succession as between the competing heirs, but it cannot, without further adjudication, be treated as automatically nullifying the earlier dealings or requiring retrospective rectification of the corporate registers.

Accordingly, the application under section 43 of the Companies Act, 1994 is dismissed.

It is, however, made clear that this judgment shall not be construed as a final adjudication that the petitioners have no substantive right or claim, if otherwise available to them in law, against any person who may have received the shares, proceeds or other benefits in the transactions complained of. Nor shall this judgment preclude the petitioners from pursuing an appropriate independent proceeding in accordance with law.

There shall be no order as to costs.

Interim order, if still subsisting, shall stand vacated.

(Justice Md. Toufiq Inam)