

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No.3298/2018**

**DURGAPUR BIO GARDEN PVT LTD & ORS.**

**Appellant(s)**

**VERSUS**

**NIRAKAR DASH & ORS.**

**Respondent(s)**

**O R D E R**

1. This statutory appeal under Section 10 GF of the Companies Act 1956 is against the judgment of the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) No. 208 of 2017 dated 03.11.2017.

2. The short facts necessary for the disposal of the present appeal are that the respondents filed a Company Petition No.57 of 2015 before the Company Law Board Kolkata, Bench alleging oppression and mismanagement by the appellants and sought various reliefs including rectification of the register of members of the company. They primarily contended that the appellants have manipulated the resignation letters and also their shares were never transferred. By its judgment dated 23.03.2017, the NCLT Kolkata dismissed the petition on the ground of delay and latches as the alleged transfer of shares is of the year 2007 and the petition came to be filed in 2015. Even on merits, the Company Law Tribunal returned a finding that the transfer of shares by the respondents was valid.

3. Aggrieved by the judgment and order passed by the Company Law Tribunal, the respondents filed Company Appeal No.208 of 2017

before the National Company Law Appellate Tribunal. By the order impugned before us, the National Company Law Appellate Tribunal reversed the finding of the Company Law Tribunal and held that there was no delay in filing of the petition. The relevant portion of the order as regards delay and laches is as under:

*"13. We do not find any substance in the arguments of the Respondents that there was delay in filing of the petition. To consider limitation or delay on laches, - the Original Petition would be relevant. In present set of facts limitation is continuous cause of action for the Appellants who are still holding original shares and are being deprived from participating in the affairs of the company as Respondents are taking baseless pleas of transfer of shares relying on documents which do not inspire confidence and are seriously suspect. We find that the NCLT has not looked into any of these details which are apparent on the face of the record and misread the petition to claim that it was barred by limitation."*

4. As regards the merits of the matter, the Appellate Tribunal considered the matter in detail and returned the following findings:

*"10. A sample reference was made to page -511 of the paper book. If the said Form-7(b) "Share Transfer Form U/s 108(1A)" of Old Act is perused, it shows that the Registrar of Companies had put his seal on top of the share transfer form along with a seal of date recording "07.11.2007" When the learned counsel for the Respondents was asked as to on what date this share transfer form was executed, he referred to this date. However, this date is date of presentation under clause (a) of Sub-section IA of Section 108. The learned counsel for the Appellants pointed out and rightly so, that the share transfer form does not bear date of execution; it does not bear even the name of the company nor number of shares which had been transferred, nor share Certificate number nor Reg. Folio No. of the shares. It is argued that it does not bear the stamp affixed on share transfer form which is mandatorily required to be stamped under Article 5(1)(a) of the Indian Stamp Act, 1899 as applicable in West Bengal. On the documents; there are names of transferors, signatures of the transferors and names of the transferees only*

written. At the foot of the documents there appear signatures of the Respondent no. 3- Adhirendra Kumar Paine. At the time of argument, it was further noticed that the receipt of cheques purported to have been executed also did not refer to number of shares transferred or share certificate number or Registered Folio Nos.

11. It is interesting to see that Respondents claimed that the Appellants were paid consideration for transfer of shares by cheque dated 08.11.2007 for which the receipts were issued, as can be seen at pages 501 to 512 of the paper book. The resignation letter however, is dated 28.03.2007 which was much before this dated of 08.11.2007. The letter of resignation dated 28.03.2007 can be seen at page 500 of the paper book. It purported to show that the Appellants had resigned from Board of Directors/Executive Body as well as they had w.e.f. that date transferred all holding of equity share individually on receipt of appropriate consideration. If such transfer had been made, consideration paid and resignation tendered in 2007, it is surprising to find that the company in its annual returns and balance sheets for financial years 2010, 2011 and 2012 continued to show the Appellants as directors. For example, a copy of the annual return as at page 382 of the paper book can be seen. Learned counsel for the Appellants further pointed out copy of the Annual Return which is at page 350 of the paper book. In this Return "date of annual general meeting/due date" is 30.09.2006. Chart claiming details of share transfer since the date of last "AGM" is annexed to the Return at page 361. This chart shows shares have been transferred from the Appellants No. 1 to 7 in favour of Respondent nos. 2 to 6. Learned counsel for the Appellants pointed out that these details claim that the "date of registration of transfer of shares" by the Appellants was "5th May, 2006". It is apparent that Respondents are relying on contradictory as well as incomplete and suspicious records coming from them, to support their claim of transfer of shares by Appellants.

12. The Appellants then pointed out Form 32 at page 452 which claims that the Respondent no. 4 - Achinta Paine, was appointed Director on 07.01.2008 but surprisingly, he was signing Director's Report even for the year ending 31.03.2006 as can be seen from page -407. Learned counsel for the Appellants thus is right in her

*submissions that the Respondents are unlawfully keeping out the Appellants and when the Appellants are still holding the original shares, they are being deprived of right to participate into the affairs of the company in an oppressive manner and the Respondents are mismanaging the affairs of the company.*

*14. We find substance in the submissions of the learned counsel for the Appellants that their signatures were taken by Respondent No. 2 for the purpose of negotiating with the bank to arrive at one-time settlement of the company accounts and the same have been misused. Documents relied on by the respondents to claim that appellants resigned from the Board of Directors and transferred their shares are suspicious documents and unreliable. We find that there is no substance in the arguments being raised by the learned counsel for the respondents, in the facts and circumstances of this matter."*

5. Having considered the matter in detail, we are of the opinion that the findings of fact arrived at by the National Company Law Appellate Tribunal are unimpeachable and we are of the opinion that the Company Law Tribunal has not made any error in fact or law.

6. In view of the above, while we affirm the judgment and order passed by the Company Law Appellate Tribunal in Company Appeal (AT) No.208 of 2017 dated 03.11.2017. The appeal is therefore dismissed.

7. The party shall bear their own costs.

8. Pending application(s), if any, shall stand disposed of.

.....J.  
[ PAMIDIGHANTAM SRI NARASIMHA ]

.....J.  
[ ATUL S. CHANDURKAR ]

NEW DELHI;  
JULY 30, 2025.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.3298/2018

DURGAPUR BIO GARDEN PVT LTD &amp; ORS.

Appellant(s)

VERSUS

NIRAKAR DASH &amp; ORS.

Respondent(s)

IA No. 29701/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 149445/2018 - EXEMPTION FROM FILING O.T.

IA No. 149444/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 29699/2018 - STAY APPLICATION

Date : 23-07-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA  
HON'BLE MR. JUSTICE ATUL S. CHANDURKAR

For Appellant(s) : Mr. Ashok Anand, AOR

Mr. Tejaswi Kumar Pradhan, AOR  
Mr. Motahar Hossain, Adv.  
Mrs. Sarifa Chowdhury, Adv.  
Mr. Manoranjan Paikaray, Adv.

For Respondent(s) : Ms. Purti Gupta, AOR  
Ms. Purti Gupta (arguing Counsel), Adv.  
Ms. Henna George, Adv.  
Ms. Sunidhi Sah, Adv.  
Ms. Pooja, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

1. The appeal is therefore dismissed in terms of the Signed Order placed on the file.
2. Pending application(s), if any, shall stand disposed of.

(VIJAY KUMAR)  
ASTT. REGISTRAR-cum-PS

(NIDHI WASON)  
COURT MASTER (NSH)