

V. Juia Vs. S. Dalmia

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Court : Mumbai

Decided On : Nov-21-1966

Reported in : AIR1968Bom347; (1968)70BOMLR20

Judge : Mody, J.

Acts : [Companies Act, 1956](#) - Sections 11(2); Securities Contracts (Regulation) Act, 1956 -Sections 2, 3, 4(1), 9(1), 9(4), 10(1) and 10(4); Rules of the Bombay Stock Exchange - Rule 4; [Arbitration Act, 1940](#) - Sections 9(B); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 35

Appeal No. : Award No. 61 of 1962

Appellant : V. Juia

Respondent : S. Dalmia

Advocate for Def. : M.M. Sanghivi and ;D.P. Mandon, Advs. for Stock Exchange Bombay

Advocate for Pet/Ap. : J.M. Gandhi, Adv.

Judgement :

ORDER

(1) This is a Petition under the Arbitration Act for the determination as to the validity of an Arbitration Agreement.

(2) The petitioner is a member of the Stock Exchange, Bombay, and was at all material times carrying on business as a certified Broker in shares and securities. In the years 1960 and 1961 the respondents employed the petitioners their brokers to effect transaction in shares and securities. The petitioner accordingly effected certain transactions. In the beginning there was no disputes between them, but later in May and June 1961 disputes arose between them. The petitioner made a claim against the respondents for payment of certain amounts but the respondents disputed their liability to pay the same on the ground that the petitioner had failed to carry out certain instructions of the respondents.

(3) The petitioner wanted the said disputes to be decided by arbitration as provided by the Rules. Bye-laws and Regulations of the Stock Exchange, Bombay. Accordingly the petitioner intimated to the Stock Exchange on the prescribed Forms that he had appointed one shah as his Arbitrator and called upon the respondents to appoint an Arbitrator on their own behalf. Thereafter the Stock Exchange informed the respondents about it and called upon them to appoint their own Arbitrator to act jointly with the Arbitrator appointed by the petitioner. The respondents by their letter in reply dated 5th December 1961 wrote to the Stock Exchange that there was no agreement for arbitration between the parties and that the petitioner did not therefore have any right to call upon the respondents to appoint their own Arbitrator. The petitioner thereupon filed this Petition mainly for a declaration that there exists a valid Arbitration Agreement between the parties in respect of the disputes.

(4) The respondents in the affidavits filed on their behalf in the matter of this Petition raised numerous contentions. It is, however, unnecessary to refer to them because Mr. Sanghvi their learned Counsel, stated at the outset of the hearing before me that the respondents admit that there exists a subsisting arbitration agreement between the parties in the terms contained in the form of the Contract Note annexed as Ex. A to the petition and as contained in the Rules and Bye-laws of the Stock Exchange Bombay in respect of all the transactions which the petitioner allege had taken place between the parties hereto and by reason whereof the petitioner claimed the sum of Rs. 3646875 mentioned in the Petition. He however stated that although the respondents admit the factum of the

arbitration agreement as stated by him, the respondents wanted to contend and contend that that arbitration agreement is not a valid agreement in law. He stated that he wanted to raise the following two contentions:-

(1) The Bombay Stock Exchange is an illegal Association and that empowering the Governing Board or the President of the Exchange to appoint an Arbitrator on behalf of the defaulting party is not in accordance with the Arbitration Act, and

(2) There was no Arbitration Agreement as the Bye-laws of the Bombay Stock Exchange and had not been published in the Gazette of India or the Gazette of the former State of Bombay or the State of Maharashtra after they had been sanctioned by the Central Government in 1957 and hence the Bye-laws had not become effective having regard to the provisions of S. 9 of the Securities Contracts (Regulation) Act of 1956.

(5) These two contentions, although not taken by the respondent in the affidavits filed on their behalf, were foreshadowed when this petition reached hearing before another Judge of this Court and as the petitioner did not oppose the respondents urging those contentions and as those contentions concerned the legality of the Stock Exchange itself as also of its Rules, Bye-laws and Regulations, a notice was directed to be issued to the Stock Exchange. In consequence of that notice the Stock Exchange has appeared at the hearing of this petition before me through its learned counsel Mr. Madon, who has urged contention on behalf of his client.

(6) During his arguments Mr. Sanghvi appeared to reformulate his said two contentions into three contentions as follows:

(1) that in view of the provisions of S. 11 of the [Companies Act, 1956](#), and because the Stock Exchange is an unregistered Association of more than 20 persons, it is an illegal Association and that therefore all its Rules Bye-laws and Regulations being those of illegal Association are themselves illegal and that therefore the provision for arbitration contained in the Bye-laws is itself illegal and not binding on the parties. He further contended that although that provision for arbitration in accordance with the Rules. Bye-laws and Regulations of the Stock Exchange is again incorporated in the contract notes between the parties, it is not

a valid agreement even as a contract between the parties.

(2) that its Bye-law 250 confers a power on the Governing Board of the President, of the Stock Exchange to appoint an Arbitrator on behalf of the Respondents, but that the provisions of that Bye-law conflict with the Statutory provisions of Section 9 of the Arbitration Act 1940, and that therefore the provision contained in Bye-law 250 is void and ineffective, and

(3) that under the provisions of sub-section (4) of S. 9 of the Securities Contracts (Regulation) Act 1956, (hereinafter referred to as 'the Act') the Bye-laws of a recognised Stock Exchange can have effect only after they are published in the Gazette of India and the Official Gazette of the State in which the Stock Exchange is situated, that they have not been so published and that the Bye-laws have therefore not become effective at all and that therefore there can be no effective Arbitration Agreement in law.

(7) The Act which is an all India Act, was enacted on the 4th of September 1956. It came into force on the 20th of February 1957 being the date mentioned in the Notification issued by the Central Government in exercise of its powers under sub-section (3) of S 1 of the Act. The Stock Exchange, Bombay had existed since long prior to the passing of the Act. It was then known as 'The Bombay Native Share and Stock Brokers Association' (hereinafter referred to as 'the Association'). At a meeting held on the 9th of April 1957 it was resolved to approve certain new Rules, Bye-laws and Regulations submitted to it, that an application be made to the Central Government for recognition of that Association under the Act, that the said Rules, Bye-laws and Regulations submitted to the Central Government and that the Governing Board of the Association be authorised to bring the Rules. Bye-laws and Regulations into force in substitution of its then existing Rules and Regulation on such date as it may appoint and notify in that behalf. In pursuance of that Resolution the Association made an application dated 9th April 1957 for its recognition under the Act and forwarded to the Central Government copies of its Rules, Bye-laws and Regulations together with certain other information. The Central Government by its Deputy Secretary's letter dated 6th August 1957 informed the Association that it had been decided to issue a Certificate of

Recognition to its Exchange with effect from 31st August 1957 subject to certain conditions mentioned in the letter, which conditions are not material for the purposes of the determination of this Petition. Thereafter the Governing Board of the Association passed a Resolution on the 13th of August 1957 that the Rules, Bye-laws and Regulations, which had been submitted to the Central Government as aforesaid and which had been approved by the Central Government, be brought into force in substitution of the then existing Rules and Regulations with effect from 31st August 1957. Under the said New Rules the Association was to have a second name also viz. 'The Stock Exchange'. In pursuance of its said earlier intimation dated the 6th August 1957 that it had decided to issue a Certificate of Recognition to the Exchange, the Central Government issued that Certificate and published the necessary notification granting recognition in the Gazette of India Extraordinary Part II. Section 3, dated 31st August 1957.

(8) The first of the said three contentions of Mr. Sanghvi is that the Stock Exchange is an illegal Association in view of the provisions of Section 11 of the Companies Act. The relevant sub-sections of S. 11 are sub-section (1), (2) and (5) and they read as follows:

'11. (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law'

'11. (2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.'

'11. (5) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to one thousand rupees.'

(9) In order to attract the prohibition contained in sub-section (2) of S. 11 four conditions must be fulfilled: Firstly, it must be a company, association or partnership consisting of more than twenty persons; secondly it must not have been registered as a company under the Companies Act not must it have been formed for the purpose of carrying on any business but other than that of banking; and, fourthly, that that business must have for its object the acquisition of gain by the company, association or partnership or by the individual members thereof. There is no dispute that the Stock Exchange is not a company, nor a partnership but it is an association. There is no dispute that it has not been registered as contemplated by sub-section (2) of S. 11. There is no averment that this Association, viz., the Stock Exchange, consisted of more than twenty members. Upon being so called upon by Mr. Sanghvi, however, Mr. Madon admitted that since the Stock Exchange under the Act in 1957 it has always consisted of more than twenty members. That requirement of fact therefore exists in the case of the Stock Exchange. The two questions, therefore, which survive for determination are:

(1) Whether the Stock Exchange was formed for the purpose of carrying on business, and

(2) Whether that business had for its object the acquisition of gain either by the association or by the individual members thereof.

(10) For the determination of those two questions it is necessary to ascertain the purpose for which the Association was formed, namely, whether its purpose was of carrying on business and secondly, if the purpose was that of carrying on business, whether the business had for its object the acquisition of gain by the Association or by the individual members thereof. In view of the provisions of S. 2(g) and S. 3(2) of the Act it is clear and there is no dispute, that Rules relate in general to the constitution and management of a Stock Exchange, whereas Bye-laws relate to the regulation and control of contracts. The Bombay Stock Exchange has Rules, has Bye-laws and has Regulations also. The Regulations are, however, merely incidental and ancillary to and form part of the Bye-laws.

(11) Mr. Sanghvi relied upon several Rules and Bye-laws of the Stock Exchange to support his contention that the Stock Exchange was formed for the purpose of carrying on business and that the object of the business was the acquisition of gain by the Stock Exchange and/or its members.

(12) The objects of the Stock Exchange are set out in its Rule 4, which has fifteen objects clauses. Clauses (i), (ii), (iii), (iv) and (xi) are relevant and together with their respective headings they read as follows

'Objects

4. The Exchange is established.

The Interests of Brokers, Dealers and the Public(i) to support and protect the character and status of brokers and dealers and to further the interests both of brokers and dealers and of the public interested in securities to assist, regulate and control the trade or business in securities, to maintain high standards of commercial honour and integrity, to promote and inculcate honourable practices and just and equitable principles of trade and business, to discourage and to suppress malpractices, to settle disputes and to decide all questions of usage, custom or courtesy in the conduct of trade and business;'

'Buildings

(ii) to erect, construct, extend and maintain in Bombay a suitable building to be used as a Broker's Hall and such other purposes of the Exchange as may be determined upon such building to be for ever called. 'The Sir Dinshaw Petit Brokers' Exchange Hall' and to erect, construct and maintain such other building or buildings as may be considered necessary or desirable either for the purposes of the Exchange or for the use of its members or for any other purpose and to alter, add to or remove any such building or buildings.'

'Acquisition of Property.

(iii) to acquire by purchase, taking on lease or otherwise and develop any property moveable or immovable and any rights or privileges necessary or convenient for

the purpose of the Exchange and in particular any land, buildings, easements or safe deposit vaults.

'Safe Deposit Vaults.

(iv) to use the safe deposit vaults for purposes of storage gratuitously or otherwise letting on hire and otherwise disposing of safes strong rooms and other receptacles for money securities and documents of all kinds'

'Clearing Corporation

(xi) to establish and maintain or to arrange or appoint agents to establish and maintain a Clearing House for the purpose of the trade or a Bank or a Stock Holding and Clearing Corporation and to control and regulate the use and administration thereof.'

(13) Mr. Sanghvi contended that these clauses show that the Stock Exchange was formed for the purpose of carrying on business, the business being that of a Stock Market, of a safe deposit vault and of a Clearing House. In support of his contention that it was a business, he relied upon the words 'the business of Stock Exchange' occurring in Rules 118, 119 and Item (xi) of Rule 120. In further support of that contention, he relied upon some of the Bye-laws, being Bye-laws 1, 3, 4, 91 and 116. Under Bye-law 3 empowers the Governing Body to 'close the market'. Bye-law 4 empowers the President to 'close the market' Bye-law 91 provides that the Exchange shall maintain a Clearing House which shall be under the control of the Governing Board and that the Clearing House shall act as the common agent of the members for clearing contracts between members and for clearing contracts between members and for delivering securities to and receiving or paying any amounts payable to or payable by such members in connection with any of the contracts and to do all things necessary or proper for carrying out those purposes. Mr. Sanghvi contended that therefore the Stock Exchange was itself envisaged as an entity, that it was a market, and was carrying on the business of a safe deposit vault and a clearing House. He further contended that that business had for its object the acquisition of gain by the Association and/or by the individual members thereof. He pointed out certain Rules and Bye-laws which according to him, show

that the Association was formed for making such gain, he pointed out that the Association, viz., the Exchange can recover from its members entrance fees under Rule 32, admission fees under Rule 33, annual subscriptions under Rule 68 from the authorised clerks, annual subscription under Rule 242 from persons who were granted permission for dealing in shares in the market under Bye-law 38, fees and charges in respect of arbitration between members and non-members under Bye-law 264 and between members under Bye-law 312, as also commission in respect of defaulter member's assets under Bye-law 341. He further pointed out that the Clearing House was a business of the Exchange because the Exchange is empowered to make charges in respect of the clearing House under Bye-law 116, as also charges for closing out under Bye-law 188. He further pointed out that the said clause (iii) of Rule 4 shows that the Exchange can acquire immovable property by way of safe deposit vaults and that under clause (iv) of Rule 4 the Stock Exchange is empowered to use the said deposit vaults for the purposes of storage not only gratuitously but even otherwise by letting on hire and otherwise disposing of safes, strong rooms and other receptacles for money, securities and documents of all kinds.

(14) Now to my mind the main purpose for which the Exchange was formed is contained in clause (i) of Rule 4 and it is to support and protect the character and status of brokers and dealers and to further the interests both of brokers and dealers and of the public interested in securities, to assist, regulate and control the trade or business in securities..... The real purpose is to further the interests of not only the brokers and dealers, but also of the public interested in securities and for that purpose to regulate and control the business in securities. The other purposes about buildings, acquisition of properties safe deposit vaults and Clearing House contained in Clauses (ii), (iii), (iv) and (xi) of Rule 4 are merely incidental or ancillary to that main purpose. There is no mention anywhere in the Rules which shows that the Exchange was formed with the object of carrying on any trade or business. These Rules and the purpose for which the Exchange was formed must be judged in the background of the Act and the new Rules and Bye-laws which it adopted after the Act came into force.

(15) The preamble of the Act states that it is an Act to prevent undesirable transactions in securities by regulating the business of dealing therein. The preamble shows that the object of the Act was to regulate the business of dealing in securities. Clause (i) of S. 2 defines 'stock exchange' as meaning 'any body of individuals whether incorporated or not constituted for the purpose of assisting regulating or controlling the business of buying, selling or dealing in securities' Under Section 3(1) any stock exchange desirous of being recognised for the purposes of the Act has to make an application to the Central Government. S 3(2) requires inter alia that every such application shall be accompanied by a copy of the Bye-laws of the Stock Exchange for the regulation and control of contracts and also a copy of the Rules relating in general to the constitution of the Stock Exchange. Under S. 4(1) the Central Government may grant recognition to a Stock Exchange if the Central Government is satisfied - and this is material - that its Rules and Bye-laws are in conformity with such conditions prescribed with a view to ensure fair dealing and to protect investors and that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange. As stated earlier, after the Act was passed, the Stock Exchange first adopted new Rules and Bye-laws but did not bring them into force, submitted them to the Central Government for its approval, and after the Central Government approved them by communicating that it was willing to grant recognition that it brought the new Rules and Bye-laws into effect on and as from 31st August 1957. It is, therefore, clear that the Stock Exchange adopted the new Rules and Bye-laws for the only purpose of regulating and controlling the trade or business in securities. Clause (i) of R. 4 says so in so many words. It is nowhere stated in the Rules that it was formed for the purpose of carrying on any trade or business. It did not adopt the new Rules till the Government actually intimated, after scrutinising them, that it was prepared to accede recognition to the Stock Exchange. That shows the desire on the part of the Stock Exchange to comply with and carry out the very purpose of the Act which is to regulate the business of dealing in securities to prevent undesirable transactions.

(16) Now Bye-law 5 provides that the trading sessions for effecting transactions shall be held on the floor of the Exchange subject to certain exceptions provided in the other Bye-laws. I have been informed by Mr. Madon across the Bar that the

Exchange has something like 500 members. The transactions are to be effected on the floor of the Exchange which is called 'the ring'. The Stock Exchange must provide adequate space for the purpose. The space must of necessity be fairly large. The other Bye-laws show that there are certain hours of business during which the transactions are to be effected on the floor of the Exchange. To put through and effectively attend to the transactions, members must of necessity have their offices very close to the floor of the Exchange. It would be difficult for all its members to find office accommodation in the vicinity of the floor of the Exchange for all of them. The Stock Exchange must therefore of necessity have available a sufficiently large building for this purpose. It would be very difficult for it to acquire it on hire. It must therefore own a large building having a ring and sufficient accommodation by way of offices for its members. It is obvious that it is because of that reason that Clauses 2 and 3 Rule 4 empower the Stock Exchange to own or construct buildings. Mr. Sanghvi argued that the owning of immovable property was a business of the Stock Exchange. Mere owning of immovable property, however, can at the highest be an investment and not a business. It would be a business in immovable property only if there is buying and selling. That is not even the contention of Mr. Sanghvi. But in this particular case, as seen earlier, the power to own immovable property is conferred on the Stock Exchange to purpose of enabling the Stock Exchange to efficiently discharge its primary purpose of regulating and controlling transactions in securities. It is but incidental thereto.

(17) For the purpose of carrying out its various functions as a Stock Exchange the Stock Exchange would need funds for purchasing or at least hiring a building, for engaging the necessary staff, for stationery for postage and various other like expenses. The Stock Exchange must therefore have some source for providing the funds required for that purpose. To acquire such funds the obvious source would be to charge its members. In my opinion it is for that purpose that the Bye-laws provide that the Stock Exchange shall be entitled to levy the fees and charges mentioned in Rules 32, 33, 68 and 242 and Bye-laws 38, 264, 312 and 341. In my opinion the power conferred on the Stock Exchange to recover such fees and charges does not make it a business of the Stock Exchange. Such fees and charges are not levied for the purpose of making it a business of the Stock

Exchange by way of a market.

(18) It is such a well-known fact that I can take judicial notice of it that modern Exchanges whether in securities or any commodities like cotton, bullion, etc., provide a Clearing House for facility of carrying out the large volume of business effected on the particular Stock Exchange. If A sells a hundred shares of a particular Company to B, B sells the 100 shares to C. C sells the 100 shares to D and D sells the 100 shares to E, normally each of the four sellers would deliver the shares to his purchaser and each of the four purchasers would pay to his own seller the price for those shares. Instead of having the shares pass through four hands in this way the Clearing House merely collects the shares from the initial seller A and delivers them to the final purchaser E. If the sales are at different rates A receives from the Clearing House the full price according to his sale and E pays to the Clearing House the full price according to his own purchase and the intervening parties merely pay to or receive from the Clearing House by way of adjusting only the differences on the basis of the rates of their own contracts. That is the primary function of the Clearing House. The larger the volume of the transactions the greater will be the facility afforded by the Clearing House. Of course, an Exchange whether in securities or in other commodities, may avail itself of the facility of a Clearing House by employing an independent person like a Bank to act for it as a Clearing House. Such an independent agency would however charge its own commission. It would therefore be in the interest of the Exchange and its members that such commission is eliminated by the Exchange itself providing this facility. The elimination of such commission benefits not only the members of the Exchange, but also the investing public because the members would otherwise in their turn, in some way, pass on that charge to the investors. Modern Exchanges therefore mostly provide their own Clearing Houses. Now for providing that facility, the Stock Exchange would require a large staff plenty of stationery and would have to incur various other incidental expenses. To meet the cost it is but natural that the Stock Exchange would levy some charges by way of Clearing House Charges. It is for that reason that Bye-laws 116 and 188 empowers the Stock Exchange to levy certain Clearing House charges.

(19) In these circumstances, in my opinion the provision in clause (xi) of R. 4 enabling the Stock Exchange to establish and run a Clearing House and in the Bye-laws enabling the Stock Exchange to levy charges by way of Clearing House charges is not for the purpose of the Stock Exchange carrying on a business as a Clearing House. Sufficient importance must also be given to the provision in the said clause (xi) that the power to establish a Clearing House is for the purpose of the trade meaning the trade in securities to be carried on under the aegis of the Stock Exchange. The clause does not empower the Stock Exchange to conduct a Clearing House for any other trade. I therefore hold that though having a Clearing House was in view of the said clause (xi) one of the purposes for which the Stock Exchange was formed the Clearing House was not its business and that it was merely incidental to its primary function or purpose of regulating and controlling transactions in securities.

(20) In the course of effecting transactions in securities and by way of carrying out such transactions the brokers i.e. the members of the Stock Exchange receive very valuable shares and securities with blank transfer forms executed by the vendors. The vendors would deliver the securities with the blank transfer forms signed by them to their own brokers, who would deliver them to the clearing house the clearing house would then deliver them to the brokers of the purchasers and the Brokers of the purchasers would deliver them to their own clients who have purchased the securities. The process would take some days for its completion. During that period the securities with the blank transfer forms must be safely kept. It is therefore but natural that the modern facility of a Safe Deposit Vault must be easily accessible to the members of the Stock Exchange. It is therefore that Clauses (iii) and (iv) of R. 4 confer on the Stock Exchange a power to acquire safe Deposit Vaults but confined for the purpose of the Exchange to use them as such gratuitously or otherwise by letting the same on hire. The power to own and use a Safe Deposit Vault is in the very terms of the two clauses restricted to the purpose of the Exchange. It makes it incidental to the main purpose of the Stock Exchange which is to regulate and control transactions in securities. The construction and running of a Safe Deposit Vault requires on initial investment as also running expenses. To meet the same it is but natural that the Stock Exchange may levy some fees for charges on such of its members as make use of it. But the fact that

the owning of a Safe Deposit Vault and letting it to be used by members is a necessary incident to the main purpose of the Stock Exchange of controlling and regulating transactions in securities and the fact that the two clauses (iii) and (iv) of R. 4 are limited to the purposes of the Stock Exchange clearly shows that the power conferred on the Stock Exchange was not for the purpose of carrying on the business of a Safe Deposit Vault.

(21) It is therefore clear that none of these activities mentioned by Mr. Sanghvi which the Stock Exchange is empowered to conduct under R. 4 was for the purpose of carrying on any business and the Association viz., the Stock Exchange, cannot be said to have been formed for the purpose of carrying on any business. Business, moreover has the motive or purpose or object of profit. But these activities of the Stock Exchange are only for effectually regulating and controlling transactions in shares and securities. Profit may, of course, result because the fees and charges which the Stock Exchange may levy cannot be so fixed that their aggregate would, every year, equal its anticipated expenses. Loss also may result if the fees and charges turn out to be less than the expenses in fact incurred. But what is more important is that these activities are not intended for the Stock Exchange making a profit or gain. The most significant factor which cannot be over emphasised is that there is no Rule or Bye-law or Regulation of the Stock Exchange which empowers or even envisages a distribution by the Stock Exchange of its profits between its members. When an association of persons carries on business, its fundamental aim would be to make profits for distribution between its members. There is, however, no such provision in the case of the Stock Exchange, Bombay. It therefore shows that it was intended that the Stock Exchange was to carry on the said activities of what Mr. Sanghvi called a market and of owning immovable properties and of a Clearing House and of a Safe Deposit Vault as merely incidental to the main function of the Stock Exchange of regulating and controlling transactions in shares and securities and not as and by way of a business by itself. This also shows that the Stock Exchange does not have for its object the acquisition of gain either for itself or for its members. Now so far as the members are concerned, the activities of the Stock Exchange may result in benefit to its members, such benefit to the members being by reason of earning more profits or gains for themselves because of the beneficial control exercised by

the Stock Exchange. But whatever its members may earn in that way would not be the direct result, but would only be an indirect result of the activity of the Stock Exchange of regulating and controlling the transactions in shares and securities. As a matter of fact, it would really be only a benefit but not a gain. If the Stock Exchange were, for example, to make a profit and to distribute it between its members it can be said that the activity was being carried on by the Stock Exchange with the object of securing gain to its members. But here such is not the object. Its activities merely enable the members to make a larger gain. But it is possible that the effect of its activities may be different on different members in spite of such regulation and control some of its members may, in respect of their transactions on the Exchange make greater gains than other members may, in respect of their transactions on the Exchange make greater gains than other members and indeed some other members may conceivably make losses. This, to my mind, conclusively shows that the activities of the Stock Exchange do not for its members. It is therefore clear that although the Stock Exchange was admittedly an association of more than twenty persons it is not formed for the purpose of carrying on any business much less a business which has for its object the acquisition of gain either by the Stock Exchange itself or by the individual members thereof. It therefore does not contravene the provisions contained in sub-section (2) of S. 11. I therefore hold that it was not an illegal Association as contended on behalf of the respondents.

(22) In view of that finding it is necessary for me to deal with the arguments which Mr. Sanghvi advanced as to the validity or otherwise of the arbitration agreement on the basis of his contention that the Stock Exchange is an illegal Association by reason of its contravention of sub-section (2) of S. 11 of the Companies Act.

(23) Mr. Sanghvi's second contention was that the provision of Bye-law 250 conflicts with the provisions of S. 9 of the Arbitration Act and that because the Arbitration Agreement between the parties is made subject to the Bye-laws of the Association and in any event in itself incorporates by agreement that provision which is contained in Bye-law 250 the Arbitration Agreement is invalid in law.

(24) Bye-law 250, in so far as it is material for the purposes of this petition, provides that if after one party to a dispute has appointed an Arbitrator ready and willing to act, there is failure, neglect or refusal on the part of the other party to appoint an Arbitrator within seven days after service of written notice of that appointment or within such extended time as the Governing Board or the President may on the application of the other party allow, the Governing Board or the President shall appoint an Arbitrator. That provision of the Bye-law 250 has been bodily incorporated in Form 'A' on the basis whereof, it is common ground between the parties and arbitration agreement exists between them. On the facts of this case that provision as contained in Bye-law 250 has become capable of being invoked because the petitioner appointed his own Arbitrator and through the Stock Exchange called upon the respondents to appoint their Arbitrator, but the respondents failed neglected and/ or refused to do so.

(25) The relevant part of S. 9 of the Arbitration Act is as under:

'9. Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then unless a different intention is express in the agreement-

(a)

(b) if any party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid for fifteen clear days after the service by the other party of a notice in writing to make the appointment, such other party having appointed its arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent.'

(26) Mr. Sanghvi contended that the preamble of the Arbitration Act shows that it was enacted to consolidate and amend the law relating to arbitration. He drew my attention to various provisions of the Arbitration Act to show that the provisions contained in the Arbitration Act constitute a Code by itself and that as shown by many of the sections of the Arbitration Act, the jurisdiction of the Court by way of a suit or proceeding before it is excluded in matters in respect of which there is an

agreement of arbitration. For the decision of the present contention I am prepared to proceed on the basis that the Arbitration Act is a consolidating Act. Mr. Sanghvi then contended that where there is an arbitration agreement and one party to that agreement appoints an arbitrator but the other party after due notice fails to appoint its own arbitrator then the provisions of clause (b) of S. 9 of the Arbitration Act must apply and the arbitrator appointed by the first party become the sole arbitrator as if appointed by consent by both the parties. He pointed out that Bye-law 250 however, contains a different and conflicting provision because it enables the Governing Board or the President of the Stock Exchange to appoint a second arbitrator to act jointly with the arbitrator appointed by the first party. He contended that therefore the provision of S. 9 of the Arbitration Act and that therefore not only is that provision void, but it also renders the entire arbitration agreement void because it takes away an integral part of the machinery contemplated by that Bye-law.

(27) Now, in my opinion, this entire contention proceeds on a misconception or a misinterpretation of the provision of S. 9 of the Arbitration Act. The material words of S. 9 are 'unless a different intention is expressed in the agreement' The provision contained in S. 9 read with its clause (b), can operate only if and in so far as a different intention is not expressed in the agreement of arbitration. To put it in different words, in cases in which a particular arbitration agreement contains no provision to operate in the contingency contemplated by clause(b), the statutory provision contained in that clause will, by implication of law, provide for the deficiency. Conversely, to the extent that an arbitration agreement does contain a provision to meet that contingency, the provision contained in clause (b) of Section 9 will not apply. If full provision for the contingency is made in an arbitration agreement clause (b), read with Section 9, will have no application whatever, If, however, an arbitration agreement does envisage that contingency and provides for it but does not provide for it fully, that part which is left unprovided for will be covered by the provision in clause (b) read with Section 9. Mr. Sanghvi however, contended that the words 'unless a different intention is expressed in the agreement' merely enable the parties to provide in the arbitration agreement that the provision of S. 9 will not apply but not to affirmatively provide a term which is not in accordance with or conflicts with the provision of S. 9. In my opinion, that

contention cannot be accepted. First it is clear against the plain and simple construction of the clear and unambiguous language of S. 9. Secondly, the interpretation Mr. Sanghvi canvasses for is that parties to an arbitration agreement can provide in their agreement that the provisions of S. 9 read with its clause (b) shall not apply discloses firstly a consciousness on the part of the parties to the agreement that the reference is to be to two arbitrators and secondly a consciousness that there can arise a contingency where one party to the agreement may appoint an arbitrator but the other may not and thirdly that the stipulation that S. 9 read with its clause (b) shall not apply will leave such a contingency unprovided for and may thereby frustrate the entire arbitration agreement. It would lead to an absurd or anomalous result. The section cannot be so interpreted as to lead to such a result. I therefore reject this second contention of Mr. Sanghvi.

(28) The third contention of Mr. Sanghvi was that, in view of the provisions of subsection (4) of S. 9 of the Securities Contracts (Regulation) Act, 1956, the Bye-laws of the Stock Exchange, Bombay, would have been valid only if they had been published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the Stock Exchange, Bombay, was situated, that is in the State in which Bombay was, meaning the State of Bombay as it then was or the State of Maharashtra newly created thereafter that the Bye-laws were not published in the Gazette of India and Bombay or the present State of Maharashtra, that the Bye-laws do not therefore become legally effective and that therefore the agreement of arbitration the factum of which is admitted by the respondents is not effective in law. This contention of Mr. Sanghvi about publication is confined only to the Bye-laws which include the regulations and as it does not apply to Rules, reference to the provisions about Rules will be initial.

(29) The material provisions of the Act concerning recognition by the Central Government of a Stock Exchange for the purposes of the Act are as follows:

'Section 3: (1) any stock exchange which is desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange.....'

'Section 4. (1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require,-

(a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors:

(b) that the stock exchange is willing to comply with any other conditions (including conditions as to the numbers of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act, and

(c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange.

may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed'

(30) Sub-section (2) of S. 9 lays down the conditions which the Central Government may prescribe under clause (a) of sub-section (1) and contains conditions relating to, inter alia the manner in which contracts shall be entered into and enforced as between members.

(31) Sub-section (3) of S. 4 is as follows:

'Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situate, and such recognition

shall have effect as from the date of its publication in the Gazette of India.'

In this connection the dates stated earlier must be borne in mind. It was on the 9th of April 1957 that the Stock Exchange, Bombay, passed its new Rules. Bye-laws and Regulations and made an application for recognition and forwarded with a copy of its new Bye-laws and Regulations. On 6th August 1957 the Government of India intimated to the Stock Exchange its willingness to recognise it as a recognised stock exchange. It was thereafter on the 13th of August 1957 that the Stock Exchange, Bombay, resolved to bring the said new Rules. Bye-laws and Regulations into force as from 31st August 1957. It was only thereafter on the 31st of August 1957 that the recognition granted by the Central Government to the Stock Exchange Bombay, was published in the Gazette of the Central Government as required by sub-section (3) of S. 4. It is therefore clear that the recognition became effective from 31st August 1957.

(32) Now the relevant portions of S. 9 of the Securities Contracts (Regulation) Act are as follows:

'Section 9(1) Any recognised stock exchange may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of contracts.

(2) In particular and without prejudice to the generality of the foregoing power. Such bye-laws may provide for.....' There are clauses (a) to (w) mentioning diverse topics in respect of which Bye-laws can be made.

'Section 9(4) Any be-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed and, when approved by the Central Government, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and shall have effect as from the date of its publication in the Gazette of India: Provided that if the Central Government is satisfied in any case that in the interest of the trade or in the public interest any bye-law should be made immediately, it may, by order in writing specifying the reasons therefore, dispense with the condition of previous publication.'

(33) Now, it is clear that under sub-section (4) of Section 9 what are to be published are the Bye-laws made under Section 9, which means sub-section (1) of Section 9. Sub-section (1) of Section 9 provides that any recognised Stock Exchange may make Bye-laws. Therefore sub-section (1) confers a power on a recognised Stock Exchange to make Bye-laws. What sub-section (1) contemplates are Bye-laws made by a Stock Exchange after recognition is granted to it because it speaks of a recognised Stock Exchange making Bye-laws and it is such Bye-laws made by a Stock Exchange after recognition is granted to it which are required by sub-section (4) to be published. The Bye-laws of the Stock Exchange, Bombay, were, however, made by it before recognition was granted to it and they cannot and are not of the nature falling under sub-section (1) of Section 9 and cannot be held to have been made under Section 9 and the requirement under sub-section (4) could not and did not apply to them. They are therefore valid although not published in the Official Gazette as contemplated under sub-section (4). For easy reference the Bye-laws made by a Stock Exchange before its recognition may be referred to as 'Pre-recognition of Bye-laws' and those made after its recognition under the provision contained in S. 9 as 'Post recognition Bye-laws' On a plain reading and construction of the unambiguous language of sub-sections (1) and (4) of S. 9. I hold that only what I have called the 'Post-recognition Bye-laws' require to be published and not what I have called 'Pre-recognition Bye-laws'

(34) Mr. Sanghvi, however, advanced an alternative contention. He contended that the scheme of the Act requires, firstly that S. 9(1) must be construed to include pre-recognition Bye-laws also and, secondly, that the word 'may' in S. 9(1) must be read and be construed as 'shall', that is an imperative requirement and that a Stock Exchange which had pre-recognition Bye-laws must after its recognition, to comply with that imperative requirement either make new Bye-law or at least remake even the same pre-recognition Bye-laws and publish them as required by S. 9(4).

(35) Under the provisions of S. 3(2) the application of a Stock Exchange for recognition is to be accompanied by copy of its Bye-laws. Under the provisions of S. 4(1) the Central Government can grant recognition to a Stock Exchange after it

is satisfied after making such inquiry as may be necessary in that behalf and obtaining further information that the Bye-laws are in conformity with such conditions as may ensure fair dealing and protection to the investors. The provisions of S. 3(2) read with S. 4 on the one hand and S. 9, sub-sections (1) and (4) on the other are similar and parallel but only to a limited extent. Pre-recognition Bye-laws require Government's satisfaction as stated in S. 9(1). That feature is similar. But although S. 4 by its sub-section (3) provides that the recognition granted by the Government to a Stock Exchange should be published in the Gazette, it does not provide that the Bye-laws on the basis of which the Government was satisfied and granted recognition should be published in the Official Gazette. Sub-section (4) of S. 9 provides that the post-recognition Bye-laws shall be published in the Official Gazette. This feature is dissimilar. Mr. Sanghvi contended that the provisions of sub-section (4) of S. 9 show that mere approval by the Government was not considered sufficient, but that the Legislature thought that in addition thereto the Bye-laws must receive publicity by being published in the Official Gazette. He contended that unless Pre-recognition Bye-laws are held to fall within S. 9, there will be differentiation on this very material point of publication between the pre-recognition Bye-laws and the post-recognition Bye-laws.

(36) Now this is an argument based on the scheme of the Act for gathering what the intention of the Legislature was. There is no reason in this case why the clear and unambiguous language of sub-section (1) of S. 9 should be construed to include what it does not, namely, the pre-recognition Bye-laws, so as to attract the provisions of Section 9(4) as to publication. Where the Legislature so intended, the Legislature has provided for publication of the Bye-laws, namely, in the case of the post-recognition. Bye-laws in sub-section (4) and one would expect that if the Legislature intended the pre-recognition Bye-laws to be similarly published, it would have made a similar provision in respect of the same. But curiously enough it is S. 4 which deal with the Government's satisfaction about the pre-recognition Bye-laws and sub-section (3) of S. 4 although it provides for publication confines it to the fact of the recognition of the Stock Exchange, and significantly omits any provision for the publication of the pre-recognition Bye-laws on the basis of which recognition is granted. As this argument is based on a consideration of the

scheme of the Act, it should be noticed that a power was conferred on a recognised Stock Exchange to make Rules by adding S. c by a subsequent amendment. Sub-section (1) of S. 7A confers that rule-making power and sub-section (2) of S. 7A contains a provision that such Rules, when made, must be published in the Official Gazette. That provision about Rules is parallel to the provision about Bye-laws in S. 9. What are to be sent to the Government along with an application for recognition are both Rules and Bye-laws. There is an omission about the publication in the Official Gazette of not only the Bye-laws but also the Rules on the basis whereof recognition is granted to the Stock Exchange. The provision about Rules clearly shows an intention on the part of the Legislature that it was never intended by the Legislature that either the Rules or the Bye-laws on the basis of which recognition is granted should be published in the Official Gazette. The addition of Section 7-A subsequently by an amendment shows that only when Rules are subsequently made by an Association after recognition is granted to it, that the Rules should be published in the Official Gazette and that the provision is similar to that in respect of the post-recognition is granted to it, that the Rules should be published in the Official Gazette and that the provision is similar to that in respect of the post-recognition Bye-laws contained in Section 9. To my mind, the omission about publication of pre-recognition Rules, has been deliberately made by the Legislature that there is no justification in ascribing an intention to the Legislature that it wanted publicity by way of publication in the Official Gazette in respect of pre-recognition Bye-laws also and that on the basis of such assumed intention to dis-regard the clear words of sub-section (1) of S. 9 and include pre-recognition Bye-laws also within its ambit.

(37) Mr. Sanghvi then contended that sub-section (1) of S. 10 of the Securities Contracts (Regulation) Act confers on the Central Government a power independently of a Stock Exchange to 'make bye-laws for all or any of the matters specified in S. 9 or amend any Bye-laws made by such stock exchange under that Section' He contended that Section 10(1) refers this power to make the bye-laws or to amend bye-laws to those under Section 9 and that if Section 9 is not construed to include pre-recognition Bye-laws, the Central Government will not have the power to make or amend Bye-laws in respect of pre-recognition Bye-laws but that that power will be confined only to post-recognition Bye-laws. He

contended that the Legislature could not have intended such an anomalous position and that therefore S. 9(1) should be construed to include pre-recognition Bye-laws also.

(38) Now, the power under S. 10(1) applies in two cases, namely (1) to make Bye-laws for all or any of the matters specified in S. 9 and (2) to amend any Bye-laws made by such stock exchange under that section. Now so far as the first power is concerned the words 'for all or any of the matters specified in S. 9' merely refer to the topics mentioned in S. 9 for which Bye-laws can be made, namely, 'for the regulation and control of contracts' as mentioned in sub-section (1) and the various illustrative topics mentioned in items (a) to (w) in sub-section (2) of S. 9. The first power refers only to the topic or topics in respect of which the power can be exercised but not to the conferment of the power itself. Moreover the word used is 'make' Bye-laws. The power to make would include the power to rescind, alter or modify. By virtue of the provisions of S. 21 of the Central General Clauses Act, a power to issue Rules or Bye-laws would include a power to issue Rules or Bye-laws would include a power to add to, amend, vary or rescind Rules and Bye-laws. Inasmuch as the power to make Bye-laws is not confined to the Bye-laws made under Section 9 that provision would apply equally to post-recognition. Bye-laws, as also to pre-recognition Bye-laws and the Central Government would have equal power to alter or amend or rescind Bye-laws of either category. There would therefore, be no disparity or dissimilarity in the powers of the Government in respect of those two categories of Bye-laws.

(39) Mr. Sanghvi relied upon the phraseology of Section 10(1) when it confers the said second power. He argued that it confers upon the Government power to amend Bye-laws made by a recognised Stock Exchange 'under that Section'. Now, as contended by Mr. Sanghvi, it is quite clear that power refers to the Bye-laws made under Section 9, namely, post-recognition Bye-laws, only and that the power to amend is conferred by Section 10(1) only in respect of post-recognition Bye-laws, but not in respect of pre-recognition Bye-laws. But that difference, to my mind, is of no substance because the power to amend pre-recognition Bye-laws is included in the first power which confers power to make Bye-laws, because the word 'make' includes also the power to amend, alter or rescind. The said second

power to amend was again specifically granted, perhaps, only by law of abundant caution, but such addition does not justify placing a narrow construction on the first power and confine it as referring only to post-recognition Bye-laws and exclude therefrom pre-recognition Bye-laws.

(40) Mr. Sanghvi then contended that under sub-section (3) of Section 9 of the Securities Contracts (Regulation) Act the Bye-laws made under S. 9 may specify the Bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the Bye-laws void under sub-section (1) of S. 14. He further pointed out that S. 14 sub-section (1), provides that any contract entered into in any State or area specified in the notification issued under S. 13 which is in contravention of any of the Bye-laws specified in that behalf under clause (a) of sub-section (3) of Section 9 shall be void. He pointed out that after Bye-laws are framed, there can be possibly be violations of many of the Bye-laws, but that S. 9(3) provides that there can possibly be violations of many of the Bye-laws, but that S. 9(3) provides that there must be a separate Bye-law which must specifically, as it were, enumerate the Bye-laws the violation of which will make the entire contract void. He contended that S. 14 gives the legislative sanction making the violation of the Bye-laws enumerated or specified under S. 9(3) void. He pointed out that the provision of sub-section (3) of S. 9 is confined only to the Bye-laws under S. 9. He contended not to include pre-recognition Bye-laws there would be no such legislative sanction making the violation of any Bye-laws void because the provision of S. 14 itself is confined to the Bye-laws made under S. 9. He contended that the Legislature could never have intended that there should be such dissimilarity about making the violation of specific Bye-laws void between post-recognition Bye-laws and pre-recognition Bye-laws.

(41) Now the provisions of S. 14(1) can only apply in a State or area specified in the notification issued under the provisions of S. 13. The granting of recognition to a Stock Exchange is independent of S. 13. Recognition can be granted to a Stock Exchange even if it is in a State or area in respect of which no notification under S. 13 is issued. Therefore there is a distinction so far as S. 14 is concerned even between different recognised Stock Exchanges, namely, those in respect of which there is a notification under S. 13 and those in respect of which there is no such

notification. Therefore even in respect of recognised Stock Exchanges even if there be a Bye-law specifying the Bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the Bye-laws under S. 9 void if no notification has been issued the sanction provided by S. 14 will not exist whereas in respect of recognised Stock Exchanges in respect of which there is a notification under S. 13 the sanction provided by S. 14 would apply. As there is such a distinction even within the category of recognised Stock Exchanges themselves there is no reason to assume that the Legislature did not want to make a similar distinction between post-recognition Bye-laws and pre-recognition Bye-laws. As a matter of fact there is no obligation under the Act cast upon all recognised Stock Exchanges to have a Bye-law of the nature contemplated under sub-section (3) of S. 9. The Government can therefore, if it so thinks fit, after issuing a notification under S. 13 and if it thinks that it is so necessary in the particular case of a Stock Exchange make it a condition of recognition that the Stock Exchange shall immediately upon recognition pass a Bye-law of the nature contemplated in sub-section (3) of S. 9. The Government can therefore, if it so thinks fit, after issuing a notification under S. 13 and if it thinks that it is so necessary in the particular case of a Stock Exchange make it a condition of recognition that the Stock Exchange shall immediately upon recognition pass a Bye-law of the nature contemplated in sub-section (3) of S. 9. The distinction may possibly have been made due to another reason. In the case of post-recognition Bye-laws the legislative sanction making contract void on the ground of violation of the Bye-laws would be that under S. 14. In the case of pre-recognition Bye-laws, however, the legislative sanction would be under the other laws of the land, e.g., the Contract Act. That would be so because all the transactions on the Stock Exchange would be entered into with a term that the same are subject to the Bye-laws, which would be the pre-recognition Bye-laws and non-compliance with the Bye-laws would render the contract void. But it is not justifiable to speculate as to the reasons why the Legislature made this distinction between post-recognition and pre-recognition Bye-laws and there is no reason why a plain construction of the unambiguous provisions of Ss. 9, 13 and 14 should not be accepted and they should be construed to mean something also than what they, on the face of them mean on the ground of a supposed intention of the Legislature. Therefore, this

contention urged by Mr. Sanghvi is not of such force as to give to the language of sub-section (1) of S. 9 a meaning other than the natural meaning attributable to it on the clear language of that sub-section so as to include pre-recognition Bye-laws within the ambit of sub-section (1) of S. 14.

(42) The last contention in this connection urged by Mr. Sanghvi was that the word 'may' in sub-section (1) of S. 9 must be read as 'shall' and must be construed to have imperative force. Mr. Sanghvi contended that if 'may' is read as 'shall' sub-section (1) of S. 9 casts an obligation upon a recognised Stock Exchange, even if it has pre-recognition Bye-laws, to immediately, upon recognition make Bye-laws and follow the procedure laid down in that behalf by S. 9. He contended that it may be that if the Government has been satisfied as to the Bye-law of a particular Stock Exchange immediately prior to its recognition, the Stock Exchange may have merely to remake the same Bye-laws, without any change merely with a view that the same may comply with the requirement as to publication in the Official Gazette. To my mind, the acceptance of this contention would reduce to an absurdity the provision of Ss. 3 and 4 which requires the satisfaction of the Central Government as to the Bye-laws of the Stock Exchange before recognition is granted to it. That provision of Sections 3 and 4 which requires the satisfaction of the Central Government as to the Bye-laws of the Stock Exchange before recognition is granted to it. That provision of Sections 3 and 4 will be rendered unnecessary because S. 9(1) itself provides that before a recognised Stock Exchange makes any Bye-laws, it shall first seek and obtain the approval of the Central Government can therefore be obtained by reason of the application under sub-section(1) of S. 9 and there would then be no necessity for the Central Government to first satisfy itself about the provisions of the Bye-laws of a Stock Exchange recognition, because such Bye-laws of a Stock Exchange before granting a Stock Exchange recognition, because such Bye-laws, being pre-recognition Bye-laws, would, on the argument of Mr. Sanghvi have no effect whatever and it would be totally unnecessary for Government to waste its energy and time over it. There is another difficulty also in the way of accepting this particular contention of Mr. Sanghvi as, on his contention, the pre-recognition Bye-laws will have no efficacy or operation whatever and a Stock Exchange after it is granted recognition, must of necessity permit no transaction on its Exchange in the

interval between the date of recognition and the date when it makes its Bye-laws, gets the approval of the Government under sub-section (1) of S. 9 and the Bye-laws are published in the Official Gazette as required by sub-section (3) of S. 9. On the clear language of sub-section (1) of S. 9 there is no reason whatever to read 'may' as 'shall'. But what is more these are the difficulties or anomalies which will result in construing 'may' as 'shall'. There is no justification for doing so, I therefore reject this contention of Mr. Sanghvi.

(43) In the result I negative the entire contention of Mr. Sanghvi as to the construction of sub-section (1) of Section 9 and I hold that what I have called pre-recognition Bye-laws do not fall within the ambit of Section 9 and do not require publication under sub-section (4) of Section 9.

(44) Mr. Gandhi, the learned Counsel for the petitioner had advanced arguments on an alternative basis. He contended that even if it be held that the pre-recognition Bye-laws required publication under Section 9 and that the pre-recognition Bye-laws of the Stock Exchange, Bombay, not having been so published are invalid, the material provision about arbitration between the parties contained in the contract which they have entered into the Form 'A' annexed to the Petition and that therefore that Arbitration Agreement is valid as a valid contract irrespective of and in spite of the provisions of Section 9 of the Securities Contracts (Regulation) Act. As I have held that the pre-recognition Bye-laws do not fall within the ambit of Section 9 and do not require publication and are therefore valid it is not necessary for me to consider this alternative contention urged by Mr. Gandhi.

(45) Under the circumstances, I hold and declare that the Arbitration Agreement, which it is common ground, does not exist between the parties hereto in the terms contained in the Form of the contract Note Ex. A to the Petition and as contained in the Rules and Bye-laws of the Stock Exchange, Bombay is valid and subsists in respect of all the transactions which the petitioner alleges had taken place between the parties hereto and by reason whereof the petitioner claims the sum of Rs. 36,466.75 mentioned in the Petition.

(46) Costs must follow the event, I therefore order that the respondents shall pay the petitioner's costs of this Petition. This Petition is an Adjourned Chamber Matter. The hearing before me has lasted. I am told by Counsel, for about 28 hours. Lump sum costs are therefore totally inadequate I therefore direct that the respondents shall pay the petitioner's costs as taxed costs where the Counsel is allowed.

(47) Mr. Purohit applies that I should make an order under Rule 600 of the Rules applicable on the Original Side of this Court that the Taxing Master may allow as instruction item a sum exceeding Rs. 1,000. As regards the facts the preparation required in this matter was not very significant. It is true that the respondents had in the affidavit denied the factum of the contracts, namely their signatures on the acknowledgment slips relating to the contracts and the petitioner had to keep his evidence ready to prove the respondents' signatures. But the work relating to the same was not considerable. The rest of the Petition and the arguments thereon were only on point of law mainly confined to the provisions of the Securities Contracts (Regulation) Act and the Rules. Bye-laws and Regulation of the Stock Exchange, Bombay, I therefore do not think that there is any reason to make any order under Rule 600 as applied for.

(48) Mr. Madon applied that the respondents should be ordered to pay the costs of the Stock Exchange, Bombay, also. Mr. Sanghvi contended that it was the Court which issued the notice of the Stock Exchange, Bombay, and it is in pursuance of that notice that the Stock Exchange has chosen to appear and that the respondents should not therefore be ordered to pay the costs of the Stock Exchange. Now it is true that the Stock Exchange has appeared because of the notice issued by the Court. As a general rule the costs of the party to whom a notice is issued by the Court and which appears in pursuance thereof to protect its interests are at the discretion of the Court and the Court may or may not award such costs against the losing party. In this particular case however the contentions raised by the respondents in respect of the Stock Exchange were of extremely far-reaching consequences. The respondents challenged the legality of the very existence of the Stock Exchange when they contended that it is an illegal Association. They also challenged the entire set or Rules, Bye-laws and

Regulations of the Stock Exchange. To my mind this case is not an ordinary case where a notice is issued to a party by the Court and the party appears to protect its interests. To the extent that the legality of its very existence was challenged, the Stock Exchange can be said in a sense and in a very limited sense to be interested in protecting its interests. But the challenge to the legality of its existence and to the legality of its Rules Bye-laws and Regulations affect not only the Stock Exchange, but the entire investing public in the State and even outside it who had pending dealing on the Stock Exchange which were subject to the Rules. Bye-laws and Regulations. If any of these contentions of the respondents had succeeded, it would have had devastating effect upon thousands of pending contracts in stocks and shares made subject to the Rules. Bye-laws and Regulations of the Stock Exchange, Bombay. Such contracts would be in various stages of completion and thousands of persons would have faced difficulties in giving and taking delivery or in receiving payments under those contracts. As a citizen of Bombay, I can take judicial notice that such pending contracts would ordinarily be of the magnitude of millions of rupees. Mr. Sanghvi contended that the Stock Exchange appeared on this Petition only for the purpose of protecting its own interests and that the respondents should not therefore be ordered to pay the costs of the Stock Exchange. This contention, which the respondents have instructed their Counsel to advance is, to say the least, a nave one. If it was held on this Petition that the Stock Exchange was an illegal Association or that the Rules. Bye-laws and Regulations lock stock and barrel of the Stock Exchange were inoperative and invalid by reason of their not having been published in the Official Gazette as contended by the respondents the result would have affected not merely the petitioner and the respondents but everyone having pending dealings on the Stock Exchange. A judgment of that nature would definitely have received publicity and the public is hardly likely to consider the niceties of law whether that judgment is binding on the Stock Exchange as it is not a direct party to the Petition, the holding of the Rules Bye-laws and Regulations of the Stock Exchange as being invalid would undoubtedly affect all pending transactions on the Stock Exchange, unless, of course my judgment is set aside or modified by a higher Court. But damage would be done. In a matter of such far-reaching consequence one can very well appreciate that the Stock Exchange may not rest

content by relying merely on the petitioner to urge all the contentions against the contentions of the respondents without it itself appearing on his petition. In my opinion, therefore, the Stock Exchange has appeared not merely for the protection of its own interests of the investing public which is one of its duties as can be seen from clause (a) of Section 4 of the Securities Contracts (Regulation) Act 1956. In that sense not only was the Stock Exchange entitled to appear, but it was under a duty to appear and it has discharged not only its personal function but its public functions and has in that sense appeared in a representative capacity. The Stock Exchange is therefore entitled not merely to recover its costs of this Petition from the respondents, but also to recover taxed costs and as it is appearing in a representative capacity, it is entitled to recover costs taxed as between Attorney and client. I therefore order that the respondents shall pay to the Stock Exchange, Bombay its costs of this Petition when taxed on the basis of one Counsel being allowed as between Attorney and client.

(49) Order accordingly.

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