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

Present:

Mr. Justice Md. Toufiq Inam.

COMPANY MATTER NO. 132 OF 2016.

IN THE MATTER OF:

Zeeba Ahmed Khan Alias Zeeba Amina Khan.
------ Petitioner.

-Versus-

Newton One Capita Ltd., and others.
----- Respondents.

Mr. Mamun Chowdhury, Advocate with
Mr. Suham Khan,
Mr. Ahmed Farzad Bin Raunak,
Mr. KM Shahidul Islam,
Mr. Rabiul Ahmed Rabik, and
Ms. Tahsin Kamal Tonima, Advocates
----- For the Petitioner.

Mr. Morshed Alam Khan, Advocate
...... For Respondent No.3.

The 27th July,2026.

Md. Toufiq Inam, J.

This is an application filed by respondent No. 3 praying for dismissal, in limine, of the company matter instituted by the petitioner under section 43 of the Companies Act, 1994.

The petitioner instituted the present proceeding under section 43 of the Companies Act, 1994 seeking rectification of the Register of Members of respondent No. 1 Company. The petitioner's case, in substance, is that the allotment of 89,000 ordinary shares of Tk.100/- each in favour of respondent No. 3 was made illegally, fraudulently and in violation of the provisions of the Companies Act and the Articles of Association of the Company. It is alleged that, as a consequence of such unlawful allotment, the name of respondent No. 3 has been entered in the Register of Members without sufficient cause.

On the above premise, the petitioner seeks rectification of the Register of Members by deleting the name of respondent No. 3 in respect of the aforesaid shares. Consequentially, the petitioner has also prayed for cancellation of the impugned shares and for striking off the names of respondent Nos. 4 and 5 as Directors of respondent No. 1 Company. Before the petition could be heard on merits, respondent No. 3 filed the present application questioning the maintainability of the proceeding itself.

Mr. Morshed Alam Khan, learned Advocate for respondent No. 3, by filing an application, submits that the petition is wholly misconceived and liable to be rejected in limine. He submits that the jurisdiction conferred upon this Court by section 43 of the Companies Act, 1994 is confined to rectification of the Register of Members in the circumstances expressly contemplated therein. The provision does not empower the Court to cancel an allotment of shares, reduce the issued share capital of a company or remove directors. According to him, although the petition has been framed as one for rectification of the Register of Members, the real object of the petitioner is to cancel the allotment of 89,000 shares made in favour of respondent No. 3 and thereby reduce the issued share capital of respondent No. 1 Company. Such relief, he submits, lies wholly outside the scope of section 43.

Referring to sections 59 and 60 of the Companies Act, he contends that reduction of share capital is a substantive corporate action which can only be undertaken in accordance with the statutory procedure prescribed therein upon an application by the company itself. The petitioner cannot circumvent that statutory mechanism by seeking substantially the same relief under the guise of rectification of the Register of Members. He submits that the petition raises complicated and seriously disputed questions relating to the validity of the impugned allotment, compliance with statutory requirements, the authority of the Board of Directors, alleged fraud and the rights of the respective shareholders. Such questions, according to him, require detailed examination of evidence and cannot be adjudicated in the summary jurisdiction exercised under section 43. In exercising jurisdiction under the said provision, the Company Court cannot assume the role of an ordinary civil court. Reliance is placed upon *Mrs. Shamsun Nahar and others v. Packstone Limited and others*.

He further submits that there is no reported decision either in Bangladesh or in England recognising cancellation of shares or annulment of an allotment as a remedy in proceedings for rectification of the register. In support of this proposition, he relies upon the decision of the Judicial Committee of the Privy Council in *Nilon Ltd. & Another v. Royal Westminster Investments SA & Others* [2015] UKPC 2.

He also refers to section 149 of the Companies Act and submits that even an irregular allotment is merely voidable at the instance of the allottee within the time prescribed by law and cannot be challenged by another shareholder in proceedings under section 43. Likewise, referring to section 155, he submits that the petitioner has failed to establish that her existing shares were fully paid up so as to entitle her to any preferential right in respect of the impugned allotment. In any event, section 155(2) empowers the Board, in appropriate cases, to allot further shares otherwise than proportionately.

It is further contended that respondent No. 3 was allotted the impugned 89,000 shares pursuant to a resolution of the Board of Directors dated 25.10.2015, following which the statutory return of allotment was duly filed and the allotted shares formed part of the issued share capital of the Company. Consequently, the name of respondent No. 3 was entered in the Register of Members for sufficient cause and none of the conditions contemplated by section 43(1)(a) is attracted. Therefore, the petition is founded upon allegations of fraud. Fraud must be specifically pleaded and strictly proved. Such issues involve disputed questions of fact requiring a full-fledged trial and are incapable of determination in proceedings under section 43. He therefore prays that the petition be rejected in limine as being not maintainable.

Mr. Suhan Khan, learned Advocate appearing for the petitioner, opposes the application. He submits that the respondent's objection proceeds on an erroneous understanding of both the pleadings and the scope of section 43 of the Companies Act. According to him, the principal question raised in the petition is whether the name of respondent No. 3 has been entered in the Register of Members "without sufficient cause" within the meaning of section 43(1)(a). That question lies at the very heart of the jurisdiction conferred upon the Company Court and can only be determined after examining the legality of the impugned allotment and the circumstances under which respondent No. 3 came to be entered as a member of the Company.

He submits that the principal relief sought by the petitioner is rectification of the Register of Members. The prayer relating to cancellation of the impugned shares is merely consequential and would arise only if the Court ultimately concludes that the allotment itself was unlawful and incapable of conferring membership upon respondent No. 3. Whether such consequential relief can ultimately be granted is a matter to be decided after hearing the petition on merits and not while considering a preliminary objection as to maintainability.

He further submits that the respondent's objections substantially relate to the merits of the controversy rather than to the maintainability of the proceeding. The legality of the allotment, the authority of the Board of Directors, the alleged violation of statutory provisions and the effect of the impugned corporate actions are all matters requiring adjudication after consideration of the pleadings and the evidence.

With regard to the allegations of fraud, he submits that the petition is principally founded upon documentary evidence. The mere existence of disputed questions of fact or allegations of fraud does not, by itself, render a petition under section 43 non-maintainable. If the Court ultimately considers oral evidence necessary for the proper adjudication of the dispute, it is competent to adopt an appropriate procedure for recording such evidence. The possibility that evidence may be required is not, in itself, a ground for rejecting the petition at its threshold.

The preliminary objection raises a narrow but important question concerning the scope of the jurisdiction conferred upon this Court under section 43 of the Companies Act, 1994. The respondent contends that the present petition is, in substance, one for cancellation of the allotment of 89,000 shares and consequential reduction of the issued share capital of the company, reliefs which lie beyond the ambit of section 43. It is further contended that the petition involves disputed questions of fact and allegations of fraud requiring a regular civil trial and is, therefore, liable to be rejected in limine.

The objection necessitates an examination of the true nature of the jurisdiction conferred by section 43. That provision empowers the Court to rectify the Register of Members where the name of any person has been entered in or omitted from the register "without sufficient cause" or where default has been made in recording the fact of a person becoming or ceasing to be a member. The jurisdiction is undoubtedly a special and limited one. It is neither intended to confer upon the Company Court a general supervisory jurisdiction over all disputes relating to shares nor to adjudicate every controversy concerning the internal affairs of a company. At the same time, the limited nature of the jurisdiction cannot be construed so narrowly as to render the statutory remedy ineffective.

The expression "without sufficient cause" is of central importance. Whether an entry has been made with or without sufficient cause cannot ordinarily be determined in the abstract. It necessarily requires the Court to examine the legal foundation upon which the impugned entry rests. If the entry is founded upon a lawful allotment, transfer or transmission, the register ordinarily requires no correction. Conversely, where the entry is alleged to have been procured by an act which is void, unauthorised or contrary to the provisions of the Act or the Articles of Association, the Court cannot determine whether rectification is warranted without first examining the legality of the transaction giving rise to the entry. Such an enquiry is not an enlargement of the jurisdiction under section 43 but an integral part of its exercise.

The maintainability of a petition is to be determined from the averments contained in the petition and not from the defence raised by the respondent. The petitioner has specifically pleaded that the allotment of 89,000 shares in favour of respondent No. 3 was made illegally and that, consequently, the name of respondent No. 3 has been entered in the Register of Members without sufficient cause. Those assertions, if ultimately established, would attract the jurisdiction under section 43. Whether they are true or false is a matter to be determined upon consideration of the evidence and the applicable law. At this stage, the Court is concerned only with the maintainability of the proceeding and not with the ultimate merits of the petitioner's claim.

The respondent has emphasised that the petitioner has also sought cancellation of the impugned shares and removal of certain directors and submits that such relief is foreign to section 43. This submission overlooks the distinction between the maintainability of the proceeding and the nature of the relief ultimately available. Whether cancellation of the allotment is an independent substantive relief or merely a consequence of rectification depends upon the findings ultimately recorded on the legality of the allotment. If, upon final adjudication, this Court concludes that any of the consequential reliefs sought fall outside the scope of section 43, it shall remain open to the Court to decline such relief while granting, if otherwise warranted, such relief as the statute permits. The amplitude of the prayer, therefore, does not by itself determine the maintainability of the proceeding.

The respondent has further relied upon sections 59, 60, 149 and 155 of the Companies Act. Those provisions undoubtedly regulate important aspects of company law, including reduction of share capital, irregular allotment and pre-emptive rights. However, their applicability depends upon the legality of the impugned allotment and the facts surrounding it. They constitute matters of defence going to the merits of the controversy rather than to the maintainability of the proceeding. It would, therefore, be inappropriate to pronounce upon their applicability before the factual foundation of the dispute has been determined.

This court is not persuaded by the submission that the petition is liable to be rejected merely because it involves disputed questions of fact or allegations of fraud. There is no rule of law that every dispute involving contested facts falls outside the jurisdiction under section 43. Membership disputes frequently arise precisely because the parties disagree as to the validity of an allotment, transfer or other corporate act. The decisive consideration is not whether the facts are disputed but whether the controversy is incapable of determination within the statutory jurisdiction. Where the dispute substantially concerns the legality of corporate acts evidenced by company records, board resolutions and statutory filings, the mere existence of disputed facts does not justify rejection of the petition in limine.

The same principle applies to allegations of fraud. Fraud must undoubtedly be specifically pleaded and strictly proved. However, the burden of proof relates to the merits of the claim and not to the jurisdiction of the Court. The mere allegation of fraud does not, without more, render a petition under section 43 incompetent. The mere possibility that evidence may be required cannot furnish a ground for terminating the proceeding at its inception.It is true that the jurisdiction under section 43 is a limited one and should not be converted into a substitute for an ordinary civil suit. But it does not mean that every petition involving disputed facts or a challenge to the validity of an allotment must invariably be rejected at the threshold. Whether the Court should exercise its jurisdiction depends upon the nature of the dispute raised in the particular case.

This court finds that the petition directly challenges the legal basis upon which respondent No. 3 came to be entered in the Register of Members. The objections raised by respondent No. 3, including the legality of the allotment, the applicability of sections 59, 60, 149 and 155, and the effect of the alleged fraud, are matters which substantially overlap with the issues requiring determination in the main petition. To uphold the preliminary objection would necessarily require the Court to determine those issues without a hearing on the merits. Such a course would be contrary to the well-settled principle that a proceeding should not be terminated in limine where the objections raised are inseparable from the substantive controversy.

This Court is, therefore, of the considered view that the respondent has failed to establish any legal ground for rejecting the petition at its inception. The objections raised are matters to be considered at the final hearing and shall remain open to the parties. Nothing stated herein shall be construed as expressing any opinion on the legality of the impugned allotment or upon the merits of the petitioner's claim.

Accordingly, the application is rejected. The main petition shall proceed to hearing on merit.

(Justice Md. Toufiq Inam)

Ashraf/ABO.