

2024:BHC-OS:18321



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.22583 OF 2023

Aloysius D'Souza, Christian,
Indian Inhabitant, who is
residing at Christal Villa 2nd
Cross Shivalbagh, Mangalore,
Karnataka, India – 575 2002

...Petitioner

Versus

1. Union of India
Through the Ministry of
Corporate Affairs, A Wing,
Shastri Bhawan,
Rajendra Prasad Road,
New Delhi – 110 001
2. Investor Education and
Protection Fund through
Rajesh Verma, Secretary,
Ministry of Corporate
Affairs, Shastri Bhawan,
New Delhi – 110 001
Email:iepfclaim@mca.gov.in
3. National Stock Exchange of
India Ltd. having its address at
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex, Bandra East,
Mumbai City, Maharashtra – 400 051
4. Dr. Reddy's Laboratories Ltd.,
a registered company having its
office at 8-2-337, Road No.3,
Banjara Hills, Hyderabad
Telengana – 500 034, India
5. Bigshare Services Pvt. Ltd.
a Company duly incorporated
under the Indian Companies Act
1956, having their registered
address at Office No.S6-2, 6th
Floor Pinnacle Business Park,

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Next to Ahura Centre, Mahakali
Caves Road, Andheri (East)
Mumbai – 400 093, India being
the Registered Transfer Agent of
the Respondent No.4 Company.

...Respondents

Mr. Nirman Sharma a/w Ms. Sheetal Shah i/b. M/s. Mehta & Girdharlal
for Petitioner.

Ms. Kanchan Phatak for Respondent Nos.1 and 2.

Mr. Prathamesh Kamat a/w Mr. Kayush Zaiwalla, Mr. Divakar N.
Dadhich, Mr. Ishan Agrawal and Mr. Ashutosh Mishra i/b. Nyaayam
Associates for Respondent No.3.

Mr. Rohaan J. Cama i/b. Mr. Harish Adwant and Mr. S. V. Adwant for
Respondent No.4

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 23 October 2024

PRONOUNCED ON : 11 November 2024

JUDGMENT (Per Jitendra Jain J):-

1. By this petition under Article 226 of the Constitution of India, the Petitioner, an individual, has prayed for quashing of the communication dated 4 October 2007 issued by Respondent No.3-National Stock Exchange (NSE) to Respondent No.5-Transfer Agent directing them not to transfer shares held by the Petitioner in Respondent No.4-Company-Dr. Reddy's Laboratories Limited. The Petitioner further seeks mandamus to issue him a duplicate share certificate.

Brief facts :-

2. Since 1986 to 1997, Petitioner acquired shares, in tranches, of Respondent No.4-Company. As on 10 May 1994, the total shares held by Petitioner of Respondent No.4-Company in Folio No.A00450 was 900 shares. The Petitioner subsequently sold some of these shares. In April 2007, the shares of Rs.10/- each of Respondent No.4-Company were split into shares of Rs.5/- each. After the bonus issue, these 900 shares became 1800.

3. On 19 January 2007, Respondent No.5-Transfer Agent informed the Petitioner that he held 450 shares (before split-up) of Respondent No.4-Company, whereas he had surrendered only 50 shares for subdivision. Therefore, a request was made to the Petitioner to surrender the shares certificate for the balance shares. There were proceedings initiated by the Petitioner by invoking the redressal mechanism of the Bombay Stock Exchange in this connection, but the same is not relevant for our purpose. Respondent No.4-Company has issued dividend warrants from time to time in the name of Petitioner, wherein it is stated that the Petitioner is holding 1800 shares. However, these dividends were not credited to the Petitioner's account because of communication from Respondent No.3-NSE which is impugned in the present proceedings. The said accumulated dividends on shares has

been transferred to Respondent Nos.1 and 2 being Investor Protection Fund set up by the Union of India.

4. The Petitioner made an application for the issue of duplicate share certificates concerning shares held in Respondent No.4-Company. This application was made to Respondent No.5-Transfer Agent. The Petitioner has complied with all the necessary requirements for the issue of duplicate share certificates, namely filing of indemnity, affidavit, FIR, etc. However, Respondent Nos.4 and 5 have refused to issue the duplicate share certificates on account of the impugned communication issued by Respondent No.3 to Respondent Nos.4 and 5. The Petitioner has enclosed various documents to show that the necessary requirements for the issue of duplicate share certificates have been complied with.

5. On 27 November 2007, Respondent No.5-Transfer Agent informed the Petitioner, in connection with the issue of the duplicate share certificates, that they have received letter from Respondent No.3-NSE dated 4 October 2007 directing them to “stop transfer” of shares held in Folio No.A00450 and, therefore, request for issue of duplicate share certificate is rejected. Alongwith this letter, Respondent No.5-Transfer Agent annexed the impugned communication dated 4 October 2007 issued by Respondent No.3-NSE on the basis of which the application for issue of duplicate share certificate was rejected.

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6. It is relevant to extract the contents of the said impugned communication dated 4 October 2007, which reads as under :-

“We are enclosing herewith an Annexure containing list of securities withheld by the Exchange on account of default by trading members in making payments of the Exchange.

We propose to get these securities transferred in our name invoking Section 108 of the Companies Act, 1956. Please let us know the procedure that should be followed to get these securities transferred to our name.

In the event these securities have been sold / dematerialized after obtaining duplicate certificates. please be kind enough to give us the details of the Shareholder, including his full postal address who arranged the duplicate certificates. In the event the shares are still held by the share holder as mentioned in the Annexure, you are hereby requested to put a stop transfer on these shares till this matter is resolved.

We have appointed M/s. Giltedge InfoTech Services Pvt. Ltd. as an agency to co-ordinate with you for follow-up and completing the task of getting these securities transferred to our name. You are requested to address your correspondence to them at the address given below under intimation to the Exchange.

*M/s. Giltedge Infotech Services Pvt. Ltd.
2nd Floor, Bhajanlal Complex,
Seth Bhajanlal Marg,
Daulat Nagar, Borivali (E),
Mumbai-400066.
Tel No. 022-28900338 Fax No.: 022-28900793.*

We certainly hope that you will take our matter on priority and do the needful at the earliest.”

7. It is important to note that the letter dated 4 October 2007 was never communicated to the Petitioner, and it was only on 8 May 2008 that Respondent No.3-NSE informed the Petitioner that they are in possession of the original share certificate of the shares held by the Petitioner in Respondent No.4-Company. Respondent No.3-NSE in the said letter stated that they have been informed by the Transfer Agent-Respondent No.5 that duplicate share certificate in respect of these shares has already been obtained by the Petitioner. The letter further states that shares belong to the defaulted member of the exchange and,

therefore, these shares get vested with powers to realise the assets of the defaulted member of the exchange. Therefore, Respondent No.3 called upon the Petitioner to return the duplicate share certificate.

8. The Petitioner replied to the above letter and denied that Petitioner has obtained duplicate share certificate in respect of share of Respondent No.4-Company. The Petitioner further stated that he was owner of number of shares of which some were sold in 1997 and later on, there were bonus issues and splitting up in the face value of shares of the company. He further brought to the attention of Respondent No.3-NSE that application for issue of duplicate share certificate was rejected by Respondent No.5 and, therefore, the question of him obtaining duplicate share certificate does not arise. Petitioner put Respondent No.3 to strict proof on the contents of the letter dated 8 May 2008 of Respondent No.3-NSE.

9. The Petitioner once again in May 2018 applied to Respondent No.5 for the issue of duplicate share certificate, dividend warrants etc. and once again complied with all the requirements necessary for issue of duplicate share certificate. Vide letter dated 30 August 2018, Respondent No.5-Transfer Agent informed the Petitioner that his request for change of bank mandate has been accepted and all the accruals will be credited to the said bank.

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10. Having received no duplicate share certificate, Petitioner's advocate issued a legal notice in July 2023 to Respondent No.3-NSE and Respondent No.4-Company calling upon Respondent No.3 to withdraw the communication dated 4 October 2007 impugned in the present proceeding. However, since the impugned communication was not withdrawn, Petitioner has filed the present petition challenging the impugned communication.

Submissions of the Petitioner:-

11. Mr. Sharma, learned counsel for the Petitioner submitted that Respondent No.3-NSE has no legal or otherwise any authority to issue such communication concerning the shares he owned. The Petitioner further submitted that till today, Respondent No.3-NSE has not taken any steps as alleged in the impugned communication. The Petitioner submits that Respondent No.4-Company has confirmed that even today the Petitioner is holding 1800 shares (450 original shares of Rs.10/- each split into 900 shares of Rs.5/- each and consequent to issue of bonus of 1:1, the shares held by the Petitioner was 1800 shares). The learned counsel further submitted that Respondent No.3-NSE cannot take the plea of delay without asserting as to what right they have to issue the impugned communication when admittedly the documents relied upon by Respondent No.3-NSE supports that the shares did not belong to the defaulting member. The learned counsel further submitted

that the impugned communication is not an order or decision which would entail Respondent No.3-NSE to contend on alternative remedy of approaching Securities Appellate Tribunal. The learned counsel further submitted that the shares are even today in his name as admitted by Respondent No.4-Company and, therefore, he is entitled to file the present petition. The Petitioner, in his rejoinder, has denied having received any consideration on account of alleged transfer of these shares as contended by Respondent No.3-NSE in their reply. The Petitioner has also relied upon paragraph No.98 of the decision of the Supreme Court in the case of *Rusoday Securities Limited s. National Stock Exchange of India Limited & Others*¹. The Petitioner, therefore, prayed that the petition be allowed by directing Respondent Nos.4 and 5 to issue duplicate share certificates and Respondent Nos.1 and 2 to issue these shares / dividends to the Petitioner which are transferred to the Investor Protection Fund.

Submissions of the Respondent No.3-NSE:-

12. The contesting Respondent No.3, represented by the learned counsel Mr. Kamat, has strongly opposed the petition on the grounds of delay and laches, alternative remedy, etc.

13. The learned counsel submitted that Respondent No.3-NSE is not amenable to the writ jurisdiction and, therefore, the present petition

¹ (2021) 2 SCC 401

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is not maintainable. He further submitted that incorrect statement has been made by the Petitioner that shares are lost whereas in fact based on the transfer forms which are annexed to the reply of Respondent No.3-NSE, shares have been transferred by the Petitioner to the transferees mentioned therein and the Petitioner has also received the consideration. This statement with regard to receipt of consideration is made relying upon the endorsement on the back of transfer form which states the “pay-in date”. On a query being raised, the learned counsel for Respondent No.3-NSE stated that he is not in a position to make a statement as to whether Respondent No.3-NSE has paid any amount to the transferee mentioned in the Transfer Form or in any manner have compensated these transferees. The learned counsel further relied upon decision in the case of *Rusoday Securities Ltd. (supra)* and more particularly paragraph Nos.104 onward and justified the impugned action.

Submissions of the Respondent No.4-Company:-

14. Mr. Cama, learned counsel for Respondent No.4-Company, submitted that as per its records as of today, 1800 shares stand in the name of the Petitioner. He further submitted that the dividends have been transferred to the Investors Protection Fund in relation to these shares. The learned counsel further submitted that they would abide by the orders passed by this Court in the present matter.

15. We have heard learned counsel for the Petitioner and the Respondents and have also perused documents which are brought to our notice during the course of the hearing. We make it clear that except for the documents which are brought to our notice and which are referred to in the present order, no other documents annexed to the proceedings or pleadings have been relied upon by the parties.

Analysis & Conclusions:-

16. The first issue that must be addressed is whether a Writ would lie against Respondent No.3-NSE. Respondent No.3-NSE in their affidavit-in-reply in paragraph No.5 have stated that they have been incorporated to facilitate, promote, assist, regulate and manage the public interest and dealings in securities of all kinds, and to provide specialized, advanced, and modern facilities for trading, clearing and settlement of securities with a high standard of integrity and honour and to ensure trading in transparent, fair and open manner. They have further stated that the object of Respondent No.3-NSE is to develop, promote and maintain a healthy market in the best interest of the investors and the economy. They have regulatory and supervisory powers to regulate its members activities. The impugned communication dated 4 October 2007 states that “stop transfer” direction is given on account of default by trading member in not making payments to the exchange. There can be no doubt that stock

exchange is an economic barometer of any economy and renders vital public duties as admitted by Respondent No.3 in their reply.

17. The Supreme Court in the case of *K. C. Sharma Vs. Delhi Stock Exchange and Ors.*² has held that the stock exchange is covered by the definition of 'State' under Article 12 of the Constitution of India and amenable to writ jurisdiction of the High Court. In this connection, the Co-ordinate Bench of this Court in the case of *Trilochana K. Doshi Vs. Stock Exchange of India and Anr.*³ has also taken the view that stock exchange is amenable to the writ jurisdiction under Article 226 of the Constitution of India and Writ of Mandamus would lie against the stock exchange. In our view, based on the objects of the Respondent No.3-NSE as mentioned by them in their reply and applying the ratio of the above referred decisions, the issue as to whether a stock exchange is amenable to writ jurisdiction is no more *res integra* and, therefore, the contention raised by Respondent No.3-NSE on this count is to be rejected. We are also surprised that inspite of issue being put to rest, such a plea is being taken contrary to binding decisions. In any event, if the stock exchange acts unfairly or arbitrarily in the discharge of its public functions, an aggrieved party can invoke a public remedy, and a writ could be issued to the stock exchange.

2 2005 (4) SCC 4

3 2000 (4) Mh.L.J.83

18. Now we deal with the contention of Respondent No.3-NSE on disputed facts for non-entertaining of the petition. It is undisputed that even today the Respondent No.4-Company and Respondent No.5-Transfer Agent have confirmed that 1800 shares stand in the name of the Petitioner. The transfer forms of 1997, on the basis of which impugned communication has been issued, does not bear the name of the defaulting member as transferee, but transferees are Tata Trustees Co. Ltd. and Fidelity Investments Trust. Till today none of these transferees have lodged their claim on these shares. Respondent No.3-NSE has not shown us any document which would indicate that these shares are assets of the defaulting member. Merely recovery of transfer forms from the office of defaulting member does not confer any ownership right on such defaulting members. Since 1998 till today, Respondent No.3-NSE has not taken any steps to transfer these shares. Respondent No.3-NSE has not brought to our notice any regulation which empower them to issue such impugned communication with respect to shares not constituting “assets” of the defaulting member. The issue before us is the legality of such impugned communication based on these admitted facts by which right to property of the Petitioner under Article 300A of the Constitution is infringed by an authority which is amenable to the writ jurisdiction. Therefore, contention raised by Respondent No.3-NSE on this count also needs to be rejected.

19. Respondent No.3-NSE has also raised a contention on the availability of alternate and efficacious remedy before the Securities Appellate Tribunal for redressal of the Petitioner's grievance and, therefore, on this count also it is submitted that the present petition is not maintainable. Respondent No.3-NSE has relied upon Section 23L of the Securities Contracts (Regulation) Act, 1956 (**SCRA**) which provides for appeals to the Securities Appellate Tribunal against an order or decision of the recognised stock exchange.

20. In our view, Section 23L(1) provides for an appeal to the Tribunal if a person is aggrieved by an order or decision of the recognised stock exchange. The communication impugned, in the present proceeding, dated 4 October 2007 is neither an order nor a decision but a direction to Respondent No.5-Transfer agent to stop transfer of the shares belonging to the Petitioner. In our view, the impugned communication cannot be construed as an "order or decision" and, therefore, the reliance placed by Respondent No.3-NSE on Section 23L for relegating Petitioner to the Appellate Tribunal is misconceived. Respondent No.3 has also relied upon Section 22E of the SCRA which provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered to determine. Since we have already observed above that the impugned communication does not fall within the term

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“order or decision”, provisions of Section 22E of the SCRA would not be applicable and in any case a Writ Court cannot be treated as Civil Court for Section 22-E and, therefore, even on this count also the contention raised by Respondent No.3-NSE is rejected.

21. Respondent No.3-NSE has also raised a preliminary objection on the locus of the Petitioner to file the present proceeding on the ground that the Petitioner has transferred the shares and, therefore, has no locus to maintain the proceeding. Respondent No.3-NSE has relied upon the Transfer Forms which are annexed to its reply in support of its contention on which admittedly name of Respondent No.3-NSE or name of defaulting member is not shown as “transferee.” However, Respondent No.4-Company has in their reply has stated that Petitioner is holding 1800 shares having face value of Rs.5/- per share and the details of the same are given in paragraph No.17 of their reply affirmed on 20 August 2024. The Petitioner has applied for issue of duplicate share certificate with respect to those shares which has been denied by Respondent No.5-Transfer Agent at the behest of the impugned communication issued by Respondent No.3-NSE. Therefore, in our view, Petitioner has a locus to maintain the present proceeding since it is his contention supported by the statement made by Respondent No.4-Company that he continues to hold 1800 shares in Respondent No.4-

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Company. Therefore, even on this count objection raised by Respondent No.3-NSE is rejected.

22. The impugned communication dated 4 October 2007 directing Respondent No.5 to stop the transfer of shares records that the securities held in the name of the Petitioner is withheld on account of default by trading member in making payment to the exchange and the Respondent No.3-NSE is proposing to get these securities transferred in its name by invoking provisions of Section 108 of the Companies Act and for this purpose, an agent is being appointed to co-ordinate with the Respondent No.5.

23. At the time of hearing, the counsel for the Respondent No.3-NSE submitted that the share transfer forms were recovered from the defaulting members' office and pursuant thereto, the impugned communication is made to Respondent No.5-Transfer Agent. The date of declaring the member as defaulter as per the notice published was August 1998 and one of the defaulting member named therein is Fiscal limited from whom, the share transfer forms were recovered. The learned counsel for the Respondent No.3-NSE brought to our notice these Transfer Forms and submitted that the shares under consideration were transferred by the Petitioner for a consideration to Tata Trustees Co. Ltd. A/c, Tata Mutual Funds and Fidelity Investments Trust A/c, Fidelity Emergent Market Funds. He also brought to our notice that pay-

in-date on the reverse side of transfer forms would show that the Petitioner has received the consideration for transfer of the shares.

24. We have perused the share Transfer Forms, and the Bench raised a query as to on what basis Respondent No.3-NSE is claiming that the share specified in these transfer forms constitutes assets of the defaulting member so as to withhold the transfer of shares. The counsel for Respondent No.3-NSE was unable to answer the same. The Transfer Forms record that Tata Trustees Co. Ltd. and Fidelity Investments Trust were the transferees. In the share transfer forms, the name of the defaulting member as “transferee” is not mentioned. Therefore, by no stretch of imagination, it can be said that the shares referred to in the share transfer forms are assets of the defaulting members. It is not even the case of Respondent No.3 to that effect. Therefore, we fail to understand under what authority of law, the Respondent No.3-NSE has issued the impugned communication when based on the share transfer forms on which they are relying upon, the name of the “transferee” is not of the defaulting member. Therefore, on this ground itself and in the absence of any explanation as to how the shares specified in the share transfer forms are assets of the defaulting member, the whole basis of the impugned communication dated 4 October 2007 falls to ground.

25. If at all someone should have been aggrieved on account of transactions referred to in share transfer forms, it would be Tata

Trustees Co. Ltd. and Fidelity Investments Trust since their names appear as “transferees.” Nothing has been brought to our notice by any of the Respondents that the transferees specified in these transfer forms have lodged the claim in any proceedings before any authority for transfer of shares based on these share transfer forms and in the absence of the name of defaulting member as “transferees” in the share transfer forms, we fail to understand under what authority of law, the Respondent No.3 has issued the communication and what locus they had to issue such communication before taking objection to the locus of the Petitioner.

26. Assuming, for the sake of testing the arguments of Respondent No.3-NSE that the Petitioner has no locus, Respondent No.3 has also not shown us any authority of law based on which assets not belonging to the defaulting member but allegedly belonging to some third party are sought to be restrained by the impugned communication. The Respondent No.3 has also made a statement that they are not in a position to state whether they have compensated the transferees namely, Tata Trustees Co. Ltd. and Fidelity Investments Trust on account of these transactions. The Respondent No.5-Transfer Agent and Respondent No.4 being company of which the shares are under consideration have also not stated that any claim is made by any of the parties on these shares except the impugned communication. Even

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today, the shares stand in the name of the Petitioner in the company and the transfer agent's records.

27. We also fail to understand as to if these share transfer forms were recovered from the defaulting member in the year 1998, why Respondent No.3-NSE did not transfer these shares in their name till today more so when according to them, they have recovered these transfer forms from the members who defaulted. This also indicates that the Respondent no.3 very well knew that based on the share transfer forms, these shares did not belong to the defaulting member and, therefore, except writing a letter to Respondent No.5-Transfer Agent on 4 October 2007, that too after almost 10 years from the date of the members being declared as defaulter, no steps have been taken by the Respondent No.3. The Respondent No.3-NSE cannot by holding these share transfer forms claim ownership by adverse possession. We have not been shown a single document which would *prima facie* indicate that the shares belong to the defaulting member and, therefore, the Respondent No.3 has right over these shares.

28. The Respondent No.3 in its reply on oath have stated that the Petitioner has received the consideration on account of transfer of these shares. On a query being raised by the Bench as to on what basis, the statement on oath was made, the learned counsel for the Respondent No.3 brought to our notice an endorsement on the reverse of transfer

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forms which specifies the date of “pay-in.” We are afraid that Respondent No.3-Stock Exchange is making this statement/submission. Pay-in and pay-out dates are the dates on which the account between the Exchange and brokers are settled and not the date and the fact that on such date, payments have been received by the security seller. If assuming the payment was made, then we fail to understand why the purchasers of the shares, namely, Tata Trustees Co. Ltd. and Fidelity Investments Trust, did not raise any claim on the ground that although they have made the payment but they have not received shares. Even in this scenario, we fail to understand as to what authority Respondent No.3-NSE have to issue the impugned communication directing Respondent No.5 to stop the transfer of shares.

29. The contention of the Respondent No.3 on delay and laches in filing of the proceedings is devoid of any merits. NSE, who has not explained as to under what authority of law the shares not belonging to the defaulting member is sought to be restrained by the impugned communication, cannot have any authority to raise this issue. If NSE has no right to issue such a direction in the facts of the present case, then we fail to understand as to what authority such an entity has to raise such a plea of delay and laches. Certainly, Respondent No.3-NSE cannot claim these securities based on adverse possession of the transfer forms, nor is it the case of Respondent No.3 that these assets belong to the

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defaulter based on the share transfer forms on which heavy reliance is placed.

30. Even otherwise, the Petitioner had made an application for issue of duplicate share certificate in April 2007 onwards to share Transfer Agent-Respondent No.5. However, for the first time, the Petitioner came to know about the impugned communication dated 4 October 2007 was when the Respondent No.5 rejected the application for issue of duplicate share certificate by referring to the impugned communication, a copy of which was enclosed with the said rejection letter dated 27 November 2007. Even in the impugned communication, nowhere has Respondent No.3 stated that the share constitutes assets of the defaulting members and in subsequent letter only a statement is made without any basis. Post knowledge of the impugned communication, the Petitioner entered into the correspondence with the Respondent No.3-NSE and denied that the Petitioner has received any duplicate share certificate.

31. There is not a single document that is produced by the Respondent No.3-NSE to claim that the shares under consideration constitutes assets of the defaulting member. After series of the correspondence, between the Respondent No.3-NSE and Respondent No.5, the advocate for the Petitioner issued a legal notice in the year 2023 and only after failure of the Respondent No.3-NSE to withdraw

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the communication, the present proceedings are filed. In our view, a person who has no authority to withhold shares cannot object to any alleged delay of the Petitioner in approaching this Court. The records do not show that the Petitioner has slept over his rights, and some corresponding rights or equities have arisen in the meantime. Laches, as is well settled, is not mere physical running of time. Even otherwise, the grievance raised is a continuing grievance; therefore, on account of this fact, the objection raised on delay is to be rejected.

32. We make it clear that we are not adjudicating upon the ownership of the title of the shares under consideration, but what is challenged before us is the authority of the Respondent No.3-NSE in issuing the impugned communication dated 4 October 2007 by which the Respondent No.5 is directed to stop the transfer of the shares under consideration.

33. As observed by us above, Respondent No.3-NSE has failed to show us any authority vested in them for issuing such communication, by which the share transfer forms on the basis of which Respondent No.3 is basing its claim clearly demonstrate that the shares under consideration did not constitute assets of the defaulting member. We make it clear that based on these share forms, if any claim is made by the transferees therein, then the same would be adjudicated without getting influenced by any of our observations made herein since the

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issue before us is limited to the authority of Respondent No.3-NSE in issuing the impugned communication when even today, the Respondent No.4-Company and the Respondent No.5-Transfer Agent confirms that the shares stand in the name of the Petitioner. Besides, here, the Petitioner's claim is only for the issue of duplicate share certificates of shares that the Respondent No.4-Company admits on the affidavit, shares are still recorded in the Petitioner's name. Even dividends on these shares are issued to the Petitioner, though not actually credited to the Petitioner's account due to the objections raised by NSE.

34. The decision relied upon by the Petitioner and Respondent No.3 in the case of *Rusoday Securities Limited (supra)* does not apply to the facts of the present case before us, and, therefore, we are not dealing with the same.

35. We, therefore, pass the following order :-

ORDER

- (i) The impugned communication dated 4 October 2007 and consequential proceedings issued/taken by Respondent No.3-NSE to/against Respondent No.5-Transfer Agent of the shares of Respondent No.4-Company is quashed and set aside.
- (ii) The Petitioner must comply with any further requirements, if any, in addition to what has already

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been complied with earlier for the issue of duplicate share certificates and Respondent Nos.4 and 5 to issue duplicate share certificates to the Petitioner within four weeks from today.

(iii) Respondent Nos.1 and 2 are directed to transfer all the dividends regarding shares under consideration to the Petitioner's account within eight weeks from today.

36. Before parting, we may only state that we are restraining ourselves from commenting Respondent No. 3's conduct in the present proceedings. But considering the NSE's dominating position in such matters, it should not have blocked the issue of duplicate certificates without any statutory authority and then raised all kinds of defenses that were unwarranted in the facts of this case.

37. The Rule is made absolute to the above extent without any cost order.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)