

Manoj Kumar Sonthalia Vs. Nariman Point Building Service and Trading Pvt. Ltd. and Others

Manoj Kumar Sonthalia Vs. Nariman Point Building Service and Trading Pvt. Ltd. and Others

SooperKanoon Citation : sooperkanoon.com/780099

Court : Chennai

Decided On : Apr-20-1993

Reported in : [1995]84CompCas559(Mad)

Judge : A.R. Lakshmanan, J.

Acts : [Companies Act, 1956](#) - Sections 187 and 291

Appeal No. : Original Applications Nos. 760 to 764 and 768 of 1992 and Applications Nos. 4718 and 4719 in C.S. No

Appellant : Manoj Kumar Sonthalia

Respondent : Nariman Point Building Service and Trading Pvt. Ltd. and Others

Advocate for Def. : R. Krishnamurthy,;G.E. Vahan Vati,;Arun Jaithey,;Darius Khambatta and;Navroz Seervai, Advs.

Advocate for Pet/Ap. : K. Parasaran, Adv.

Judgement :

A.R. Lakshmanan, J.

1. The above applications were filed by the plaintiff in the suit for various reliefs pending disposal of the suit.

2. The short facts are as follows :

The plaintiff/applicant filed C.S. No. 1246 of 1992 against the first defendant/first respondent company (in short 'NPBS'), four other newspaper companies and six other persons. The suit is primarily concerned with the validity of a board meeting of the second defendant/Indian Express, Bombay Limited, Bombay, held on January 23, 1991, and certain resolutions for appointing additional directors. The plaintiff/applicant also prays for declaration and permanent injunction in respect of various acts committed by the sixth defendant/sixth respondent along with other directors, particularly Nusli Wadia (seventh defendant) and Vane Srinivasan (eighth defendant). Many interlocutory applications have been filed by the plaintiff/applicant in this suit.

3. The plaintiff/applicant had also filed C.S. No. 1247 of 1992 against NPBS and nine others. The defendants include Nusli Wadia, Venu Srinivasan, Mrs. Saroj Goenka and her three daughters. This suit challenges the transfer of shares in the aforesaid board meeting held on January 5, 1991, and also seeks for a declaration that 24.32 per cent. shares have been held in trust for the benefit of the plaintiff's brother.

4. Serious allegations have been made regarding the holding of the board meeting on January 5, 1991, and the extraordinary general meeting on January 23, 1991. According to the plaintiff, no notice has been given in respect of these meetings and the same were conducted clandestinely. The resolutions passed therein were filed before the Registrar of Companies through the office of Sundaram Clayton Limited, of which the eighth defendant is the managing director. According to the plaintiff, this was done with the intention to suppress from the plaintiff and his mother the fact of the illegal share transfer. The reasons as to why the meetings and the resolutions passed are invalid have been set out in detail in the plaint. Therefore, I am not repeating the same here. Similarly, in the other suit (C.S. No. 1247 of 1992), it is stated that the shares were neither intended to be nor were transferred as there was no consideration for the same. According to the plaintiff,

the shares were retained only in trust. The reasons as to why the share transfers are null and void have been set out in the plaint in that suit, with which we are not presently concerned.

5. The prayers in the present applications are as follows :

O.A. No. 760 of 1992 : To restrain by an order of temporary injunction respondents Nos. 7, 8 and 9/defendants Nos. 7, 8 and 9 from exercising any powers as directors of the first respondent/first defendant company.

6. O.A. No. 761 of 1992 : To restrain by an order of temporary injunction respondents Nos. 7, 8 and 9/defendants Nos. 7, 8 and 9 from exercising any powers of the second respondent/second defendant company pending disposal of the suit.

7. O.A. No. 762 of 1992 : To pass an order of temporary injunction restraining respondents Nos. 10, 11 and 12/defendants Nos. 10, 11 and 12 from acting or exercising any of the powers as directors and/or alternative directors of respondents Nos. 1 to 5/defendants Nos. 1 to 5 companies pending disposal of the suit.

8. O.A. No. 763 of 1992 : To pass an order of temporary injunction restraining the sixth respondent/sixth defendant from exercising powers as managing editor, chairman and executive director in so far as the third and fourth respondents/third and fourth defendants companies are concerned pending disposal of the suit.

9. O.A. No. 764 of 1992 : To pass an order of temporary injunction restraining the operation of the resolution passed at the board meetings of the second and third respondents/second and third defendants dated June 24, 1992, September 5, 1992, and September 13, 1992, reducing or curtailing the powers of the plaintiff/applicant as joint managing director and further directing continuance of status quo pending disposal of the suit.

10. O.A. No. 768 of 1992 : To pass an order of temporary injunction restraining respondents Nos. 6 to 12/defendants Nos. 6 to 12 from interfering in any manner in the plaintiff/applicant's powers as joint managing director of the third

respondent/third defendant company pending disposal of the suit.

11. Application No. 4718 of 1992 : To direct the restoration of all powers vested in the applicant/plaintiff in respondents Nos. 1 to 5/defendants Nos. 1 to 5 consequent to the resolutions passed in the board meeting of the first respondent/first defendant held on September 26, 1990, pending disposal of the suit.

12. Application No. 4719 of 1992 : To direct the applicant/plaintiff, Mrs. Saroj Goenka and the sixth respondent/sixth defendant to be appointed as joint representatives of the respondent/defendant companies under section 187 of the Companies Act.

13. A common affidavit has been filed in all the above applications : According to the applicant/plaintiff, in furtherance of conspiracy, the alleged board meeting was held on January 5, 1991, wherein far reaching resolutions were passed, viz.

(a) Appointing defendants Nos. 7 to 9 as directors and thereby making the plaintiff and his mother/the fourteenth defendant a helpless minority.

(b) 6,240 equity shares and 4,000 preference shares belonging to the plaintiff and 3,040 equity shares standing in the joint names of the plaintiff and the sixth defendant were transferred to the same of RNG. Despite the serious nature of the resolutions being passed, neither the plaintiff nor his mother was given any notice of the board meeting and were informed about the same only in March, 1991.

(c) It is further contended as under : No notice in writing was given of the board meetings, which is a mandatory requirement.

(d) The appointment of three additional directors was sought to be confirmed at the extraordinary general body meeting to be held on January 23, 1991. No notice of this meeting was given to the plaintiff and his mother and the minutes of the meeting have not been shown to the plaintiff till date.

(e) The ninth defendant was shown as having been appointed as director. He has been included only because of his close association with RNG and to give a

facade of legality/responsibility over the illegal appointment.

(f) Form 32 has to be filed with the Registrar of Companies in respect of appointment of new directors. But, in respect of appointment of three additional directors, this form was filed on February 13, 1991, by the secretarial staff of Sundaram Clayton Limited, of which the eighth defendant is the managing director.

(g) Defendants Nos. 7 to 9 were made as directors of the second defendant company by an alleged board meeting held on January 23, 1991, where RNG was to have been the chairman. No notice of this meeting was given to the plaintiff or to Mrs. Goenka. An extraordinary general meeting was allegedly held on February 21, 1991, of which again no notice was given.

(h) The appointment of defendants Nos. 6 to 8 as directors is completely illegal. The alleged board meeting itself is a nullity and all resolutions purported to have been passed there are void and without effect.

(i) The administrative powers of the managing director and joint managing director of respondents Nos. 3 and 4 have been reduced so as to deprive them of substantial powers of management and to render their offices a nullity with intent to humiliate the plaintiff and Mrs. Saroj Goenka.

(j) Defendants Nos. 6 to 8 have managed to gain control of respondents Nos. 1 and 2/defendants Nos. 1 and 2 companies. In furtherance of their conspiracy, they have appointed R. A. Shah/the twelfth defendant as a director of the second defendant at the board meeting held on June 24, 1992.

(k) The manner in which the first defendant owns or controls the other defendant companies has been set out in the plaint.

(l) At the board meeting held on September 26, 1990, RNG formally laid down the plan for succession and subsequently the articles of the first defendant were also amended to implement the decisions taken at the board meeting.

(m) After the death of RNG, and particularly after the enormity of the fraud was revealed on March 17, 1992, the sixth defendant has adopted a hostile attitude against the plaintiff and Mrs. Saroj Goenka. He has also embarked upon a course of action to systematically humiliate the plaintiff by removing all the administrative powers vested in him as joint managing director of the southern newspapers. The actions taken by the sixth defendant have been fully set out in paragraph 21(a) to (d) of the affidavit.

(n) The plaintiff became aware of the appointment of defendants Nos. 7 to 9 as additional directors in March, 1991. At that time, no action was taken keeping in mind the critical state of RNG's health.

(o) The enormity of the fraud played by defendants Nos. 6 to 8 depriving the plaintiff of his shares became clear only after he received the minutes of the board meeting of the first defendant company held on January 5, 1991. Thereafter, steps were taken by several well wishers to avoid any legal proceedings being taken in the matter so as to maintain the peace and harmony of the family. Several discussions were also held with senior members of the Times of India group to settle the disputes amicably. All these attempts were rendered futile because of the recalcitrant attitude of the sixth defendant.

(p) By the first week of September, 1992, it was clear that there was no chance of settlement and thereafter the plaintiff was constrained to file the above suit for the necessary reliefs.

14. In the above circumstances, the plaintiff has filed the present applications for the reliefs mentioned therein.

15. A common counter-affidavit has been filed by Vivek Goenka/sixth defendant/sixth respondent denying all the allegations contained in the affidavit filed in support of these applications.

16. Mr. K. Parasaran, learned senior counsel for the plaintiff/applicant, reiterated the contentions raised by the plaintiff in the affidavit filed in support of these applications.

17. I shall now take up O.A. No. 760 of 1992 which is to injunct defendants Nos. 7 to 9 from exercising powers as directors of the first defendant/first respondent company and deal with the factual aspects of the matter. In answer to the said prayer, Mr. P. Chidambaram, learned senior counsel appearing for the sixth defendant/sixth respondent submits as under : Defendants Nos. 7 to 9/respondents Nos. 7 to 9 were inducted at the board meeting held on January 5, 1991. The plaintiff denies knowledge about the said meeting. This is falsified by the following facts :

(a) The plaintiff himself admits that at the board meeting held on March 16, 1991, of IENB, he was informed of induction of defendants Nos. 7 to 9 on the board of the first defendant company.

(b) In the board meeting held on April 7, 1991, the plaintiff was present. The plaintiff took the chair. The seventh defendant was present and leave of absence to defendants Nos. 8 and 9 was granted.

(c) In the board meeting held on June 26, 1991, the plaintiff was present. The eighth defendant was in the chair. The seventh defendant was present.

(d) In the board meeting held on September 24, 1991, the plaintiff was again present. The seventh defendant was in the chair. The eighth defendant was present.

(e) In the board meeting held on February 4, 1992, the plaintiff was present. The seventh defendant was in the chair and the eighth defendant was present.

(f) In the board meeting held on June 24, 1992, the plaintiff was present. The seventh defendant was in the chair and the eighth defendant was present.

(g) In the board meeting held on September 5, 1992, the plaintiff was present. The seventh defendant was in the chair. The plaintiff objected at the meeting as director. The eighth defendant was also present and no objection was taken by the plaintiff. Until the suit was filed, the plaintiff never challenged the induction or attendance of defendants Nos. 7 and 8 or leave of absence granted to the ninth defendant at the board meetings, in any letter or proceeding.

18. In answer to the submissions made by Mr. P. Chidambaram, Mr. K. Parasaran, learned senior counsel, submits that the plaintiff was given only the minutes of the board meeting of IENB/second defendant and that the minutes of the meeting dated January 5, 1991, of the first defendant company were deliberately suppressed and not furnished till March 17, 1992, which, according to the learned senior counsel, concealed the fraud being played upon the plaintiff. Further, the fact of defendants Nos. 7 to 9 being elected as directors at the extraordinary general body meeting of the first defendant company was completely concealed. According to the plaintiff, no notice of this meeting was given to the plaintiff and his mother and no container theory was put forth for this meeting. In so far as it relates to the board meeting held on April 7, 1991, it is contended that the minutes of the previous board meeting held on January 23, 1991, were not read and confirmed and the election of defendants Nos. 7 to 9 through the extraordinary general body meeting of the first defendant company held on January 23, 1991, was also deliberately suppressed. It is stated that the plaintiff came to know of the transfer of shares only after the death of RNG on October 5, 1991.

19. O.A. No. 761 of 1992 was filed to injunct defendants Nos. 7 to 9/ respondents Nos. 7 to 9 from exercising powers as directors of the second defendant/second respondent company. It is seen from the documents filed that defendants Nos. 7 to 9 were inducted as directors in the board meeting held on January 23, 1991. The plaintiff denies knowledge of the said meeting, which, according to Mr. P. Chidambaram, learned senior counsel for the sixth defendant, is falsified by the following facts :

(a) In the board meeting held on March 16, 1991, the plaintiff was present. Mrs. Saroj Goenka was in the chair and defendants Nos. 7 to 9 were present. This is mentioned in paragraph 24 of the plaint.

(b) At the board meeting held on June 26, 1991, the plaintiff was present. The seventh defendant took the chair and the eighth defendant was present.

(c) At the Board meeting held on September 24, 1991, the plaintiff was present. Mrs. Saroj Goenka was in the chair. Defendants Nos. 7 and 8 were present. It is at this meeting, the sixth defendant, Vivek Goenka was appointed as managing

editor of all the publications of the second defendant company. It may even be recalled at this stage that a similar resolution was passed on the same date in respect of the publications of the third defendant company as well.

(d) At the board meeting held on September 5, 1992, the plaintiff was present. The seventh defendant was in the chair. The eighth defendant was present. At this meeting, the sixth defendant, Vivek Goenka, was redesignated as managing director of the second defendant company.

20. Mr. K. Parasaran, learned senior counsel for the plaintiff, in reply submits that the appointment of defendants Nos. 7 to 9 was deliberately suppressed and that the sixth defendant became a permanent representative of the second defendant company by fabricating the minutes of the first defendant company dated August 31, 1990. My attention was drawn to pages 29 and 34 of the plaintiff's documents. Thus, it is contended that the seventh defendant's self-appointment as sole representative of the first defendant company and the consequent extraordinary general body meeting held on February 21, 1991, were deliberately concealed as part of a fraudulent conspiracy. Though the participation of the plaintiff in the board meetings was admitted, it was argued, that he participated in the said meetings ignorant of the fraud being played upon him. It is further contended that after RNG's death, at the subsequent board meetings, the plaintiff objected to the presence of the seventh defendant or taking the chair. In fact, he represented to Nusli Wadia/seventh defendant about the practice of fabricating the minutes. But, no reply was received from him to the plaintiff's letter dated September 11, 1992.

21. It is seen from the proceedings extracted above of the various board meetings that the plaintiff has attended several meetings and that he can claim no equity in his favour. In fact, the plaintiff has nothing to do with the second defendant company and RNG himself has proposed the appointment of additional directors. It is also very relevant to notice that no application for injunction in respect of the third defendant company was filed. Defendants Nos. 7 to 9 are also the directors of the third defendant company and the plaintiff does not ask for a similar prayer for the third defendant company.

22. O.A. No. 762 of 1992 has been filed by the plaintiff to injunct defendants Nos. 10 to 12/respondents Nos. 10 to 12 from exercising powers as directors/alternate directors in defendants Nos. 1 to 5/respondents Nos. 1 to 5 companies. According to Mr. K. Parasaran, learned senior counsel for the plaintiff, the prayer has been framed comprehensively as defendants Nos. 10 to 12 are directors in some companies and alternate directors in other companies and the appointment of these persons was strongly objected to but the final minutes do not record the dissent. It is further argued that no injunction against defendants Nos. 7 to 9 in respect of the third defendant company was asked for because the plaintiff was led to believe that RNG was present at the meeting held on June 24, 1991, and had signed a circular resolution dated June 26, 1991. Though he was present, he was not made the chairman. The plaintiff was not present and believed that RNG had signed the minutes. The medical records produced for June 24, 1991, would show that RNG was examined on that date by Dr. Doongajee. On March 11, 1991, this doctor states, RNG was able to recognise the relatives but unable to even remember anything. When the newspaper was read to him, he could not retain anything and the newspaper was read again. The medical evidence recorded on February 23, 1993, would reveal that the appointment of defendants Nos. 7 and 9 was not in order since RNG could not have been present or have participated in the meeting. Thus, it is submitted that these facts were deliberately suppressed from the plaintiff and that the fraud was revealed only later.

23. I am of the view that the prayer asked for in O.A. No. 762 of 1992 is misconceived, as rightly contended by Mr. P. Chidambaram, learned senior counsel for the sixth defendant, in so far as defendants Nos. 4 and 5 companies are concerned. Defendants Nos. 10 to 12 are not directors of these two companies. The most significant aspect of this application read with other applications is that there is no prayer seeking an injunction against defendants Nos. 7 to 9 in respect of the third defendant company, which is the most crucial company so far as the plaintiff is concerned. In so far as the first defendant company is concerned, defendants Nos. 10 and 12 were inducted as directors on June 24, 1992, and the plaintiff was present at the said meeting. According to the minutes placed before this court, there was no dissent. According to the version of Mrs. Saroj Goenka of the minutes, she and the plaintiff dissented. It is also not

disputed that the eleventh defendant is not a director of the first defendant company and hence, I am of the view, the prayer in this behalf is misconceived as rightly urged by Mr. P. Chidambaram.

24. In so far as the second defendant company is concerned, defendants Nos. 10 and 12 were inducted as directors on June 24, 1992, in the very presence of the plaintiff. It is also not disputed that the eleventh defendant is not a director of the second defendant company and hence, this application in this behalf is misconceived. In so far as the third defendant company is concerned, defendants Nos. 10 and 11 were inducted as directors on June 24, 1992, in the presence of the plaintiff. The twelfth defendant is not a director of the third defendant company and hence, the prayer in this behalf is also misconceived. I am of the view that no injunction as prayed for is justified since the plaintiff having been a party to the appointment of these people as directors, it is not open to him to challenge these appointments. The plaintiff is also picking and choosing the appointment of directors as mentioned above.

25. O.A. No. 763 of 1992 has been filed by the plaintiff to injunct the sixth defendant, Vivek Goenka, from exercising powers as managing editor and chairman and executive director in so far as defendants Nos. 3 and 4 companies are concerned. According to M. K. Parasaran, learned senior counsel for the plaintiff, this prayer was sought for because the sixth defendant increasingly interfered in the day-to-day affairs of the third defendant company and has appointed one P.M. Rajagopalan as the chief executive with more powers than the managing director/joint managing director. On January 28, 1993, he has also appointed one Narasimhan as the president and virtually all the departments were directed to report to him directly or through P.M. Rajagopalan. Almost all the powers of the plaintiff in the third defendant company have been eliminated, vide resolutions dated June 24, 1992, September 6, 1992, and September 13, 1992. These have been challenged in Application No. 5998 of 1992, wherein status quo of the plaintiff as on June 24, 1992, is sought to be restored.

26. In answer to the submissions made by Mr. K. Parasaran, learned senior counsel for the plaintiff, Mr. P. Chidambaram, learned senior counsel for the sixth

defendant, submits that so far as the fourth defendant company is concerned, the prayer is misconceived. As rightly contended by him, the sixth defendant is not the chairman and executive director of the fourth defendant company. The only directors of the fourth defendant company are Mrs. Saroj Goenka, the plaintiff and the sixth defendant. The resolution was passed by that board appointing the sixth defendant as managing editor, with the approval of both Mrs. Saroj Goenka and the plaintiff.

27. In so far as the third defendant company is concerned, the sixth defendant was appointed as managing editor at the board meeting held on September 24, 1991, and it was also reiterated at the board meeting held on June 24, 1992. So far as the chairman and executive director are concerned, the sixth defendant was appointed as the executive director of the third defendant company at the board meeting held on November 1, 1989, and has been functioning as such for the last 31/2 years. He was appointed as chairman at the board meeting held on September 5, 1992. Above all, the plaintiff was present and the seventh defendant was in the chair. No grounds have been urged to grant injunction against the sixth defendant for functioning as managing editor and/or chairman and executive director of the third defendant company.

28. At this stage, it is pertinent to notice the order passed by me on April 13, 1993, dismissing Application No. 5998 of 1992 (since reported in Vivek Goenka v. Manoj Sonthalia [1993] 2 MLJ 1; [1995] 83 Comp Cas 897 filed by the plaintiff. That application was filed to ensure that the plaintiff's powers as joint managing director of the third defendant company as on June 24, 1992, should be maintained pending disposal of the suit. The sixth defendant was the only respondent in that application. It is useful to extract paragraph 27 of my order in that application (at page 908 of 83 Comp Cas) :

'It is the duty of this court to recognise the corporate democracy of a company in managing its affairs. It is not for this court to restrict the powers of the board of directors. The board of directors in various resolutions have appointed the sixth defendant as executive director, managing editor and chairman. It will not be open to this court to interdict the functions of the board managed company. As rightly

contended by Mr. P. Chidambaram, learned senior advocate, it will not be open to this court to interfere with the day-to-day functions, management and administration of a company unless it is established that the decisions taken by the board are ultra vires the Act or the articles of association of the company. At this interlocutory stage this court is concerned only with the prima facie case and balance of convenience as disclosed by the documents produced by both parties. It is for the plaintiff to let in oral evidence at the time of trial and establish his case.'

29. As pointed out by Mr. P. Chidambaram, learned senior counsel for the sixth defendant, the plaintiff had taken part in the board meetings held on June 24, 1992, and September 5, 1992. The protest was only on September 5, 1992. Resolutions were passed by majority. In so far as the meeting held on June 24, 1992, is concerned, no objection was raised for the appointment of the sixth defendant as managing editor and hence, I am of the view, the plaintiff is not entitled to any equitable or discretionary relief as prayed for in the above application. Therefore, I hold that this application is misconceived and the same is liable to be rejected.

30. O.A. No. 764 of 1992 has also to be rejected for the same reasoning given in my order dated April 13, 1993, in Applications Nos. 841, 5129 and 5998 of 1992.

31. A. No. 768 of 1992 has been filed by the plaintiff to injunct defendants Nos. 6 to 12/respondents Nos. 6 to 12 from interfering with the plaintiff's powers as joint managing director of the third respondent/ third defendant company. As observed by me earlier, this application also has to abide by the decision rendered by me in Applications Nos. 841, 5129 and 5998 of 1992 dated April 13, 1993 (since reported in Vivek Goenka v. Manoj Sonthalia [1993] 2 MLJ 1; [1995] 83 Comp Cas 897.

32. It is contended by Mr. K. Parasaran, learned senior counsel for the plaintiff, that the plaintiff became a director of the third defendant company in 1980 itself. The board meeting dated June 24, 1991, is seriously disputed in the light of the medical evidence, which came to be disclosed on February 23, 1993. Again, it is repeated that the appointment of defendants Nos. 10 to 12. On June 24, 1992, has been disputed. The minutes have been fabricated and in any event, defendants

Nos. 10 to 12 were appointed by virtue of the illegal majority obtained by inducting defendants Nos. 7 to 9. The appointments of defendants Nos. 6 to 12 is itself disputed. The appointment of defendants Nos. 7 to 9 in the first defendant and the second defendant companies at the respective extraordinary general body meetings held on January 23, 1991, and February 13, 1992, is clearly illegal and liable to be set aside and no container theory in respect of these meetings has also been put forth. Therefore, it is argued, that injunction should be granted restraining defendants Nos. 6 to 12 from interfering with the plaintiff's powers as joint managing director of the third defendant company.

33. According to Mr. P. Chidambaram, learned senior counsel for the sixth defendant, the sixth defendant became a director of the third defendant company in the year 1985. Defendants Nos. 7 to 9 were inducted as directors of the third defendant company by a circular resolution dated June 24, 1991, which has been signed by RNG, sixth defendant, Mrs. Saroj Goenka and the plaintiff. This, in my view, is the principal reason why the plaintiff is not able to challenge and, therefore, has not challenged the appointment of defendants Nos. 7 to 9 as directors of the third defendant company. So far as defendants Nos. 10 to 12 are concerned, I have already dealt with the same while dealing with O.A. No. 762 of 1992 and, hence, I am not repeating the same here.

34. As rightly submitted by Mr. P. Chidambaram, learned senior counsel for the sixth defendant, defendants Nos. 6 to 12 were validly appointed as directors of the third defendant company and, hence, they are entitled to function as such and take part in the management of the said company. Section 291 of the Companies Act deals with the general powers of the board and the restrictions thereon. The gist of the section is that except where express provision is made that the powers of a company in respect of any particular matter are to be exercised by the company in general meetings, in all other cases, the board of directors are entitled to exercise all its powers. When the validity of the appointment is not in doubt, no injunction, in my view, can be granted as prayed for. Hence, this application is also liable to be dismissed.

35. Application No. 4718 of 1992 has been filed by the plaintiff for a direction for restoration of all powers vested in the plaintiff in defendants Nos. 1 to 5 companies consequent to the resolution passed at the board meeting of the first defendant company held on September 26, 1990. Mr. K. Parasaran, learned senior counsel for the plaintiff, submits that the minutes constitute the succession plan of RNG and that the said plan was implemented by amending the articles, interlocking the rights and interests of the plaintiff and the sixth defendant, and making RNG supreme till his life time. In any event, it is the plaintiff's case, that the handing over of the shares to Nusli Wadia was to be done by both the grandsons. However, only the plaintiff's shares were illegally transferred to RNG's name by virtue of the conspiracy between defendants Nos. 6 and 7. Even the shares held in the joint names were not transferred where Vivek Khaitan's name was shown as the first shareholder. He submits that the minutes are not a pious wish and hence, as recorded in the minutes. defendants Nos. 1 to 5 companies have to be run by the plaintiff and the sixth defendant as a team and any resolution in violation of this specific directive would be contrary to the RNG's succession plan.

36. Mr. P. Chidambaram, learned senior counsel for the sixth defendant, in reply to the above argument contends that the whole prayer is misconceived and the minutes referred to are the minutes of the board meeting of the first defendant company. The said minutes, according to Mr. P. Chidambaram, contain only the pious wish of late RNG. They do not constitute the resolution and the same is also not enforceable in a court of law. In any event, the subsequent change in the shareholding pattern of the first defendant company would prevail over a pious wish expressed by the late RNG. Notwithstanding the pious wish, on the same day, viz., on September 26, 1990, after the meeting, RNG in the presence of the seventh defendant, asked the plaintiff to transfer back the shares to him, which is admitted by the plaintiff by his letter dated November 12, 1990, to the seventh defendant. In the same letter, the plaintiff also admits that it seemed he had lost the confidence of RNG and hoped that the act of his sending the shares together with the share transfer deeds as desired by his grandfather 'will restore the faith and the trust that I seem to have lost'.

37. According to Mr. P. Chidambaram, all these are irrelevant in so far as defendants Nos. 2 to 5 companies are concerned. A pious wish expressed at the board meeting of the third defendant company is not relevant to the management of defendants Nos. 2 to 5 companies. Above all, it is submitted, that no powers were vested in the plaintiff in defendants Nos. 1 to 5 companies consequent on the resolution dated September 26, 1990. Hence, in my view, the question of restoration of such powers does not arise.

38. Application No. 4719 of 1992 is filed by the plaintiff for a direction that the plaintiff, Mrs. Saroj Goenka and the sixth defendant shall be appointed as joint representatives of all the respondent companies under section 187 of the Companies Act. Mr. K. Parasaran, learned senior counsel for the plaintiff, elaborating the said prayer, submits that the sixth defendant, Vivek Goenka, appoints himself as the sole representative of defendants Nos. 1 and 2 companies by fabricating the minutes and by getting appointed as the sole representative of the second defendant company, the sixth defendant uses the illegally obtained majority to appoint himself as the sole representative in other respondent companies as well, and if his appointment in the second defendant company is set aside, then. His appointment in several companies also will have to be set aside.

39. I am of the view, that the prayer in this behalf is totally misconceived. Under section 187 of the Companies Act, a body corporate may appoint only one representative. There is no question of appointing joint representatives. In so far as the first defendant company is concerned, as rightly contended by Mr. P. Chidambaram, section 187 of the Companies Act is not applicable because it is composed of shareholders who are individuals, who will exercise their power to elect/appoint directors who will manage and represent the company. In so far as the second defendant company is concerned, it is the first defendant company which has to appoint its representative, which means that the board of directors of the first defendant company will appoint a representative to represent the first defendant company in the meetings of the second defendant company. Similarly, in so far as the third defendant company is concerned, it is the board of directors of the second defendant company who will appoint a representative to represent the second defendant company in the meetings of the third defendant company.

40. In so far as the fourth defendant company is concerned, it was originally a wholly owned subsidiary of the fifth defendant company and as long as it was so, it was the board of directors of the fifth defendant company who would appoint a representative. It is also stated that between June, 1992, and January, 1993, the fourth defendant company was sold to the first defendant company and has become a subsidiary of the first defendant company. Hence, it is the board of the first defendant company which will appoint a representative to represent it at the meetings of the fourth defendant company. So far as the fifth defendant company is concerned, it is a wholly owned subsidiary of the third defendant company and, hence, it is the board of directors of the third defendant company which will appoint a representative to represent it at the meetings of the fifth defendant company. Thus, I am of the view, that the prayer in this application is also wholly misconceived and cannot be granted for the aforesaid reasons.

41. Mr. P. Chidambaram, learned senior counsel for the sixth defendant submits, that the plaintiff's objective in injuncting defendants Nos. 7 to 9 is because he wants to control the board of directors although he is minority shareholder. In reply, it was argued on behalf of the plaintiff that the plaintiff's objective is not to control the company but to ensure that the persons who have been elected in a fraudulent and illegal manner be removed. Although the plaintiff is a minority shareholder, he is entitled to participate in the management of the company along with the sixth defendant, which is made clear by the board resolution and the subsequent amendment of articles on September 26 and 27, 1990, respectively, which states that the plaintiff and the sixth defendant have to work as a team and that they were his successors to run the newspapers. The exclusion of the plaintiff from the management of the companies would be a ground to wind up the company under the just and equitable clause. For this proposition, the learned senior counsel for the plaintiff has cited the decisions in *Ebrahimi v. Westbourne Galleries Ltd.* [1972] 2 All ER 492 and *Hind Overseas (P.) Ltd. v. Raghunath Prasad Jhunjhunwala*, : [1976]2SCR226 .

42. It is contended by Mr. K. Parasaran, learned senior counsel for the plaintiff, that once a prima facie case of fraud is established, the interim relief asked for should follow, otherwise, the perpetrators of fraud will reap the benefits of fraud

during the interregnum. It is further urged that the Companies Act does not require that the board of directors must reflect the shareholding pattern. The proper legal position is that the shareholders who are in a majority can elect directors of their choice. The Act does not authorise the majority to eliminate the minority by wrongful means. In a family owned company, a large shareholder cannot be removed from management on the plea of corporate democracy.

43. Mr. P. Chidambaram, learned senior counsel for the sixth defendant, submits that all the defendant companies have the power to appoint additional directors and, therefore, defendants Nos. 7 to 9 have been validly appointed. In reply to this argument, Mr. K. Parasaran, learned senior counsel for the plaintiff, submits that there is no dispute about the power to appoint additional directors, but the same has been done by fraudulent exercise of that power. The real case, according to the learned senior counsel for the plaintiff, is regarding the conspiracy and fraud perpetrated by the sixth defendant with the active connivance of defendants Nos. 7 and 8 against the plaintiff. Mr. K. Parasaran further submits that the conspiracy has started not on January 5, 1991, but much earlier and as soon as RNG settled the succession issue on September 26, 1990. The same was to convert a unitary ownership of the sixth defendant and the plaintiff into the sole ownership of the sixth defendant and also to convert the team of the plaintiff and the sixth defendant into an exclusive performance of the sixth defendant.

44. Regarding the appointment of additional directors, it is stated by Mr. K. Parasaran, learned senior counsel for the plaintiff, that the plaintiff never knew that first the appointments were part of a larger design and even during the period from January 5, 1991, to October 5, 1991, he was always given the impression that the three persons were appointed as additional directors in defendants Nos. 1 and 2 companies at two board meetings. But, the fact that defendants Nos. 7 to 9 were elected as directors of the first defendant company at an extraordinary general body meeting of the first defendant company on January 23, 1991, was concealed from the plaintiff. The illegal transfer of shares was also deliberately suppressed from the plaintiff till the 13th day after RNG's death. The minutes of January 5, 1991, meeting were deliberately suppressed from the plaintiff. If the board meetings of the period January 5, 1991, to October 5, 1991, are examined, it will

be seen that all the resolutions related to management of various companies and there is no interference in the powers of the plaintiff. Thus, all the meetings were conducted in such a manner so as to conceal the election of defendants Nos. 7 to 9 as directors and the illegal transfer of shares. The plaintiff had no knowledge of the fraud of confiscation of his shares by the purported transfer of shares. As the plaintiff had no knowledge of the fraud or conspiracy during the period, no question of estoppel or acquiescence on the part of the plaintiff can arise at all. No one can be held to acquiesce in a fraud against him. Learned senior counsel for the plaintiff has also made a reference to Halsbury's Laws of England, 4th edition, volume 16, paragraphs 1472 and 1473, in this context. Thus, it was argued that there can be no waiver/estoppel/ acquiescence if a person had no knowledge of the fraud being committed or of his rights being violated.

45. I am unable to accept the argument of learned senior counsel for the plaintiff. The suppression of the plaintiff's own participation in approving the appointment of defendants Nos. 7 to 9 in defendants Nos. 3 and 5 companies on June 24, 1991, and June 26, 1991, respectively, assumes significance not only from the point of view of the maintainability of the plaintiff's challenge to the resolution of the board of directors of the third defendant company but also from the point of view of the credibility of the plaintiff and the positive attempt on the part of the plaintiff to mislead this court in material respects. The circular resolutions for the appointment of defendants Nos. 7 to 9 on the board of defendants Nos. 3 and 5 companies clearly establish the following :

(a) RNG had initiated the move to appoint these three persons as additional directors.

(b) He was present at the meeting of the third defendant company held on June 24, 1991.

(c) It was considered by all the directors including the plaintiff that it was desirable to appoint defendants Nos. 7 to 9 on the board of directors on account of their eminence, in that, such appointment was to be made in the various companies in the group for uniformity of policy and better co-ordination of the operations of the companies. In fact, defendants Nos. 7 and 8 are described in the circular

resolution as well-known industrialists.

(d) The suppression of the plaintiff's own participation in the said resolution becomes even more significant if reference is made to the averments made in the plaint. It becomes clear that the plaintiff has mentioned those facts purposely.

46. I fail to understand as to how the plaintiff can make certain assertions in the plaint that the appointment of defendants Nos. 7 to 9 on the boards of defendants Nos. 3 and 5 companies is illegal and fraudulent. The whole case of the alleged illegal shift of the balance of power in defendants Nos. 1 to 5 companies and the challenge to the appointment of defendants Nos. 7 to 9 is misconceived and it is not open to the plaintiff to urge this. In the plaint, the plaintiff not only failed to refer to his own participation in the appointment of defendants Nos. 7 to 9 in defendants Nos. 3 and 5 companies but also makes a bold assertion that such appointment was 'concealed from him.'

47. The principal contention of Mr. K. Parasaran, learned senior counsel for the plaintiff, is that there was a conspiracy conceived during RNG's lifetime to divest the plaintiff of his 37 per cent. shareholding. In answer to this contention, it was argued by Mr. P. Chidambaram, learned senior counsel for the sixth defendant, that whatever allegations of fraud and conspiracy are made by the plaintiff, the level of proof and the burden against him is very heavy. Each circumstance leading up to the conspiracy must be consistent only with the conspiracy theory sought to be established and must exclude every other hypothesis to the contrary. Reference was also made to the decision in *S. P. Bhatnagar v. State of Maharashtra*, : 1979 CriLJ566 ; *Chandmal v. State of Rajasthan*, : 1976 CriLJ679 and *Sharad Birdichand Sarda v. State of Maharashtra*, : 1984 CriLJ1738 .

48. The following facts will also clearly establish, as contended by Mr. P. Chidambaram, learned senior counsel for the sixth defendant, that the allegations of conspiracy made by the plaintiff cannot be sustained and the question of estoppel or acquiescence on the part of the plaintiff can arise :

(a) The plaintiff's version is that the board meeting of September 26, 1990, and the annual general body meeting of September 27, 1990, were free from any

controversy. This version is clearly negated by the fact that in his letter of November 12, 1990, the plaintiff admits that RNG had, on September 26, 1990, asked him to return the shares and that RNG had lost faith in him. The plaintiff had tried to impose upon RNG the minutes prepared by Mr. Gurumurthy in which there was a marked emphasis upon the creation of a trust and that the plaintiff and the sixth defendant were to have equal status in the company. On account of this controversy, RNG had lost faith in Mr. Gurumurthy, who had to disassociate himself from the 'Express' group of companies in October, 1990.

(b) The plaintiff's assertion that the letter dated November 12, 1990, and the share transfer forms were extracted from the plaintiff by the seventh defendant on the ground that both the plaintiff and the sixth defendant were to execute transfer deeds in favour of RNG which is ex facie false as would appear from the letter dated November 12, 1990, which speaks of only loss of confidence in the plaintiff and not in the sixth defendant. The plaintiff, by letter dated November 12, 1990, sent the transfer deeds with regard to his exclusive shares or shares where he was the first holder and not with regard to 12.16 per cent. shares of which the sixth defendant was the first holder. From November 12, 1990, till date, the plaintiff has never sought to enquire as to what happened to the transfer deeds executed by him or alternatively put on record that the transfer deeds were never intended to be acted upon. The plaintiff further has never requested that the sixth defendant was also to transfer his holdings.

(c) The suggestion that the articles of association, which were amended on September 27, 1990, were never sought to be re-amended during the lifetime of RNG is an irrelevant circumstance. The substantial part of amendments of the articles dealt with the conferring upon RNG certain privileges. There could never have been any ground to take any action to amend that. In any case, the sixth defendant had never any desire to transfer his shareholding to any third party and, therefore, there was never any occasion to seek any amendment of the articles as amended on September 27, 1990. Furthermore, it is clear from the document that the 37 per cent. shares vested in RNG and he had not decided to transfer these shares to any other person during his lifetime. The fact that this was not done would not only show that there was no conspiracy but would militate against it.

(d) Allegations that the factum of the meeting dated January 5, 1991, was kept a secret are without any basis. The notice of the meeting was circulated. The decisions of the meeting were acted upon. Even on his own showing, the plaintiff, on March 16, 1991, was fully aware of the fact that such a meeting had been held and directors had been appointed. The plaintiff was always aware of the minutes of the meeting. His case that the minutes were kept away and not shown to him is falsified by two contradictory assertions in the two plaints. Moreover, if what the plaintiff says has any semblance of truth, it is inconceivable that a director of the company wanting to obtain a copy of the minutes which are denied to him, would not put a demand on record demanding a copy of the minutes.

(e) The alleged circumstance that directors were brought into various companies in absolute secrecy is falsified by the conduct of the plaintiff himself. I have already made reference to the submissions already advanced in this regard by Mr. P. Chidambaram.

(f) Allegations that Mr. Venu Srinivasan's office was used to file the annual returns of the company are explained by the simple fact that the plaintiff and certain officers close to him in the Madras office, viz., Mr. L. Seshan and Mr. N. Rajendrakumar were not sending the record when asked for by RNG in Bombay. They were not co-operating either with RNG or with the sixth defendant. They could not be trusted at this stage for filing the returns.

(g) The assertion that the cancelled pronote was not sent back to the plaintiff by RNG is an absolutely irrelevant circumstance and is not indicative of conspiracy. The pronote which was given in consideration of RNG transferring 37 per cent. shareholding to the plaintiff was cancelled. A letter to that effect was duly signed by RNG and sent to the plaintiff. The fact that only a letter was sent and the pronote was not sent is not a circumstance indicating conspiracy since in view of the cancellation, the pronote ceased to have any effect in law.

(h) The alleged circumstance that Mr. L. Seshan prepared the statement of assets and liabilities of RNG after his death and showed the shares as not transferred clearly corroborates the fact that Mr. Seshan is actively in collusion with the plaintiff as is demonstrated by his conduct.

49. The meeting dated September 24, 1991 of the board of directors of the Indian Express (Madurai) Private Limited held at Bombay is a crucial meeting for the following reasons : The meeting was attended by RNG, the sixth defendant and Mrs. Saroj Goenka. Leave of absence was granted to the plaintiff. Mrs. Saroj Goenka was elected as chairperson for the meeting. The chairperson mentioned that additional directors have been appointed in the holding company (first defendant company) and, therefore, the directors should consider the appointment of additional directors on the board of the third defendant company as well. She then tabled before the meeting, copies of the circular resolution which has been circulated to all the directors. She also mentioned that RNG, Vivek Khaitan and herself have all approved and accorded their consent to the circular resolution appointing Nusli N. Wadia (seventh defendant), Venu Srinivasan (eighth defendant) and Shrikrishna Mulgaokar (ninth defendant) as additional directors of the company with effect from June 24, 1991. The text of the circular resolution was then recorded by the board meeting. This is the meeting by which the plaintiff also became the joint managing director. A resolution to the said effect was also unanimously passed appointing the plaintiff, who was the executive director, as the re-designated joint managing director of the company from June 24, 1991, on the terms and conditions detailed therein in regard to his powers and duties. It is thus seen that the board itself can appoint additional directors and that the powers of the board have been validly exercised, which, in my view, does not call for any interference.

50. Mr. K. Parasaran, learned senior counsel for the plaintiff/applicant has cited the decision in *Parmeshwari Prasad Gupta v. Union of India* : [1974]1SCR304 . In the said case, the services of the general manager were terminated at a board meeting. That meeting was convened without giving notice to one of the directors. The next day, the chairman sent a telegram to the general manager stating that his services had been terminated. Subsequently, at the next board meeting, the action of the chairman, who terminated the services by his letter and telegram, was ratified. It was held that the first board meeting, which was convened without giving notice to one of the directors, was invalid and the resolution passed to terminate the services of the general manager would be inoperative. However, on the peculiar facts of that case, it was held that the termination of services was

effected by the chairman's telegram and letter which were subsequently ratified.

51. Relying on the above decision, Mr. K. Parasaran submits that the board meetings of January 5, 1991, of the first defendant company and of January 23, 1991, of the second defendant company would be invalid and the resolutions passed therein are inoperative as no notice was given to the plaintiff and his mother, who are the other directors of the first defendant company, and to the plaintiff and Mrs. Saroj Goenka, who are the other directors of the second defendant company. According to Mr. P. Chidambaram, learned senior counsel for the sixth defendant, the above decision is in favour of the sixth defendant and against the plaintiff. It is seen from para 14 of the said decision that it was open to a regularly constituted meeting of the board of directors to ratify that action which, though unauthorised, was done on behalf of the company and that the ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953, and that the appellant was not entitled to the declaration prayed for by him, and the trial court as well as the High Court were right in dismissing the claim. In the instant case, it is seen from the records that the minutes of the earlier meetings were discussed at the subsequent meetings. It is also proved that the plaintiff has attended several meetings and hence, he is not entitled to challenge the decision taken at the board meetings since the decision taken at the previous board meetings has been subsequently ratified in the next meeting.

52. The next decision relied on by Mr. K. Parasaran, learned senior counsel for the plaintiff, is in *American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All ER 504. This decision is by the House of Lords. There is no dispute with regard to the principles laid down by the House of Lords governing the grant of interlocutory injunction, which have been set out in detail in the said judgment. The House of Lords held that there was no rule of law which stipulated that a court should not grant interlocutory injunctions on a balance of convenience unless the plaintiff establishes a prima facie case or a probability that he would be successful at the trial of the action. The House of Lords further held that it was sufficient if the court was satisfied that the claim was not frivolous or vexatious and that there was a serious question to be tried and once this is established, the grant of interlocutory

injunction would be passed on the balance of convenience. I am of the view that the said decision is not applicable to the facts of the case on hand and is distinguishable on facts. I have already held on facts that the plaintiff has not made out a prima facie case for the grant of injunction in his favour and that the balance of convenience is also not in his favour.

53. The decision in *Dalpat Kumar v. Prahlad Singh* : AIR 1993 SC276b was also cited by Mr. K. Parasaran, wherein three principles to be applied for grant of temporary injunction have been laid down by the apex court.

54. Mr. P. Chidambaram, learned senior counsel for the sixth defendant, in support of his contention cited the decision in *Imperial Oil Soap and General Mills Co. Ltd. v. Wazir Singh*, AIR 1915 Lah. 478. In the above case, the company had filed a suit for recovery of certain sums of money. The plaint was signed by one of the directors. It was contended that the said director had no authority to institute the suit on behalf of the company. The defendant who had raised this objection was also a shareholder. The High Court observed that this defendant had actually participated in the appointment of the director who was representing the company. Further, this person had also functioned as director for several years. In such cases, the parties were held not entitled to question the powers of individual directors. Similarly, the shareholders who had joined in the appointment as directors without taking exception would be estopped from objecting to the validity of his appointment. In my opinion, this decision is really in favour of the defendants and not in favour of the plaintiff/applicant as contended by learned senior counsel for the plaintiff. It is specifically established that the plaintiff has joined in the appointment of defendants Nos. 7 to 9 and defendants Nos. 10 to 12 and has also participated in the board meetings subsequent to their appointment. The only contention raised by the plaintiff/applicant is that the appointment was made without his knowledge and the same was kept concealed from him as part of the conspiracy. I have already held that this is a matter which has to be gone into in detail only at the time of trial and that the theory of conspiracy has to be established only after a full-fledged trial. It is useful to refer to two passages of the judgment of the Division Bench of the Lahore High Court :

'When a company is shown to have accepted a certain person for many years as its director and has never on any occasion repudiated any of his acts as such, it is not open to one who has no concern with the company to challenge the appointment of such director or to contest his authority to act on behalf of the company.'

When a shareholder of a company takes part in nearly all the general meetings of the company and joins in the annual appointment of its director without taking exception to his appointment, he is under the circumstances debarred by his conduct from objecting to the validity of the director's appointment or to his authority to act for and on behalf of the company.'

55. Mr. P. Chidambaram then relied on the decision in *John Shaw and Sons (Salford) Ltd. v. Peter Shaw and John Shaw* [1935] 2 KB 113. The principles of section 291 of the Act have been set out in the above judgment. The relevant passage is reproduced :

'A company is an entity distinct alike from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers. ..'

56. Mr. P. Chidambaram, learned senior counsel for the sixth defendant then relied on the decision in *Peninsular Life Assurance Co., In re* [1936] 6 Comp Cas 32. In that case, the application was for rectification of the share register. The applicant claimed about an irregularity of a meeting stating that notice had not been given in respect of a board meeting. This point was taken only when the matter was part-heard. The objection was not taken even while filing inspection of all the records. The court observed that the shareholder should have proved that notice was not given to the opposing directors. In the present case, it is true, that the objections regarding the meeting have been taken in the plaint. The conduct of the plaintiff in this case will show that objection was not taken by him when the additional directors were present at the meetings. The burden of proof is on him to show that he had no notice. In the decision in *Shuttleworth v. Cox Brothers and*

Co. Ltd. [1927] 2 KB 9, it was held that it was not for the court to manage the affairs of the company and that is for the shareholders and the directors. It is argued on behalf of the plaintiff that in the light of the above case, the court was concerned with the alteration of the articles of a company and hence, the said decision will also not be applicable to the facts of the present case. I am unable to accept the said contention. The decision has been relied on by learned senior counsel for the sixth defendant only for the purpose of showing that it is for the shareholders to decide whether it is for the benefit of the company and not for the court and that it was also not for the court to manage the affairs of the company and it is for the shareholders and the directors. In my opinion, the principle laid down in the above decision is applicable to the facts of the present case.

57. Three case-laws governing the principles of grant of injunction have been cited by Mr. P. Chidambaram, learned senior counsel for the sixth defendant. They are in United Commercial Bank v. Bank of India, : [1981]3SCR300 ; Hazrat Surat Shah Urdu education Society v. Abdul Saheb [1988] 4 JT 232 and Dalpat Kumar v. Prahlad Singh : AIR 1993 SC276b . In the instant case, as already held by me, the plaintiff has failed to establish that he would be put to irreparable loss unless interim injunction was granted.

58. Mr. G. E. Vahan Vati, learned senior counsel appearing for the first defendant/first respondent, made three submissions :

- (a) The decision with regard to the company as regards shares;
- (b) the decision with regard to the appointment of directors;
- (c) the decision with regard to the alleged shareholding of the plaintiff.

59. Points 1 and 2 relate to the transfer of shares and the alleged shareholding of Anil Kumar Sonthalia. A separate suit has been filed alleging conspiracy for divesting the plaintiff of his shareholding and also the shareholding of Anil Kumar Sonthalia, brother of the plaintiff, in regard to his shareholding. A number of applications have also been filed in the said suit, which are pending in this court. Hence, the contentions raised by learned senior counsel for the first defendant are

not dealt with in this order and the same will be dealt with in the applications filed in the share transfer suit. So far as the appointment of additional directors is concerned, Mr. G. E. Vahan Vati, learned senior counsel, adopted the arguments of other learned senior counsel who appeared on behalf of the other defendants/respondents. Learned senior counsel has also invited my attention to the relevant paragraphs in the minutes of the board meetings and also other connected papers. Which I have already referred to while dealing with the arguments of Mr. P. Chidambaram.

60. In a connected matter in Applications Nos. 841, 5129 and 5998 of 1992, by order dated April 13, 1993 (since reported in Vivek Goenka v. Manoj Sonthalia [1995] 83 Comp Cas 897, I have already dealt with the points in extenso and have observed that since the defendant/respondent companies are board-managed companies, the board of directors may exercise all the powers by virtue of section 291 of the Companies Act and the articles of association of the company and that the fundamental principle of corporate democracy, which is at the very foundation of the company law, was recognised by this court earlier and between March, 1991, and September, 1992, the plaintiff and Mrs. Saroj Goenka sat on the board of directors of the first and the third defendant companies and did not demur. In fact, the minutes show that the new directors appointed on January 5, 1991, were welcomed on the board. The main prayer in C.S. No. 1246 of 1992 is concerned with the validity of the meeting of the board of directors of the first defendant company held on January 5, 1991, and the board of directors meeting of the second defendant company held on January 23, 1991, and certain other resolutions for appointing additional directors. In my view, it will not be open to this court to interfere with the day to day functions, management and administration of a company unless it is established that the decisions taken by the board are ultra vires the Act or the articles of association of the company. I have consistently taken this view in my earlier orders. At this interlocutory stage, this court is concerned only with the prima facie case and the balance of convenience as disclosed by the documents produced by both the parties and it is for the plaintiff to let in oral evidence at the time of trial and establish his case.

61. The following important circumstances will conclusively militate against the conspiracy theory strenuously put forward by learned senior counsel for the plaintiff and highly suggestive of the hypothesis given by the sixth defendant to the effect that the plaintiff's relations with RNG got strained on account of the reasons mentioned in the pleadings. They are :

(a) Gurumurthi's draft of the minutes of the board meeting dated September 26, 1990, bears the corrections in hand by R. A. Shah and the plaintiff.

(b) The contents of the letter dated November 12, 1990.

(c) The letter dated January 2, 1991, of RNG cancelling the pronote.

(d) The notice of the meeting dated January 5, 1991, sent to the plaintiff.

(e) The knowledge/acquiescence and even active participation of the plaintiff in the appointment of the directors to various companies.

(f) The disillusionment of RNG with the Madras office in not sending the documents.

(g) Gurumurthi's disassociation from 'Indian Express' on account of these factors in October, 1990; and

(h) The contents of Shri Achyut Patwardhan's letter.

62. During the hearing of the case, I suggested whether the plaintiff's power as joint managing director can be increased as a temporary measure and that the suit itself can be taken up and disposed of at the earliest stage. At the next hearing, Mr. R. Krishnamurthi, learned senior counsel for the sixth defendant, Mr. G. E. Vahan Vati, learned senior counsel for the first defendant and Mr. Navroz Seervai, learned senior counsel for the seventh defendant, appeared before me and represented that the financial powers of the plaintiff can be increased to some extent for which course Mr. Arvind P. Datar, learned counsel appearing for the plaintiff, was not agreeable. This court has suggested this only as an interim measure. Both the parties were not willing to give up their stand. Hence, I could not move about reapproachment between the parties. This is only by the way.

63. I make it clear that the views expressed by me in this common order are only for the purpose of disposing of the above applications on a prima facie consideration of the materials placed before this court at this interlocutory stage.

64. For the foregoing reasons, I hold that there are no merits in the applications filed by the plaintiff/applicant. Accordingly, all the applications are dismissed. However, there will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com