IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Mohamed Noordeen Hyder Ali
5A, Alfred Place, Colombo 03.
Petitioner-Appellant

SC/CHC/APPEAL/13/2018
CHC/30/2015/CO

Vs.

1. Hybro Industries (Pvt) Ltd.
   10, Maligawa Road, Ratmalana.
2. Hyrun Nissa Hyder Ali
   8, Glen Aber Place, Colombo 04.
3. Jeenath Begum Hyder Ali
   8, Glen Aber Place, Colombo 04.
4. Samsun Nissa Hyder Ali
   8, Glen Aber Place, Colombo 04.
5. Mohamed Iqbal Hyder Ali
   8, Glen Aber Place, Colombo 04.

Respondent-Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere
Hon. Justice K.M.G.H. Kulatunga

Counsel: M.A. Sumanthiran, P.C., with Manjuka Fernandopulle for the Petitioner-Appellant.
Kaushalya Navaratne, P.C., with Eshan Sandungahawatta for the 1st, 2nd and 3rd Plaintiff-Respondent-Respondents.

Argued on: 23.02.2026

Written submissions:
by both parties on 23.03.2026 and 06.04.2026.

Decided on: 27.07.2026

<u>Samayawardhena, J.</u>

Introduction

This dispute is among members of the same family. The 2nd and 3rd respondents are the petitioner's younger sisters. The 4th respondent is the petitioner's mother and the 5th respondent is his elder brother. Their father, who passed away on 27.06.2013, was a wealthy businessman who controlled a group of companies known as the Hyder Ali Group of Companies, of which the 1st respondent company is one.

The petitioner instituted this action in the Commercial High Court on 20.07.2015 against the aforesaid respondents under sections 224 and 225 of the Companies Act, No. 7 of 2007, seeking, *inter alia*, declarations that the affairs of the 1st respondent company were being conducted in a manner oppressive to him and prejudicial to the interests of the company, a declaration that he is a shareholder of the 1st respondent company, a declaration that his removal as a director and the appointment of the respondents as directors were unlawful, an order requiring the respondents to purchase his shareholding at a fair value, and, in the alternative, an order winding up the company. He also sought several interim reliefs.

Upon the application being supported *ex parte*, the Commercial High Court issued notice on the respondents and granted an interim order preserving the *status quo*. Subsequently, after hearing both parties, the Commercial High Court vacated the interim order. An application for leave to appeal against that order was refused by this Court.

Thereafter, the 2nd, 3rd and 4th respondents filed objections dated 17.01.2017 to the main application. Upon hearing oral submissions and considering the written submissions tendered by learned counsel, the Commercial High Court, by judgment dated 19.01.2018, dismissed the petitioner's application with costs on the basis that he lacked the requisite *locus standi* under section 226 of the Companies Act to institute proceedings under sections 224 and 225 thereof. Hence this appeal by the petitioner.

At the hearing before this Court, it was common ground that compliance with section 226 of the Companies Act is a condition precedent to the institution of proceedings under sections 224 and 225 thereof. The real controversy was whether the petitioner fell within the category of persons entitled to invoke those provisions, having regard in particular to sections 86(1)(d) and 232(a) of the Companies Act.

The principal contention of learned President's Counsel for the petitioner was that the Commercial High Court could not properly have determined that question without permitting the petitioner to adduce oral evidence, particularly on the issue whether the 2nd to 4th respondents had in fact signed the share transfer forms marked P12(a) to P12(q).

Accordingly, the questions that arise for determination are whether the Commercial High Court erred in law and in fact in holding that the petitioner lacked the requisite *locus standi* under section 226 of the Companies Act to maintain this application and whether it erred in law in refusing to permit the petitioner to lead oral evidence despite his requests to do so.

The 1st respondent company is not the only company within the Hyder Ali Group of Companies. Similar proceedings have been instituted in respect of several other companies within the Group, and substantially similar orders have been made, giving rise to SC/CHC/APPEAL/27/2018, SC/CHC/APPEAL/28/2018, SC/CHC/APPEAL/34/2018, SC/CHC/APPEAL/35/2018, SC/CHC/APPEAL/42/2018, SC/CHC/APPEAL/46/2018 and SC/CHC/APPEAL/51/2018. The parties to those appeals are the same as the parties to the present appeal. At the hearing, learned President's Counsel appearing for both sides informed this Court that the parties to those appeals would abide by the judgment delivered in the present appeal.

Who may invoke the jurisdiction of Court under sections 224 and 225 of the Companies Act?

The first question that arises is who is entitled to invoke the jurisdiction of the Commercial High Court under sections 224 and 225 of the Companies Act. The answer to that question is to be found in sections 224, 225 and 226 of the Companies Act.

Section 224(1) which deals with oppression reads as follows:

> *224(1) Subject to the provisions of section 226, any shareholder or shareholders of a company who has a complaint against the company that the affairs of such company are being conducted in a manner oppressive to any shareholder or shareholders (including the shareholder or shareholders with such complaint) may make an application to court, for an order under the provisions of this section.*

Section 225(1) which deals with mismanagement reads as follows:

> *225(1) Subject to the provisions of section 226, any shareholder or shareholders of a company, having a complaint—*
>
> *(a) that the affairs of the company are being conducted in a manner prejudicial to the interests of the company; or*
>
> *(b) that a material change (not being a change brought about by or in the interest of any creditors, including debenture holders or any class of shareholders of the company) has taken place in the management or control of the company, whether by an alteration in its board of directors or of its agent or secretary or in the constitution or control of the firm or body corporate acting as its agent or secretary or in the ownership of the shares of the company or in any other manner whatsoever, and that by reason of such change it is likely that the affairs of the company may be conducted in a manner prejudicial to the interests of the company,*

may make an application to court for an order under the provisions of this section.

Section 226 prescribes the threshold requirements that shall be satisfied before proceedings are instituted under sections 224 and 225. Section 226(1) to (3) read as follows:

> *226(1) An application under section 224 or section 225 may only be made by a shareholder or shareholders, who at any time during the six months prior to the making of the application—*
>
> *(a) constituted not less than five per centum of the total number of shareholders; or*
> *(b) held shares which together carried not less than five per centum of the voting rights at a general meeting of the company.*
>
> *(2) For the purposes of subsection (1), where any shares are held by two or more persons jointly, such persons shall be counted only as one shareholder.*
>
> *(3) Where several shareholders of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the remaining shareholders, may make the application on behalf and for the benefit of all of them.*

A plain reading of sections 224, 225 and 226 makes it clear that the right to institute proceedings under sections 224 and 225 is not available to every person who may have an interest in the affairs of a company. Nor is it available to every shareholder. Such proceedings may be instituted only by a shareholder or a group of shareholders who satisfy the threshold requirement prescribed in section 226(1), namely, that they constituted not less than five per centum of the total number of shareholders or held shares carrying not less than five per centum of the voting rights at a general meeting of the company during the six months preceding the application.

Does the petitioner qualify to institute proceedings under sections 224 and 225?

The next question is whether the petitioner satisfies the requirements necessary to invoke sections 224 and 225 of the Companies Act.

As stated earlier, it is not the petitioner's position that a person who is not a shareholder may institute proceedings under those provisions. Nor does he dispute that the threshold requirements prescribed in section 226 shall be satisfied. His contention is that he is a shareholder of the 1st respondent company and that his shareholding exceeds the minimum requirement prescribed in section 226.

It is nevertheless noteworthy that, in paragraph (c) of the prayer to the petition, the petitioner seeks a declaration that he is a shareholder of the 1st respondent company. The very fact that such a declaration was sought indicates that his status as a shareholder was in dispute. It therefore becomes necessary to examine who qualifies as a shareholder under the Companies Act.

Who is a shareholder under the Companies Act?

Section 86 of the Companies Act defines the term "shareholder" as follows:

> *86(1) In this Act, the term "shareholder" means—*
>
> *(a) a person whose name is entered in the share register as the holder for the time being of one or more shares in the company;*
> *(b) until a person's name is entered in the share register, a person named as a shareholder in an application for incorporation of a company at the time of registration of the company;*
> *(c) until a person's name is entered in the share register, a person who is entitled to have that person's name entered in the share register under a registered amalgamation proposal as a shareholder in an amalgamated company;*

(d) until a person's name is entered in the share register, a person to whom a share has been transferred and whose name ought to be but has not been entered in the register.

(2) Where a notice of any trust has been entered in the share register in respect of any shares in a company under subsection (2) of section 129, the person for whose benefit those shares are held in trust—

(a) shall be deemed to be a shareholder in the company; and
(b) shall in respect of those shares, enjoy all such rights and privileges and be subject to all such duties and obligations under this Act, as if his name had been entered in the share register as the holder of those shares.

(3) Where a company has wrongfully failed to enter in the share register the name of a person to whom shares have been transferred, that person—

(a) shall be deemed to be a shareholder in the company; and
(b) shall in respect of those shares, enjoy all such rights and privileges and be subject to all such duties and obligations under this Act, as if his name had been entered in the share register as the holder of those shares.

Section 529, which is the interpretation section of the Act, provides that the term "shareholder" shall have the same meaning as that assigned to it by section 86.

A plain reading of section 86 shows that the legislature has identified several categories of persons who may be regarded as shareholders for the purposes of the Act. The most obvious category is a person whose name is entered in the share register as the holder of one or more shares in the company. However, the section also recognises certain circumstances in which a person whose name does not appear in the share register may nevertheless be regarded as a shareholder.

In order to properly understand the scope and effect of section 86, it is first necessary to examine the statutory scheme relating to the share register and the significance attached to it by the Companies Act.

The share register and its legal significance

Section 123 of the Companies Act imposes a statutory obligation on every company that has issued shares to maintain a share register containing, *inter alia*, the names and latest known addresses of persons who are or have within the preceding ten years been shareholders, the number of shares of each class held by them, and particulars relating to the issue, redemption, repurchase and transfer of shares. The share register thus serves as the primary statutory record of the ownership and transmission of shares in a company. The maintenance of an accurate share register is not a mere administrative formality. It serves as the primary statutory record of the ownership of shares in a company and provides certainty and transparency in relation to the identity of shareholders and their respective shareholdings. The importance attached by the legislature to the maintenance of such a register is underscored by subsection (2), which makes non-compliance a criminal offence punishable by fines imposed both on the company and on every officer in default.

The significance of the share register is further reflected in section 130, which provides as follows:

> *130(1) The entry of the name of a person in the share register as holder of a share shall be prima facie evidence that title to the share is vested in that person.*
>
> *(2) Subject to the provisions of subsections (2) and (3) of section 86, a company may treat the registered holder of a share as the only person entitled to—*
>
> *(a) exercise the right to vote attaching to the share;*

(b) receive notices;

(c) receive a distribution in respect of the share; and

(d) exercise any other rights and powers attaching to the share.

Section 130(1) provides that the entry of the name of a person in the share register as the holder of a share shall be *prima facie* evidence that title to that share is vested in that person. Section 130(2) further provides that, subject to sections 86(2) and 86(3), a company is entitled to treat the registered holder of a share as the only person entitled to exercise the rights and powers attaching to that share, including the right to vote, receive notices and receive distributions. Thus, while the Companies Act recognises the limited situations contemplated by sections 86(2) and 86(3), the statutory scheme accords considerable significance to registration in the share register.

The Companies Act not only requires every company to maintain a share register but also provides a specific mechanism for rectification of that register where it does not accurately reflect the true position regarding the ownership of shares.

Section 128 provides as follows:

128(1) Where—

(a) the name of any person is without sufficient cause entered in or omitted from the share register of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a shareholder,

the person aggrieved or the company or any shareholder of the company, may make an application to the court for rectification of the register.

(2) Where an application is made under this section, the court may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application made under this section, the court may decide—

(a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between shareholders or alleged shareholders or between shareholders or alleged shareholders on the one hand and the company on the other hand; and

(b) any other question necessary or expedient to be decided for rectification of the register.

(4) If the court makes an order directing the rectification of the register, the company shall within ten working days of the making of the order, deliver a copy of the order to the Registrar.

(5) Where a company fails to comply with the requirements of subsection (4)—

(a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees; and

(b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

The breadth of the jurisdiction conferred by section 128 is noteworthy. The section expressly empowers Court to determine questions relating to the title of any person to have his name entered in or omitted from the share register and contemplates disputes not only between shareholders but also between shareholders and alleged shareholders. Thus, where a person asserts that he is entitled to be recognised as a shareholder notwithstanding the fact that his name does not appear in the share register, the Companies Act provides a specific statutory remedy by way of an application for rectification of the register.

In the present case, the petitioner accepts that his name has not appeared in the share register of the 1st respondent company since 2004. He also accepts that, according to the share register, his father was not a shareholder of the 1st respondent company.

Furthermore, section 131 requires a company to disclose its shareholders and their respective shareholdings in its annual returns. The annual returns of the 1st respondent company from 2005 onwards, marked X1(a) to X1(g), identify, *inter alia*, the 2nd, 3rd and 4th respondents as shareholders of the company. The petitioner himself signed some of those annual returns, including X1(a), X1(b), X1(d) and X1(e), in his capacity as a director. Those annual returns are therefore inconsistent with the petitioner's present contention that the shares had been transferred to his father in 2006.

Even after the death of the father in 2013, there was no alteration to the share register, the annual returns or any other corporate record to reflect the devolution of the shares which the petitioner now claims through these proceedings.

It is also undisputed that, at the time of instituting this application on 20.07.2015, the petitioner had not obtained an order under section 128 rectifying the share register of the 1st respondent company. It was, however, informed to Court during the course of argument that, subsequent to the institution of the present proceedings, the petitioner filed applications seeking rectification of the share registers of the companies within the Group.

The petitioner's claim to shareholder status

The petitioner contends that he has the requisite *locus standi* to maintain this application by virtue of section 86(1)(d) read together with section 232(a) of the Companies Act.

I have already referred to section 86, which defines the term "shareholder". The petitioner relies in particular on section 86(1)(d), which includes within the definition of "shareholder", "*until a person's name is entered in the share register, a person to whom a share has been transferred and whose name ought to be but has not been entered in the register*".

Section 86 is the general provision defining the term "shareholder". However, section 232 extends the meaning of that term for the limited purposes of sections 224 to 228 of the Act. Section 232 provides as follows:

> *232. A reference in sections 224 to 228 to a "shareholder", shall also include a reference to—*
>
> *(a) a person on whom shares have devolved through the death of a shareholder;*
> *(b) the executor or administrator of a deceased shareholder; or*
> *(c) a person who was a shareholder at any time within six months prior to the making of an application under section 224 or section 225.*

The petitioner relies on section 232(a), which provides that a person on whom shares have devolved through the death of a shareholder shall also be regarded as a shareholder for the purposes of sections 224 to 228.

The petitioner's case may be summarised as follows. He states that in 2006 the 2nd, 3rd and 4th respondents transferred their entire shareholdings in the companies comprising the Hyder Ali Group to the father. In support of that contention, he relies on the share transfer forms marked P12(a) to P12(q) and the affidavit marked P13 made by one of the attesting witnesses. For the purpose of this appeal, I will assume that P12(a) to P12(q) are genuine documents. According to the petitioner, although those transfers were never reflected in the share register, the father nevertheless became a shareholder by operation of section 86(1)(d). The father died intestate on 26.06.2013 and, according to the petitioner, the shares held by the father devolved upon his heirs, including the petitioner. The petitioner accordingly contends that he became entitled to at least 29.16 per centum of the shares of the 1st respondent company and thereby satisfied the threshold requirement prescribed by section 226. On that basis, he maintains that he is entitled to invoke section 232(a) and institute the present proceedings.

The argument is attractive at first sight. However, it does not withstand scrutiny when the relevant provisions of the Companies Act are read as a whole. Section 86(1)(d) cannot be read in isolation. It shall be construed in its statutory context and in harmony with the other provisions of the Act dealing with shareholders, share transfers and the share register, having due regard to the purpose and object of the legislation.

Section 86(1)(d) does not provide that every person in whose favour a share transfer form has been signed automatically becomes a shareholder. Rather, it refers to "*a person to whom a share has been transferred and whose name ought to be but has not been entered in the register*". The critical words are "*has been transferred*" and "*ought to be*".

In my view, section 86(1)(d) contemplates a situation where a transfer has become effective in law and the transferee is entitled to have his name entered in the share register, but for some reason the register has not yet been amended to reflect that position, for example, due to inadvertence or negligence. Mere signing of a share transfer form does not, by itself, establish that a valid and legally effective transfer has been completed.

There are several difficulties with the petitioner's argument. First, there is no evidence that the father accepted the alleged transfers. Indeed, the available evidence points in the opposite direction. During his lifetime, the father took no steps whatsoever to have the alleged transfers recognised or reflected in the corporate records. Acceptance is fundamental to any transfer. A transfer cannot be thrust upon an unwilling or indifferent transferee.

Secondly, there is no evidence that the statutory requirements necessary to complete the alleged transfers were complied with. Section 24 of the Stamp Duty Act, No. 43 of 1982, as amended, provides that, in the absence of an agreement to the contrary, stamp duty in respect of a transfer of shares is payable by the transferee. The father did not pay the requisite stamp duty or took any other steps to complete the alleged transfers in accordance with law.

More importantly, the petitioner's own pleaded case is inconsistent with any suggestion that the failure to register the alleged transfers resulted from mistake, fraud, negligence or wrongful conduct on the part of the company. In paragraph 18 of the petition and the corresponding averment in the supporting affidavit, the petitioner states:

> *Though the shares were so transferred in 2006, this is not reflected in the Company Registry. All this happened on the basis of trust. Even thereafter, the Petitioner did not move to alter the records at the company registry on the basis of such trust.*

This averment makes it abundantly clear that the non-registration of the alleged transfers was deliberate. According to the petitioner himself, the parties consciously chose not to alter the corporate records. Thus, this is not a case where a completed transfer was not recognised due to any fault on the part of the company or its officers.

This conclusion is reinforced by section 86(3), which provides as follows:

> *86(3) Where a company has wrongfully failed to enter in the share register the name of a person to whom shares have been transferred, that person—*
>
> *(a) shall be deemed to be a shareholder in the company; and*
> *(b) shall in respect of those shares, enjoy all such rights and privileges and be subject to all such duties and obligations under this Act, as if his name had been entered in the share register as the holder of those shares.*

The legislature has expressly provided that where a company has wrongfully failed to enter in the share register the name of a person to whom shares have been transferred, that person shall be deemed to be a shareholder and shall enjoy all rights and privileges as if his name had been entered in the register.

The petitioner does not rely on section 86(3). Nor could he. As already observed, he does not allege that the company "wrongfully failed" to enter the father's name in the share register. On the contrary, his own case is that the absence of registration was deliberate and was attributable to an arrangement based on trust.

In these circumstances, I am unable to accept the contention that the father became a shareholder of the 1st respondent company by virtue of section 86(1)(d). If the father was not a shareholder, it necessarily follows that no shares could have devolved upon the petitioner upon the father's death within the meaning of section 232(a). Accordingly, the petitioner cannot rely on section 232(a) to establish the *locus standi* required under section 226 of the Act.

Are the alleged transfers consistent with the Articles of Association?

Even assuming that the share transfer forms marked P12(a) to P12(q) were in fact signed by the 2nd, 3rd and 4th respondents, the petitioner faces a further difficulty.

Section 74(1) of the Companies Act, No. 17 of 1982, which was in force at the time of the alleged transfers, provided that shares in a company are transferable in the manner provided by the articles of the company. Likewise, section 49(5) of the Companies Act, No. 7 of 2007, recognises that "*A share in a company is transferable in the manner provided for by its articles and such articles may limit or restrict the extent to which a share is transferable.*"

Accordingly, although shares in the 1st respondent company are transferable, they are transferable only in the manner authorised by the Articles of Association of the company.

The parties did not address Court on the provisions of the Articles of Association relating to the transfer of shares. However, Article 47(a) of the Articles of Association of the 1st respondent company, produced marked P2, provides as follows:

> *47(a) Any share may be transferred by a member to another member or to the child or spouse of a member and a transfer of a share to any person who is not a member shall not be registered except with the prior consent in writing of all Directors.*

Article 2 defines a "*member*" as "*any duly registered holder of shares for the time being of the company*".

It is common ground that the father was not a duly registered holder of shares and, therefore, was not a member of the 1st respondent company. Accordingly, the alleged transfers by the 2nd and 3rd respondents to the father could not have been registered unless the prior written consent of all the directors had been obtained. No such consent has been produced.

The position of the 4th respondent stands on a different footing. If she was a duly registered holder of shares at the relevant time, a transfer to her husband may fall within the category of a transfer to the "spouse of a member" contemplated by Article 47(a).

However, even if all the alleged transfers are assumed to be permissible transfers within the meaning of Article 47(a), the petitioner encounters a further obstacle in Article 50.

Article 50 provides as follows:

> *50. The instrument of transfer of any share shall be signed both by the transferor and transferee and shall contain the name and address both of the transferor and transferee, and* <u>*the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the Register in respect thereof*</u>*. Each signature to such transfer instrument shall be duly attested by the signature of one credible witness who shall add his address and occupation.*

The effect of Article 50 is clear. Until the name of the transferee is entered in the share register, the transferor is deemed to remain the holder of the shares. The petitioner himself accepts that the father's name was never entered in the share register as the transferee of the shares allegedly transferred under P12(a) to P12(q). Accordingly, by virtue of Article 50, the transferors, namely the 2^{nd}, 3^{rd} and 4^{th} respondents, are deemed to have remained the holders of those shares.

This is, in fact, consistent with the corporate records. The annual returns of the company continued to identify the 2^{nd}, 3^{rd} and 4^{th} respondents as shareholders. No corporate record reflects the father as a shareholder.

The same conclusion follows from section 73 of the Companies Act. Section 73 provides that, "*notwithstanding anything to the contrary in the articles of a company,* <u>*it shall not be lawful*</u> *for the company to register a transfer of shares, unless a proper instrument of transfer has been delivered to the company*". A proper instrument of transfer necessarily includes an instrument that is duly stamped and otherwise valid in law.

It is common ground that the transfer forms relied upon by the petitioner were not duly stamped. Accordingly, even if the signatures appearing on P12(a) to P12(q) are assumed to be genuine, it would have been unlawful for the company to register those transfers on the basis of those instruments.

For all these reasons, the father cannot be regarded as a shareholder of the 1st respondent company on the basis of P12(a) to P12(q). Once that conclusion is reached, the petitioner's reliance on section 232(a) necessarily fails, for there could be no devolution upon him of shares held by a deceased shareholder.

Can the petitioner challenge his removal as a director in proceedings under sections 224 and 225?

The petitioner has also sought a declaration that his removal as a director of the 1st respondent company was unlawful.

Sections 224 and 225 of the Companies Act provide remedies in respect of oppression of shareholders and conduct prejudicial to the interests of the company. The focus of those provisions is not the vindication of personal rights of directors as such. Accordingly, the mere fact that a person has been removed as a director does not, by itself, entitle that person to invoke the jurisdiction of Court under sections 224 and 225.

A complaint relating to the removal of a director may become relevant in proceedings under sections 224 and 225 where the applicant is a shareholder and alleges that such removal forms part of conduct which is oppressive to him in his capacity as a shareholder or prejudicial to the interests of the company. In such a case, the complaint is not directed at the removal from office *per se*, but at the manner in which the affairs of the company are being conducted.

In the present case, however, the petitioner has failed to establish that he is a shareholder of the 1st respondent company. In those circumstances, his complaint relating to his removal as a director cannot independently sustain an application under sections 224 and 225.

If the petitioner contends that his removal as a director was unlawful or otherwise gave rise to a personal cause of action, it is open to him to pursue such remedies as may be available in law. However, that question does not arise for determination in these proceedings.

I must also observe that, although the petitioner was removed as a director on 14.03.2015, he did not challenge that removal until the institution of the present action on 20.07.2015.

For the foregoing reasons, I hold that the learned Commercial High Court Judge correctly concluded that the petitioner lacked the requisite *locus standi* under section 226 of the Companies Act to institute proceedings under sections 224 and 225 thereof.

Did the Commercial High Court err in law by refusing to permit the petitioner to lead oral evidence?

One of the principal submissions advanced by learned President's Counsel for the petitioner was that the learned Commercial High Court Judge erred in refusing to permit the petitioner to lead oral evidence, particularly for the purpose of proving that the 2nd, 3rd and 4th respondents had signed the share transfer forms marked P12(a) to P12(q).

Before considering that submission, it is necessary to examine the procedure applicable to applications instituted under sections 224 and 225 of the Companies Act.

Sections 224 and 225 of the Companies Act provide for applications to Court on the grounds of oppression and mismanagement respectively, but do not prescribe in detail the procedure to be followed thereafter. However, having regard to the opening words of section 226(4), namely, "*Where at the conclusion of an inquiry under the provisions of section 224* *or section 225*", it is evident that the legislature contemplates an inquiry as opposed to a trial in the ordinary sense.

Section 520(1) and (2) of the Companies Act provides as follows:

> *520(1) Every application or reference to court under the provisions of this Act shall, unless otherwise expressly provided or unless the court otherwise directs, be by way of petition and affidavit, and every person against whom such application or reference is made, shall be named a respondent in the petition and be entitled to be given notice of the same and to object to such application or reference.*
>
> *(2) Every application or reference made to court in the course of any proceeding under this Act or incidental thereto, shall be made by motion in writing.*

Section 520(1) stipulates that applications under the Act shall be made by way of petition and affidavit, unless otherwise expressly provided or unless Court otherwise directs. It also recognises the right of the respondent to object to such application. However, the section does not elaborate the procedure to be followed after the filing of the petition and affidavit and the objections.

The position under the repealed Companies Act, No. 17 of 1982, was different. Section 212 expressly provided that applications under sections 210 and 211 relating to oppression and mismanagement were to be made by way of summary procedure. At the same time, section 441 provided that applications under the other provisions of the Act were to be made by way of petition and affidavit. Thus, the repealed Act clearly distinguished between proceedings instituted by summary procedure and proceedings commenced by petition and affidavit. However, under the Companies Act, No. 7 of 2007, a uniform procedure has been adopted by requiring applications under the Act to be instituted by petition and affidavit, unless otherwise expressly provided or unless Court otherwise directs.

It follows that the mere fact that an application is required to be made by petition and affidavit does not, by itself, attract summary procedure. Equally, applications under sections 224 and 225 cannot be assimilated to actions instituted under the regular procedure prescribed by the Civil Procedure Code. Regular procedure commences with a plaint and ordinarily proceeds through answer, replication, issues, trial, judgment, decree and execution. Such a procedure would be wholly inconsistent with section 520.

The procedure contemplated by section 520 is best understood as a special procedure, *sui generis* in nature. It is neither the regular procedure nor the summary procedure prescribed by the Civil Procedure Code. Rather, it is a procedure under which the Commercial High Court is required to conduct an inquiry in a manner consistent with the provisions of the Companies Act, the principles of natural justice and the requirements of fairness.

Section 529 of the Companies Act defines the term "court" as a High Court established under Article 154P of the Constitution for a Province and <u>empowered with civil jurisdiction</u> by Order published in the Gazette under section 2 of Act No. 10 of 1996. The Civil Procedure Code, as its long title makes clear, is a consolidation of the law relating to the procedure of the civil courts. It follows that, where the Companies Act does not prescribe a particular procedure and there is no inconsistency between the two enactments, the Commercial High Court may resort to the relevant provisions of the Civil Procedure Code to supplement the procedure prescribed by the Companies Act and to fill procedural gaps.

This approach is consistent with the reasoning of the Supreme Court in *Jayawardene v. Obeysekere* [2011] 1 Sri LR 349, where, in the course of considering the limited question of substitution upon the death of a party in pending proceedings under sections 224 and 225 of the Companies Act, J.A.N. De Silva C.J. observed at page 355:

> *I am therefore convinced that the proceedings under scrutiny was found to be an action in which, in addition to the application to the general procedure found in the companies Act, the regular procedure found in the Civil Procedure Code must fill any procedural lacuna.*

In this regard, I find guidance in the decision of *De Fonseka v. Dharmawardene* [1994] 3 Sri L.R. 49. That case concerned an application under section 86 of the Civil Procedure Code to set aside an *ex parte* decree. Section 86(3) of the Civil Procedure Code, like section 520 of the Companies Act, requires the application to be made by petition supported by affidavit, but is silent as to the procedure to be followed thereafter. In that context, the Court held:

> *An inquiry on an application to set aside an ex parte decree is not regulated by any specific provision of the Civil Procedure Code. Such inquiries must be conducted consistently with the principles of natural justice and the requirement of fairness. Section 839 of the Civil Procedure Code recognizes the inherent power of the court to make an order as may be necessary for the ends of justice.*

Although that decision concerned an application under section 86 of the Civil Procedure Code, the underlying principle is equally applicable here. Where a statute prescribes the manner in which proceedings are to be initiated but does not comprehensively regulate the procedure to be followed thereafter, the Court shall conduct the inquiry in a manner consistent with the principles of natural justice and fairness, while ensuring the expeditious determination of the matter.

Unlike substantive law, which creates and defines legal rights and obligations, procedural law is a means to an end and not an end in itself. Its purpose is to facilitate the administration of justice, not to impede it. Accordingly, procedural provisions should be applied and interpreted in a manner that advances the effective determination of substantive rights while ensuring fairness to all parties.

The usual practice presently followed in the Commercial High Court is that the petitioner files a petition supported by affidavit together with supporting documents. The respondents thereafter file objections supported by affidavit together with supporting documents, and the matter is then fixed for inquiry and determined on the basis of such material and the written and oral submissions of counsel, without resort to *viva voce* evidence.

This practice is consistent with the object and purpose of sections 224 and 225 of the Companies Act. The mere existence of disputed questions of fact does not, by itself, require the Court to direct that oral evidence be led. If the mere existence of a dispute of fact were sufficient to require oral evidence, applications under those provisions would, in many instances, be transformed into protracted trials. Such an approach would undermine the very purpose of the legislation and the rationale underlying the establishment of the Commercial High Court, namely, the speedy and effective resolution of commercial disputes.

Having said that, there is presently no practice of affording the petitioner an opportunity to file counter-objections responding to the positions taken up by the respondents in their objections. In many instances, the objections raise new factual matters, produce additional documents and advance positions not addressed in the petition. In such circumstances, considerations of fairness may require that the petitioner be afforded an opportunity to respond thereto. Otherwise, the petitioner may have no meaningful opportunity to answer such matters except through written submissions. However, as a matter of practice, documents are not permitted to be tendered together with written submissions.

There is no reason in principle why the Commercial High Court should not permit the filing of counter-objections supported by affidavit together with documents, if the petitioner so desires, strictly responsive to matters raised in the objections.

Once counter-objections are filed, the matter can be formally fixed for inquiry. The purpose of such inquiry is not, as a rule, to receive oral evidence but to ascertain whether the circumstances warrant an exception to the general rule. The general rule is that the matter should be determined on the basis of affidavits, documents and written submissions. The reception of oral evidence is the exception. Whether oral evidence should be permitted in a particular case is a matter entirely within the discretion of the Judge.

Even where the Court concludes that oral evidence is necessary, it is not obliged to permit unrestricted oral evidence on every matter in dispute. The Court retains control over its own proceedings and may confine the inquiry to identified issues, limit the witnesses to be called, and regulate the manner in which evidence is led so as to secure a fair, proportionate and expeditious determination of the application.

Where the Court decides to determine the matter on the basis of affidavits, documents and written submissions but subsequently requires clarification on any factual or legal issue before delivering judgment, it may invite further written submissions or hear counsel on the specific issue.

I must also add that the inquiry may serve as an opportunity to explore the possibility of an amicable settlement, particularly as disputes under sections 224 and 225 frequently arise among family members, relatives or persons who were once in a relationship of mutual trust and confidence.

Applying those principles to the present case, the petitioner sought to establish through oral evidence that the 2nd, 3rd and 4th respondents had signed the share transfer forms marked P12(a) to P12(q).

As discussed earlier, proof of the signatures alone would not establish that the father became a shareholder of the 1st respondent company. Nor would it establish that shares devolved upon the petitioner through the death of a shareholder within the meaning of section 232(a) of the Companies Act. The petitioner's case fails for reasons wholly independent of the authenticity of those signatures, including the absence of acceptance of the alleged transfers by the father, the non-compliance with the statutory requirements governing the transfer of shares, the absence of any rectification of the share register, the provisions of Articles 47 and 50 of the Articles of Association, and the fact that the father was never recognised as a shareholder in the corporate records of the company.

In those circumstances, the fact which the petitioner sought to establish through oral evidence was not determinative of the question of *locus standi*. Therefore, even if oral evidence had been permitted and the petitioner had succeeded in proving that the 2nd, 3rd and 4th respondents had signed P12(a) to P12(q), the outcome of the case would have remained unchanged.

Accordingly, the refusal of the Commercial High Court to permit oral evidence occasioned no prejudice to the petitioner. I therefore find no basis to interfere with the exercise of discretion by the learned Commercial High Court Judge in refusing to permit the petitioner to lead oral evidence in the circumstances of this case.

Conclusion

For the foregoing reasons, I affirm the judgment of the Commercial High Court dated 19.01.2018 and dismiss this appeal with costs.

As agreed, the parties in SC/CHC/APPEAL/27/2018, SC/CHC/APPEAL/28/2018, SC/CHC/APPEAL/34/2018, SC/CHC/APPEAL/35/2018, SC/CHC/APPEAL/42/2018, SC/CHC/APPEAL/46/2018 and SC/CHC/APPEAL/51/2018 will abide by this decision. Accordingly, those appeals shall stand dismissed in terms of this judgment.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court

K.M.G.H. Kulatunga, J.

I agree.

Judge of the Supreme Court