

Kishore Y. Patel and Others Vs. Patel Engineering Co. Ltd. and Others

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Court : Mumbai

Decided On : Jul-04-1991

Reported in : AIR1992Bom114; [1994]79CompCas53(Bom)

Judge : D.R. Dhanuka, J.

Acts : [Companies Act, 1956](#) - Sections 186, 391, 397, 398 and 643; Companies (Court) Rules, 1959 - Rules 9 and 11; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 40, Rule 1

Appeal No. : Notice of Motion in Suit (Lodging) No. 1924 of 1991

Appellant : Kishore Y. Patel and Others

Respondent : Patel Engineering Co. Ltd. and Others

Advocate for Def. : I.M. Chagla,;J. Avaria and;Khambatta, Advs., i/b;M/s. Hariram & Co. and;S.F. Vajifdar

Advocate for Pet/Ap. : J.I. Mehta,;G.E. Vahanvati,;Mr. Aspi Chinoy and;Mr. Pratap, Advs., i/b;M/s. Mulla &Mulla Cragie Blunt &Caroe

Judgement :

ORDER

1. The plaintiffs are shareholders of Patel Engineering Company Ltd., the 1st defendant company in this suit. The defendants Nos.2 to 8 are also the

shareholders of the 1st defendant company. There are two groups of shareholders in this company who are continuously fighting for its control and management since quite sometime i.e. (1) Y. G. Patel Group represented by the plaintiffs and (2) Pravin Patel Group represented by the defendants. Having regard to the verdict of Extraordinary General Meeting of the Company held on 8th May, 1990 under the Chairmanship of retired Judge of this Court, Shri D. M. Rege, and the realities of situation, it can be safely stated that the defendants' group is the majority group and the plaintiffs' group is the minority group. On 24th June, 1991, the plaintiffs filed this suit seeking to obtain several reliefs against defendants Nos. 2 to 7. By prayer (a) of the plaint, the plaintiffs have prayed that the defendants Nos. 2 to 7 be decreed to pay a sum of Rs. 511 lacs to the 1st defendant company along with further interest on the sum of Rs. 470 lacs at 18% per annum from the date of the suit till judgment and thereafter till payment and realisation. The plaintiffs have described the action as a derivative action. By prayer (b) of the plaint, the plaintiffs have sought a declaration in the following terms :--

'That this Hon'ble Court be pleased to declare that defendants Nos. 2 to 7 are not entitled to chair/act as Chairman at General Meetings of the 1st defendant-Company.'

These are the only substantive prayers in the suit, rest of the prayers being for interim reliefs.

2. By this notice of motion, the plaintiffshave sought a direction from this Hon'bleCourt to appoint a retired High Court Judgeor some other fit and proper person to be theChairman of the Extraordinary GeneralMeeting of the 1st defendant company scheduled to be held on 9th July, 1991. By the saidprayer, the plaintiffs have also sought relief tothe effect that such independent Chairmanshould address letters to the members of the1st defendant company who are alleged tohave addressed proxies asking them to confirm in writing to such independent Chairmanwhether they have in fact executed the proxiesor not. Prayer (a)(iii) of the notice of motion istoo general. By prayer (a)(iv) of the notice ofmotion, the plaintiffs arc seeking appointment of Court Receiver, High Court, Bombay, as the Receiver of all the books ofaccounts, papers, documents and

records of the 1st defendant company including those pertaining to the Doha Arbitration claim (and in particular correspondence exchanged between the 1st defendant company and the 9th defendant and/or the Government of Qatar) as also all statutory records and proxies wherever located, with all powers under Order XL, Rule 1 of the Code of Civil Procedure.

3. When an application for ad interim relief was made to me on behalf of the plaintiffs, I decided to grant an opportunity to the contesting defendants to file their affidavit, if any, to oppose the application by Friday, the 28th June, 1991, and fixed the application on 1st July, 1991. This application was extensively argued by the learned Counsel for the parties on 1st July, 1991 and 2nd July, 1991. Having regard to the citation of number of authorities and the length of the arguments. I had to reserve my orders and the matter was kept today for dictating orders.

4. This notice of motion involves a question of law as to whether the Civil Court has inherent jurisdiction to appoint a Chairman to conduct a meeting already called by the company in pursuance of a requisition served on it in absence of any enabling power under the Companies Act, 1 of 1956, particularly when the Articles of Association of the Company make the necessary provisions in respect thereof. The question raised pertains to the subject of corporate democracy, doctrine of internal management, rule of supremacy of majority coupled with exceptions thereto and the power of the Court to interfere with conduct of company meetings. This notice of motion involves consideration of question as to the power of the Civil Court to grant an interlocutory relief of the kind sought in absence of prayer for final reliefs in terms thereof or in a situation when prayer (a) of the plaint is in nature of a money claim and prayer (b) thereof is totally unmaintainable in law.

5. The facts and circumstances leading to filing of this suit as explained by counsel on both sides are too many. However, I propose to refer only to such of the facts and such of the documents which, in my opinion, are really germane to the disposal of this application.

6. The material facts are as under:--

a) Till about June, 1990, Mr. Y. G. Patel Group was in management of the 1st defendant company. Sometime in the year 1963, Mr. Y. G. Patel was appointed as Chairman and Managing Director of the 1st defendant company. Sometime in or about the year 1976, Mr. Kishore Patel, son of Mr. Y.G. Patel, was appointed as the Chief Executive of the 1st defendant company. Mr. Kishore Patel also held power of attorney from the 1st defendant company.

(b) During January, 1989 to April, 1989, various persons belonging to Pravin Patel Group purchased 29,842 shares of the 1st defendant company. On 3rd May, 1989, the Board of Directors of the 1st defendant company communicated its decision to the applicants concerned to the effect that the said shares could not be transferred to the name of the transferees as in its opinion such proposed transfer would be prejudicial to the interests of the company and there was an attempt to take over. References were filed before the Company Law Board. The Company Law Board ultimately directed the 1st defendant company to effect transfer of the shares. The decision of the Company Law Board is impugned by the persons aggrieved thereby in a writ petition, being Writ Petition No. 2150 of 1991, filed on the Appellate Side of this Court.

(c) Members of Pravin Patel Group claim to be in majority having acquired large number of shares, as aforesaid. An attempt was, therefore, made by this group to acquire the control and management of the company in accordance with norms of corporate democracy. On 29th August, 1989, an extraordinary general meeting of the company was held. At the said meeting, five directors nominated by Pravin Patel Group were elected. On 11th September, 1989, Mr. Kishore Patel belonging to Y. G. Patel Group filed Suit No. 6506 of 1989 in the Bombay City Civil Court at Bombay in order to restrain the defendants to the suit from giving effect to the special resolution dated 29th August, 1989. On 34th of September, 1989, one Ratilal Shah, another shareholder, being a supporter of Y. G. Patel Group, also filed a similar suit in the City Civil Court at Bombay. The Directors who were elected at the meeting held on 29th August, 1989 were restrained from functioning as Directors by the interim orders passed by the Bombay City Civil Court. The matters came to the High Court in appeal. By an order dated 23/26/28th March, 1990, passed in Appeals from Order, Variava, J. allowed the appeals and directed

convening of an extraordinary general meeting on 8th May, 1990 to consider as to whether the resolution dated 29th August, 1989 could be ratified and confirmed. Variava, J. passed several strictures against the plaintiffs' group in his judgment. This meeting was held under the chairmanship of retired Judge of this Court, Shri D. M. Rege. The resolution dated 29th August, 1989 was ratified and confirmed. The Additional Directors nominated by Pravin Patel Group took over. The plaintiffs lost control. Pravin Patel group got control of management of 1st defendant company in due course of law after having established their majority. By an order dated 4th May, 1990, the Hon'ble Supreme Court dismissed the Special Leave Petition filed by Y. G. Patel group. The order of Variava, J. has acquired finality. On 5th June, 1990, Annual General Meeting of the 1st defendant company was held. At this meeting also, the directors nominated by plaintiffs' group could not be elected. The Power of Attorney granted by defendant No. 1 in favour of Mr. Kishore Patel was revoked. It is not disputed that since about June, 1990. Pravin Patel group is in management of the affairs of the 1st defendant company. It is not necessary to refer to the large number of litigations which are pending between the parties or which were initiated by the parties against each other or one another in different Courts. What I have said above is enough for the purpose of stating the background facts leading to the filing of the present suit.

7. I shall now state the facts concerning the extraordinary general meeting scheduled to be held on 9th July, 1991 in respect whereof the plaintiffs are seeking judicial intervention by this notice of motion.

(a) On 9th April, 1991, certain shareholders belonging to Y. G. Patel Group served a requisition on the 1st defendant company calling upon the company to convene an extraordinary general meeting of the company to consider and, if thought fit, to pass various resolutions set out therein as ordinary resolutions. By the said requisition, it was proposed that the following resolutions should be considered at the extraordinary general meeting:--

(1) 'RESOLVED that the total number of directors of the Company be increased from seven to nine.'

(2) 'RESOLVED that Shri Pravin A. Patel a director of the company be removed from the office of the director and that the vacancy caused as a result of removal of the said Shri Pravin A. Patel be not filled up.'

(3) 'RESOLVED that Shri Rohit A. Patel a director of the Company be removed from the office of the director and that the vacancy caused as a result of removal of the said Shri Rohit A. Patel be not filled up.'

(4) 'RESOLVED that Shri Shamit Majumdar a director of the Company be removed from the office of the director and that the vacancy caused as a result of removal of the said Shri Shamit Majumdar be not filled up.'

(5) 'RESOLVED that Shri Sukhinder Bagai a director of the Company be removed from the office of the director and that Shri Azad N. Parikh be appointed as a director of the Company instead of the said Sukhinder Bagai so removed at the meeting.'

(6) 'RESOLVED that Shri Kishore Y. Patel be appointed as a director of the Company who shall be liable to retire by rotation.'

(7) 'RESOLVED that Shri Surendra Jashbhai Patel be appointed as director of the Company who shall be liable to retire by rotation.'

In the Explanatory Statement attached to the said requisition, it was stated by the requisitionists that the Directors sought to be removed (representing Pravin Patel Group) do not reflect the sentiments of majority of the shareholders of the company and corporate democracy required that the Board should have persons of choice of the majority of shareholders of the company. No allegations are to be found in the Explanatory Statement appended to the said requisition.

(b) On 29th April, 1991, the 1st defendant company issued a notice to its shareholders convening the extraordinary general meeting of the company on 24th May, 1991. On 16th May, 1991, members of Y. G. Patel group filed a suit in the Bombay City Civil Court at Bombay, numbered as Stamp No. 4382 of 1991, for a direction that the City Civil Court do appoint a retired Judge of the High Court or some other fit and proper person to preside as the chairman of the extraordinary

general meeting of the 1st defendant company to be held on 24th May, 1991 including any adjourned date thereof. It was also prayed in the said suit that defendants Nos. 2 to 5, who are four of the Directors sought to be removed by the said requisition or any director from that group, must be restrained from acting as Chairman at that meeting. The said suit is pending. An application for interim relief taken out by way of notice of motion in the said suit is also pending. In the abovementioned writ petition filed on the Appellate Side of this Court (Appellate Side Writ Petition No. 2150 of 1991) impugning the decision of the Company Law Board directing the company to transfer the shares in question) a Division Bench of this Court consisting of Vaidya, J. and myself, passed an order to the effect that the meeting scheduled to be held on 24th May, 1991 be held only for the purpose of adjourning the same to 9th July, 1991 in order to enable the Court to consider the said petition on reopening. The said petition is pending. On 21st May, 1991, parties to the suit in the City Civil Court, who are the same very parties in substance, obtained an order from His Honour Judge Shri J. M. Patel to the effect that Mrs. Liliben Pandya, the defendant No. 7 in this suit, shall chair the meeting of the company scheduled to be held on 24th May, 1991. The Bombay City Civil Court Suit Stamp No. 4353 of 1991 as well as the notice of motion taken out therein are still pending. On 24th June, 1991, the plaintiffs have filed this suit. Most of the reliefs claimed in this notice of motion are identical to the reliefs claimed in the City Civil Court suit referred to hereinabove. The plaintiffs have chosen to continue parallel proceedings in two Courts without any justification.

8. Before detailed arguments on this application were commenced by Mr. J. I. Mehta, the learned counsel for the plaintiffs, Mr. 1. M. Chagla, the learned counsel for the contesting defendants, informed the Court that apart from his strong legal views in the matter to the effect that this Court has no inherent jurisdiction to appoint a chairman to conduct a meeting of this kind, to cut the matter short, his clients were willing to take a consent order for appointment of an independent chairman as Chairman of the meeting, provided no special directions as contemplated in prayer (a)(ii) of the motion were sought. According to the learned counsel for the contesting defendants, the chairman of the meeting could not be directed to carry on correspondence with shareholders who had given proxies and the contesting defendants could not be expected to agree to issue any special

directions by the Court in terms of prayer (a)(ii) of the motion. Since this offer of Mr. Chagla was not acceptable to Mr. Mehta, the hearing was proceeded with on merits.

9. I shall first consider the question as to whether the Civil Court has inherent jurisdiction to appoint a chairman to conduct a company meeting already convened by the company in pursuance of a requisition.

10. Article 75 of the Articles of Association of the Company provides that the Chairman (if any) of the Board of Directors shall, if willing, preside as Chairman at every general meeting, whether ordinary or extraordinary, but if there be no such Chairman, or in case of his absence or refusal, some one of the directors (if any be present) shall be chosen to be Chairman of the meeting. Article 76 provides that in certain situations the shareholders present shall choose one of their own members to be the Chairman of the meeting. The Companies Act I of 1956 provides for holding of statutory meeting. Annual General Meeting and Extraordinary General Meeting. Wherever the Legislature thought it fit to empower an independent authority to convene a company meeting, the Legislature has expressly made provisions in that behalf under the Companies Act 1 of 1956. If default is made in holding of an Annual General Meeting in accordance with Section 166, the authority named in Section 167 of the Act can convene an Annual General Meeting of the company. Similarly if for any reason it is impracticable to call a meeting of the company other than an Annual General Meeting in any manner in which meetings of the company may be called or to hold or conduct a meeting of the company in the manner prescribed by the Act or the Articles, the Company Law Board is empowered to convene a meeting of the company in accordance with the parameters laid down under Section 186 of the Companies Act 1 of 1956. Prior to 1974, Section 186 of the said Act conferred powers on the Courts to direct convening of a meeting other than annual general meeting and issue ancillary and consequential directions in that behalf. Since 1974, the Court has no such power to convene or conduct the company meeting under Section 186 of the Act. The Act also empowers the Company Court to issue directions for holding of meetings of the members, secured creditors and unsecured creditors under Section 391 of the Act. The Act confers large powers

on the Company Court to direct convening of meetings under Sections 397 and 398 thereof. Articles of Association' of Company bind all the shareholders. The Court can issue directions to a company to convene or conduct the meeting in a manner not warranted by Articles only when specifically authorised by a statutory provision and not otherwise. It was held at one stage by the High Court of Madras that the Court could appoint an independent chairman to conduct a meeting already called by the company under Section 186 of the Act. This view was in terms overruled by the Hon'ble Supreme Court in its judgment in R. Rangachari v. S. Suppiah, : [1976]1SCR798 . By this judgment, the Hon'ble Supreme Court reversed the Division Bench judgment of the High Court of Madras against which the appeal was filed before the Supreme Court.

11. The learned counsel for the plaintiffs frankly conceded that the plaintiffs are not invoking Section 186 or any other substantive provisions of the Act. Mr. J. I. Mehta, the learned counsel for the plaintiffs, strongly relied on Rule 9 of the Companies (Court) Rules, 1959. The said Rule reads as under:--

'9. Inherent powers of Court.--Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.'

It is well known that these rules were framed by the Hon'ble Supreme Court in exercise of the powers conferred on it by sub-sections (1) and (2) of Section 643 of the Companies Act 1 of 1956. Rule 9 of the Companies (Court) Rules must therefore be construed in conjunction with Section 643 of the Companies Act 1 of 1956. Section 643 of the said Act has a direct bearing on interpretation and applicability of Rule 9 invoked by Mr. Mehta, as stated above. Section 643 of the Companies Act 1 of 1956 enables the Supreme Court to make rules providing for all matters relating to the winding-up of companies and for other matters specified therein. It appears to me that Section 643(b)(v) of the Act alone is relevant for our purpose. Section 643(b)(v) of the Act reads as under:--

'S. 643(b)(v). Generally for all applications to be made to the Court under the provisions of this Act.'

While considering applications made to the Company Court under the substantive provisions of the Companies Act 1 of 1956, the Company Court is entitled to mould the relief and exercise its inherent jurisdiction whenever found necessary to prevent injustice. The Court is thus required to address itself to the question as to under which substantive provision of the Companies Act 1 of 1956, the application is made by the applicant. If the application made is found maintainable under some specific substantive provision of the Act, then alone Rule 9 of the Rules can be pressed into service and not otherwise. In our case, the application made by the plaintiffs is not maintainable under any of the provisions of the Companies Act 1 of 1956. In my judgment, Rule 9 of the Companies (Court) Rules cannot be therefore invoked.

12. I shall now refer to the authorities cited by the learned counsel on both sides.

13. The learned counsel for the plaintiffs relied upon the judgment of the High Court of Madras in the case of Nagappa v. Madras Race Club, : AIR1951 Mad831a (2). In this case, the plaintiff had filed a declaratory suit impugning the election of defendants Nos. 2 to 13 to the Managing Committee of the Club and impugning also certain resolutions purported to have been passed at certain meetings of members of the Club. In this case, the Chairman of the meeting himself was one of the candidates. The Chairman of the meeting had given ruling in respect of validity of his own nomination paper. In paragraph 19 of the judgment, it was observed by the Division Bench of the High Court of Madras that election of the members of the Managing Committee was wholly void as no special resolution was passed as required by law. In paragraph 20 of the judgment, the High Court held that in view of no special resolution having been passed, the suit could be straightway disposed of in favour of the plaintiffs and nothing else survived in the suit. However, the Court thought it proper to deal with other objections also in respect of the said election. In paragraph 29 of its judgment, the Division Bench held that the impugned election was also invalid on the further ground that Mr. Natesan presided at the meeting. It was observed that Mr. Natesan was himself a candidate for the Managing Committee and he gave ruling on the question of validity of his own nomination. It was held that the Chairman was in the position of a quasi judicial officer. It was held that it was a case of clear

conflict between interest and duty and the principles relied upon by the plaintiffs were principles of universal application. It was therefore held by the Court as an additional ground of its decision that the impugned election was void. The learned counsel for the plaintiffs submits that on first principle, if one may use that expression, the defendants Nos. 2, 3, 4 and 6 cannot be permitted in law to chair the meeting at which resolutions seeking to remove them as directors would be discussed and voted upon. The learned counsel submits that if the resolution passed at a meeting under their chairmanship would be assailable on the principles laid down in the above referred case, there is no reason as to why the plaintiffs should not be able to prevent defendants Nos. 2, 3, 4 and 6 and their supporters from chairing the meeting or getting an independent chairman appointed. The above referred judgment of the High Court of Madras was well distinguished by the High Court of Calcutta in the case of B. and A. Investore v. J.K.E. Industries, : AIR1956 Cal658 . In this case, the shareholders had issued a requisition to call an extraordinary general meeting to consider a proposed resolution for removal of certain persons as directors. In this case, an application was made for an order that the meeting be called in accordance with the directions of the Court and the same be conducted in a manner the Court deemed fit. In support of the application, the learned counsel for the applicant in the above referred Calcutta case relied upon the ratio of judgment of the Madras High Court in Nagappa's case : AIR1951 Mad831a (2)) (supra). P. B. Mukherji, J. of the High Court of Calcutta held that the above referred Madras case was clearly distinguishable, as in the case before him the decision would be taken by the shareholders and not by the chairman himself. It was for the shareholders to decide as to whether a particular director should be removed from directorship or not. It was held that accordingly on any view of the matter, the case in which the chairman had given a ruling on the validity of his own nomination had no analogy with the case before him. The learned Judge held that merely because there was rivalry between two groups of directors, the Court could not be called upon to convene a meeting or conduct the same. After considering the evolution of the Company Law, the learned Judge held that the Court could not be required to intervene to convene a company meeting not in the manner prescribed by the Act or by the Articles of Association of the Company and to override the express

provisions thereof. I am in complete agreement with the ratio of the above referred Calcutta case which is directly on the point. I must however add that I do not share the observations made in paragraph 17 of this judgment by Mukharji, J. to the effect that the powers then given to the Court under Section 186 of the Act was unsuitable and irresponsible. Since 1974, the Court has no power to convene or conduct a company meeting under Section 186 of the Act. In any event, the above referred Madras judgment is not an authority for the proposition that the Court has power to appoint an independent chairman of a company meeting except in accordance with express statutory provisions made in the Act. It is for the chairman, directors and shareholders to decide as to who will chair the meeting to be held on 9th July 1991 in light of Articles of Association of the Company and the applicable provisions of law. It is possible that the directors sought to be removed will express their unwillingness to chair the meeting and some one else entitled to chair the same would do so in terms of the authorisation under the Articles of Association of the Company.

14. In my judgment, the ratio of the judgment in Nagappa's case : AIR1951 Mad831a (2)) (supra) is not an authority for the proposition that the Court has inherent power to appoint chairman of a company meeting or that the Court can intervene in these matters except in accordance with express statutory provisions of the Act. Even if it is assumed that defendants Nos. 2, 3, 4 or 6 are not entitled to chair the meeting, one of the others authorised under the Articles of Association of the company can do so.

15. The learned counsel for the plaintiffs then relied upon another judgment of the High Court of Madras in the case of V. Selvaraj v. M.H.P. Fund Ltd., : AIR1968 Mad378 . In this case, following unreported judgment of Ramamurthy, J. quoted in paragraph 8 of the judgment, it was held that the Court has inherent power to give directions in the matter where there was confusion and pandamonium and it was in the interests of justice to assist the company to perform its statutory duty to hold the annual general meeting which it was not able to hold because of the trouble which it was facing. This judgment is expressly, or at any rate by necessary implication, overruled by a later judgment of the same High Court in the case of T. M. Menon v. Universal Film (India) Pvt. Ltd., (1982) 52 Com Cas 371 : 1982 Tax

LR 2533, This judgment also takes note of the judgment of the Supreme Court in the case of R. Rangachari : [1976]1SCR798 (supra). I shall now discuss the ratio of the judgment of the High Court of Madras in the case of T.M. Menon v. Universal Film (India) Pvt. Ltd. The facts of this case appear to be almost identical to the facts of the present case. In this case, an extraordinary general meeting of the shareholders of the company was scheduled to be held on 26th November, 1980. In this case, an application was filed under Rules 9 and 11(b) of the Companies (Court) Rules, 1959 for appointment of an independent chairman of Court's choice to conduct the said meetings. In this case also, one of the items on the agenda was to consider the resolution for removal of the respondent and his wife as director of the company. The question before the Court was as to whether the application was at all maintainable under the law. The learned counsel for the applicant pressed for appointment of an independent chairman by the Court in exercise of its powers under Rules 9 and 11(b) of the said Rules. In alternative, the learned counsel for the applicant submitted that at least an 'Advocate-observer' may be appointed with a power to remain present at the meeting of the company. The High Court of Madras, after referring to the Supreme Court judgment in R. Rangachari's case, held that the application made to the Court was not maintainable as the Court could not exercise its inherent power and induct an outsider in a company meeting which was duly convened beyond what could not be done even under Section 186 of the Act. It was argued before the Court that the judgment of the Supreme Court in R. Rangachari's case : [1976]1SCR798 must be restricted to a case which directly arose under Section 186 of the Act alone. On this aspect, the learned Judge observed as under 1982 Tax LR 2533 (Mad):--

'When the Supreme Court has held, by reference to S. 186 of the Act, that once a meeting is called by the company, there can be no question of appointment of a chairman to be present for other purpose in a meeting, it is indicative of the approach to be made when an application is filed by a party merely invoking R. 9 of the Rules.....'

I go one step further. In my judgment, Rule 9 of the Rules can be invoked only for the purpose of moulding appropriate relief to be granted, provided the application

is shown to be maintainable under substantive provision of the Companies Act 1 of 1956 and not otherwise. In the above referred judgment of the Madras High Court, the judgment of the same High Court in V. Selvaraj : AIR1968 Mad378 (supra) was in terms relied upon in the Division Bench judgment in R. Ranga-chari's case : [1976]1SCR798 which was expressly overruled by the Supreme Court. In T. M. Menon's case 1982 Tax LR 2533, the High Court of Madras held that the application made to the Court for appointment of an independent chairman or in alternative an 'advocate-observer' was not maintainable and the Court had no inherent power to do so under Rule 9. It is axiomatic and well settled that in case the meeting is conducted illegally and illegal resolutions are passed or procedure followed at the meeting is opposed to law, the decisions taken at the meeting can be impugned in appropriate proceedings which may be filed later on.

16. At this stage it shall be appropriate to refer to the judgment of the High Court of Kerala in the case of Dr. A. M. Zacharia v; Majestic Kuries, and Loans (P.) Ltd., (1987) 62 Com Cas 865. It was held by the High Court of Kerala that the Civil Court had no inherent power to direct convening or conducting of a company meeting. In this case, the question before the High Court of Kerala was as to whether the civil court was authorised by law to direct convening of an annual general meeting of a company. It was held by the High Court of Kerala, after referring to the judgment of the Supreme Court in R. Rangachari's case : [1976]1SCR798 and various other judgments, that the civil court had no authority to appoint a Commissioner to convene the 5th Annual General Meeting of the company. I am in respectful agreement with the ratio of the judgments of the High Courts of Calcutta, Madras and Kerala referred to hereinabove. The earlier judgments of the High Court of Madras cited by the learned counsel for the plaintiffs are not directly on the point or do not hold the field as stated above.

17. Mr. J. I. Mehta, the learned counsel for the plaintiffs, also relied upon an unreported judgment of brother Choudhari, J. dated 20th June, 1989 in Notice of Motion No. 1154 of 1989 in Suit No. 1352 of 1989. This judgment was in terms set aside in appeal. I have been shown copy of the order passed by Division Bench of this Court in appeal and I find that the above referred judgment and order both were set aside by the Division Bench. The learned counsel for the plaintiffs has

submitted that I should attach weightage to the view expressed by a learned Judge of this Court in a judgment although set aside in appeal as the appellate order was by consent and it does not therefore state any reason. In this case, Brother Choudhary, J. expressed the view to the effect that the Court always had power to appoint an independent chairman to preside over the meeting of a company. In this case, it was held that the appointment of a chairman by the Court was necessary when there are factions among the shareholders. In this case, the learned Judge relied upon the judgment of the High Court of Madras in *Ananthalakshmi v. T.B.A. and P. Ltd.*, : AIR1952 Mad60 and the judgment in *V. Selvaraj's case* : AIR1968 Mad378 (supra). With great respect to the learned Brother Judge, I am in total disagreement with the view expressed by him. In my humble view, it cannot be assumed that the Court always has inherent power to appoint an independent chairman of the company meeting when there are factions amongst the shareholders. In my opinion, provisions of the Companies Act 1 of 1956 and the Articles of Association of the Company hold the field and the Court has no power to override the Act or the Articles in garb of exercising powers under Rule 9 of the Rules. In my humble opinion, it is also not correct to say that whenever there are two groups amongst the shareholders, the Court must appoint an independent chairman and conduct the meeting through its nominee. If that were be the law, in every case the Court could be called upon to appoint a chairman of the company meeting as existence of rival groups in a company is almost a common feature. In my judgment, the Court is required by law to restrict itself to the statutory provisions under the Act. According to me, the judgment of the High Court of Madras in *V. Selvaraj's case* : AIR1968 Mad378 stands overruled by later judgment of the same Court in *T. M. Menon's case* 1982 Tax LR 2533 (supra). The judgment of the High Court of Madras in *Ananthalakshmi's case* : AIR1952 Mad60 also does not hold the field.

18. It was argued by Mr. Aspi Chinai, the learned counsel for the plaintiffs, who supplemented the arguments of Mr. J. I. Mehta at the stage of rejoinder, that prayers (c)(i), (c)(ii) and (c)(iii) of the plaint must be considered as ancillary to prayers (a) and (b) only. The learned counsel submitted that the Civil Court always has inherent power to grant appropriate interim relief in a civil suit. In my judgment, prayer (b) of the plaint is totally misconceived and is liable to be treated as not

maintainable in law. No one can seek declaration from a civil court debarring a particular person from chairing a meeting of the company which may be held at any point of time. If prayer (c) of the plaint is to be treated as adjunct to prayer (b) of the plaint, ex facie it is not maintainable in law. By prayer (a) of the plaint, the plaintiffs are seeking a money decree in favour of defendant No. 1 and against defendants Nos. 2 to 7. Holding of the extraordinary general meeting on 9th July, 1991 has no nexus whatsoever with prayer (a) of the plaint. The plaintiff ought to have annexed a copy of the requisition dated 9th April, 1991 to the plaint. The learned counsel for the plaintiffs was fair enough to tender a copy of the said requisition for perusal of the Court. It is for the shareholders to decide as to which particular individual or group enjoys the confidence of the majority. It is not within the power of this Court to issue a declaration and disqualify one or the other individual from chairing a meeting of the company irrespective of facts and irrespective of situation prevailing. In my judgment, a declaration of the kind sought in prayer (b) of the plaint can never be claimed.

19. Mr. Chagla, the learned counsel for the contesting defendants, rightly relied on the judgment of the Supreme Court in *Cotton Corporation of India v. United Industrial Bank Ltd.*, : [1983]3SCR962 , in support of his submission that the Court cannot grant interim relief unless it is likely to grant final relief in the same terms or in terms having close nexus with the prayer for interim relief. It appears that the submission of Mr. Chagla is well founded. In my judgment, the Court is not likely to grant final relief in terms of prayer (b) of the plaint. In my judgment, there is no nexus between money decree prayed for in prayer (a) of the plaint and the interim relief sought in this case. From this point of view also, the notice of motion is liable to fail. Assuming that I had any inherent power to appoint an independent chairman of the company, I would not have exercised any such power in this case having regard to the history of the litigation and observations made by Variava, J. against the plaintiffs in his judgment and order dated 23rd/26th/ 28th March, 1990 referred to hereinabove and having regard to the parallel proceedings which have been continued by the plaintiffs in the City Civil Court at Bombay as well as in this Court. If the meeting dated 9th July, 1991 is conducted in contravention of law, party aggrieved can always pursue its legal remedy.

20. It was stated that several proxies have been forged at the instance of Pravin Patel group. This allegation has been denied. Mr. B. Srinivasan has filed an affidavit, copy whereof is annexed as Exhibit 'L' to the plaint, The plaintiffs have given a schedule of the alleged forged proxies in Exhibit 'M' to the plaint. Along with the affidavit in rejoinder, the plaintiffs have filed several affidavits of members of the Bajaj family. All these allegations are bare allegations. The allegations are strongly made on behalf of the plaintiffs and the same are strongly denied on behalf of the contesting defendants. It is explained on behalf of the contesting defendants that all these persons had given earlier proxies referred to in Exhibit 'M' to the plaint in favour of Pravin Patel group but later on these proxies have been given in favour of Y. G. Patel group. It was submitted on behalf of the contesting defendants that in this view of the situation the plaintiffs are unnecessarily trying to malign the contesting defendants as the proxies of the later date in favour of the plaintiffs' group are bound to prevail over the earlier proxies. I am not persuaded to uphold the allegation of forgery. If such an allegation is persisted, evidence may have to be recorded in an appropriate proceeding at an appropriate stage.

21. In the conclusion, I hold as under:--

(1) The Companies Act 1 of 1956 makes specific provisions for convening of Company meetings. The Act empowers authorities like Company Law Board to convene meetings and issue directions notwithstanding the provisions contained in the Articles of Association. The Act specifically empowers the Court to direct convening of meetings in certain situation only. The Civil Court or the Company Court has no inherent power to convene or conduct a company meeting by appointing a chairman or otherwise. The Companies Act 1 of 1956 prevails. In absence of invocation of overriding statutory provision of the Act, Articles of Association of the Company must prevail.

(2) Rule 9 of the Companies (Court) Rules is liable to be interpreted in light of the enabling provisions of the Act contained in Section 643 of the Companies Act. Rule 9 can therefore be invoked by the Company Court while considering applications made to it under one or other substantive provision of the Companies

Act 1 of 1956 and not otherwise.

(3) The Civil Court cannot intervene to conduct a Company meeting not in the manner prescribed by the Act or by the Articles of Association of the Company or override the same in exercise of its inherent power under Rule 9 of Companies (Court) Rules or Section 151 of the Code of Civil Procedure.

(4) I hold that the notice of motion is not maintainable in so far as prayers (a)(i) and (a)(ii) are concerned. In any event, no case is made out for grant of any interim relief. Since there is no substance in the motion, it shall have to be dismissed straightway.

22. The learned counsel for the plaintiffs has supported prayer for appointment of receiver by contending that the contesting defendants have siphoned away the funds of the 1st defendant company and have caused enormous loss to the 1st defendant company by purporting to settle the claim of the company in respect of the Doha Project. The learned counsel for the plaintiffs wants me to appoint the Court Receiver, High Court, Bombay, of all the books of account, papers etc. of the 1st defendant company. Some of the relevant facts emerging from the record are as under:--

(a) The 1st defendant company is engaged in execution of construction projects in India and abroad.

(b) Sometime in the year 1981, a contract was awarded to the 1st defendant company in respect of a project described by the parties as Doha Project. Soon after completion of the project, the 1st defendant company made a claim against the concerned Government in the sum of Rs. 34.6 million Qatar Riyals. Sometime in the month of July, 1988, the Ministry of Public Works made a recommendation to the effect that the said claim be settled in the amount of Q.R. 9918520.74. At that time the plaintiffs' group was in management of the 1st defendant company. Nothing further happened in pursuance of the said report for about two years. According to the contesting defendants, a copy of the said report was not in file. According to the contesting defendants, the plaintiffs are answerable to explain as to what steps were taken by them as a follow-up to the report Exhibit 'A' to the

plaint. The contesting defendants have submitted that Mr. Kishore Patel had himself observed in the meeting of the Working Group held on 27th January, 1988 as under:--

'PECL was, however, optimistic that the client may finally accept to settle claims amounting to QR 5 mn.' A copy of the minutes of this meeting is annexed to the affidavit in reply. It has been pointed out that merely because the Ministry of Public Works recommended settlement by its report (Ex. A to the plaint) in sum of 9 million and odd Q.Rs., it should not be assumed that the said recommendation was accepted or was likely to be accepted. A question is posed on behalf of the contesting defendants as to why the plaintiffs' group did not get this proposal implemented immediately as the plaintiffs' group was in management of the 1st defendant company until about June, 1990. The plaintiffs have built up the charge of siphoning of funds against the defendants on basis of conjectures and surmises.

(c) The said claim was ultimately settled for 7 million and odd Q. Rs. The 1st defendant company represented by new management appears to have agreed to pay 20% commission to a person called Shaikh Abdul Reh-man, who saw to it that the matter was not merely settled but the amount was actually remitted to defendant No. 1. It is stated on behalf of the plaintiffs that there was no such middleman in the picture. The story of an agent intervening to finalise the settlement is attacked as a false story. The contesting defendants dispute every single allegation. It is submitted on behalf of the plaintiffs that the letter dated 14th November, 1990 addressed by the 1st defendant company to the Reserve Bank for permission to grant 20% commission to this middleman was full of lies and it could be easily demonstrated that the contesting defendants have committed fraud. It is commented with some apparent justification that no reference was made to the letter dated 22nd September, 1990 in this letter dated 14th November, 1990. All these aspects have been properly explained at least in part on behalf of the contesting defendants. The matter may have to be examined on evidence at the trial. Part of the amounts has already been paid to Shaikh Abdul Rehman. The 1st defendant has already received the full amount of 7.3 million Q.Rs. in its Bank account at London sometime in the month of December, 1990. It may be that

when the evidence is led the plaintiffs may be able to establish some more facts. Today I have nothing before me except the unproved allegations, some of which, at any rate, do not inspire any confidence whatsoever. It is a matter of business strategy as to whether and for what amount a claim against a foreign Government should be settled or whether some concession or commission should be given to an agent in between. I cannot infer dishonesty, misfeasance or lack of probity at this stage. The burden of proving allegations made would be on the plaintiffs and for the moment I must presume good faith until contrary is proved. Thus prayer (c) of the plaint for interim relief has no merit whether viewed in conjunction with prayer (b) alone or prayers (a) and (b) both or independently of the said prayers. I cannot direct appointment of a Court Receiver of all the records of the 1st defendant company. The learned counsel for the plaintiffs has submitted a list of documents pertaining to the Doha Project, copy whereof has been submitted to the learned counsel for the contesting defendants, which they would like to be preserved in view of the matter being sub-judice. I have no reason to suspect that the documents in possession of the 1st defendant company will disappear. If the plaintiffs make an application for inspection of the relevant documents or initialling of the originals or some such relief, such an application will be considered on its own merits. I express no opinion. No case is made out for appointment of receiver of documents of 1st defendant company. Prayer (a)(iv) of the notice of motion is not maintainable also in view of the ratio of judgment of the Supreme Court in *Padam Sen v. State of U. P.*, : 1961 CriLJ322 . In this case it was held that the Court had no inherent power to appoint a Commissioner to seize accounts books in possession of the plaintiffs upon an application by the defendant that he has apprehension that they would be tampered with.

23. Now an important question arises as to what final order I should pass in a matter of this nature. I have held that (here is no substance whatsoever in prayer (b) of the plaint. I have held that I have no jurisdiction to appoint a chairman in respect of a company meeting which is already convened. I have held that I cannot appoint Receiver of the records of the 1st defendant company in a matter of this nature. The question still arises as to whether I should merely refuse ad-interim relief and keep the motion pending and for what? In similar situation, Civil Applications are filed on the Appellate Side of this Court for interim relief. Such

applications are circulated and placed on board for consideration as to whether rule should be issued or not. When the Court comes to the conclusion that no case is made out for grant of ad-interim relief, such applications are straightway rejected. It does not happen and it should not happen that in every case, the application for interim relief is fixed for final hearing on a future day when an interim relief is declined. In a given case, the Court may decline ad-interim relief and fix the application for interim relief for final hearing on a future date. In another case, the application itself is rejected straightway. It all depends on facts of each case. I am not persuaded to keep the notice of motion pending and make it returnable to some other date for a further hearing. Having regard to totality of facts and circumstances and non-maintainability of the motion, the notice of motion is dismissed with costs.

24. The plaintiffs are directed to pay to the contesting defendants a sum of Rupees 3,000/- towards cost of the notice of motion.

25. The Prothonotary & Senior Master shall issue certified copy of this order expeditiously.

26. Notice of motion dismissed.

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