

Naina D. Kamani Vs. Janson Engineering and Trading Pvt. Ltd.

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SooperKanoon Citation : sooperkanoon.com/922239

Court : Mumbai

Decided On : Aug-18-2011

Judge : Roshan Dalvi, J.

Acts : [Companies Act. 1956](#) - Section 433(g), 313, 285 to 290, 287(2), 174, 433(f), 193 , 283, 397, 398, 53(2)(b); Bombay Rent Act 1947 - Section 13(4); Code of Civil Procedure(C.P.C) - Order 34

Appeal No. : NOTICE OF MOTION NO. 3701 OF 2009 IN SUIT NO. 2429 OF 1997

Appellant : Naina D. Kamani

Respondent : Janson Engineering and Trading Pvt. Ltd.

Advocate for Pet/Ap. : Mr. F.E. D

Judgement :

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1. The Plaintiff is one of the permanent Directors of Defendant No.1 Company. Defendant Nos. 2 and 3 are two other permanent Directors of Defendant No.1. The Company essentially owns one residential building. The Plaintiff and Defendant No.2 reside in two flats of the building. The building was purchased in an auction by Defendant the No.1 Company when the Plaintiff and Defendant No.2

were its members and Directors. The property came to be purchased on 19th January 1989 under the certificate of such purchase in an auction. One flat was thereafter purchased by Defendant No.3 and accordingly the Plaintiff and Defendants 2 and 3 came to be the three Directors of Defendant No.1 Company.

2. It is the case of the Plaintiff that in order to give the Plaintiff sufficient representation in management it was specifically decided that all the three Directors would equally partake in the Board Meetings so that the resolutions of the Board would be unanimous. The Articles of the Company came to be amended to make a specific provision in that regard. Article 51(f) of the Articles of Association of the Company dealing with (Directors and proceedings of the Board) came to be incorporated in the Article to make a specific provision for unanimous vote at the Board Meetings. Similarly under Article 51(e) it was specifically shown that the Plaintiff and Defendant Nos. 2 and 3 were permanent Directors of the Company and further appointment of any Directors, other than any additional Director, would be by the person nominated by the outgoing Director as a permanent Director.

3. Articles 51(e) and (f) are, therefore, peculiar to Defendant No.1 Company.

4. It may be mentioned that the Company does not carry on any business except manage the building which is the only property it owns.

5. Consequent upon the unanimity required in Board Meetings, which became impossible of actual performance, a deadlock came to be in the working of the Company. The suit which came to be filed in 1997 challenged essentially the proceedings in a Board Meeting held on 5th August 1993 as being false, fabricated, fraudulent and not binding on the Plaintiff. The Board Meeting of 5th August 1993 was convened and conducted inter alia in presence of the Plaintiff. Unanimous resolutions are shown to have been passed. The material resolution which dealt with the asset of the Company was authorising Defendant No.6, the father of Defendant No.2, to obtain vacant possession of a flat on the ground floor of the Company's building from one Pushpa Kadambande along with one garage and servant's room and upon obtaining such possession to let it out to Defendant

No.6 after he carried out external repairs and renovations to the entire building as per the offer made by him. The challenge to that meeting is essentially in respect of the said resolution.

6. The suit is, therefore, for a declaration that Defendant Nos.6 has no right, title and interest in the suit flat, is a trespasser therein, for recovery of possession and for other incidental reliefs of damages, mesne profits and injunction. The suit also claims declaration with regard to the validity of several other Board Meetings with which this Notice of Motion is not concerned.

7. Pending the suit the Article 51(f) and (e) of the Articles of Association of Defendant No.1 Company, which were actually instrumental in bringing out the deadlock between the Directors and Members of the Company, were sought to be amended to bring them in conformity with the usual rule of majority on the board for resolutions to be passed at Board Meetings. A Board Meeting came to be held in that behalf which the Plaintiff attended. Certain resolutions came to be passed thereon. Amongst them was the resolution to convene an Extraordinary General Meeting (EGM) to inter alia to amend the Articles of Association for that purpose.

8. Thereafter there has been a further Board Meeting which came to be held on 9th October 2009. The Plaintiff has prayed for the relief of injunction in respect of steps to be taken by Defendant No.1 Company pursuant to resolutions passed at the Board Meetings held on 5th August 1993, 6th August 2009 and 9th October 2009 and the EGM held on 31st August 2009 and other consequential reliefs of injunction restraining the Directors appointed at these meetings to act as such.

9. The Notice of Motion came to be amended to add a further prayer restraining Defendants 2, 3 and 6 from convening or holding any meetings of Defendant No.1 Company or acting in pursuance of resolutions passed at the aforesaid meetings.

10. In short the Plaintiff, who is a Director of Defendant No.1, seeks to stop all businesses of Defendant No.1. Defendant No.1, therefore, cannot be a company which can transact any business as a going concern. If the prayers of the Plaintiff must be granted, there would be a complete deadlock in business, if any, of

Defendant No.1.

11.Upon the premise that the Plaintiff would be entitled as a Director and member of the Company having a 33% stake in the Company to such reliefs, the Plaintiff's case making out the reasons why such extreme relief should be granted is required to be seen.

12.The injunction in respect of the Board Meeting held on 5th August 1993 cannot be claimed in a Notice of Motion taken out in 2009. The suit itself has been filed in 1997 to challenge the proceedings at the meeting held on 5th August 1993 which the Plaintiff had attended.

13.The Plaintiff has pressed the reliefs in respect of the meetings held in 2009. The Board Meeting held on 6th August 2009 has sought to transact a number of businesses. The Plaintiff admittedly attended the meeting along with Defendant No.3 and Defendant No.12 who was the alternate Director to Defendant No.2. The Plaintiff admittedly left the meeting soon thereafter and before the resolutions of the Board could be passed. She submitted an objection letter and refused to sign the attendance register. It is her case that she was ridiculed and jeered on in the meeting which constrained her to leave the meeting before the business was transacted.

14.The Minutes of the Meeting show that due to the non-cooperative attitude of the Plaintiff and her regular objections for all activities at every Board Meeting the Company could not comply with statutory requirements of filing the statutory documents with the Registrar of Companies (ROC) or holding AGMs. Surprisingly the Plaintiff herself has taken exception to the Board passing resolutions for filing the statutory documents required to be filed by the Company, but remaining unfiled for as many as 9 years - a circumstance which would itself result in winding up the company under Section 433(g) of the Companies Act. The Board, in fact sought to make amends and bring the stalemate to an end in that behalf. Several businesses came to be transacted at that meeting including the approval of the notice in the EGM which was to be convened on 31st August 2009 at 5 p.m at the registered office of the Company interalia for alteration of the Articles of

Association of the Company.

15. Defendant No.6 came to be appointed as Director nominated by Defendant No.2 who sought to resign under the specific provision of Article 51(e) of the Articles of Association of the Company. The Respondent No.1 to the Notice of Motion came to be appointed as an alternate Director to Defendant No.3 and Respondent No.2 came to be appointed as an alternate Director to Defendant No.6 who was appointed Director in the same Board Meeting.

16. The Plaintiff has challenged the proceedings at the Board Meeting on two specific grounds. The Plaintiff has contended that there was no quorum upon she having left the Board Meeting and hence no business could be transacted. She has also challenged the attendance of Defendant No.12 as the alternate Director to Defendant No.2 in that meeting on the ground that the Defendant No.2 who had appointed Defendant No.12 as his alternate whilst he was abroad had returned to the State of Maharashtra after the appointment of Defendant No.12 and consequently on and from such date Defendant No.12 could no longer be a Director of Defendant No.1 and his attendance as a Director was bad in law.

17. These two contentions of the Plaintiff have to be separately considered.

18. Defendant No.2 appointed Defendant No.12 as his alternate Director under the provisions of Section 313 of the Companies Act, 1956. The validity of the attendance of the Defendant No.12 shall be considered presently.

19. The quorum at the Board Meeting would be the three permanent Directors under Article 51(f) of the Articles of Association of the Company since the powers exercised by the Board of Directors were to be by an unanimous vote. Three Directors admittedly attended the Board Meeting dated 6th August 2009. It is only because the Plaintiff left the meeting after attending the meeting setting out her grievances in an objection letter dated 4th August 2009 that the Plaintiff claims that there was no quorum at that Board Meeting.

20. Quorum is the minimum number of Directors required to transact the business at any Board Meeting. It would have to be seen when the quorum is required to be

present. Sections 285 to 290 of the Companies Act, 1956 which deal with meetings of Board do not make any provisions in that regard. Section 287(2) only requires 1/3 of the total strength of the Board or two Directors whichever is higher to be the quorum. However the provisions of the Companies Act, 1956 being subject to the Articles of Association of the Company and in the case of Defendant No.1 Company there having been the aforesaid peculiar Article requiring the full strength of the Board to pass resolutions would necessitate the full strength to be the quorum.

21. Section 174 of the Companies Act, 1956 sets out the quorum for General Meetings which are members' meetings. Under Section 174(4) a meeting would stand adjourned for want of quorum to the next week at the same time and place or as the Board may determine when if the quorum was not present within $\frac{1}{2}$ an hour the members present would constitute the quorum. Such a provision is absent for Board Meetings. Board meetings being meetings of Directors who act on behalf of the Company as their Agents are required to take place essentially every quarter for transacting various businesses. Hence understandably the provisions applying to the General Meetings for want of quorum would not apply to Board Meetings. The quorum at the Board Meetings were Directors of the Company would meet to transact the business would, therefore, require the minimum number of Directors required by the Company to be present to transact those businesses. Essentially, therefore, at the time of transacting the various businesses on the agenda of such Board Meeting the quorum would require to be present.

22. Consequently, it is argued on behalf of the Plaintiff that unlike in a General Meeting of members where the quorum is required to be seen at the beginning of the meeting only, in the case of Board Meetings the quorum must be present when every resolution is passed. This would indeed be for the benefit of all the Directors to take part in the proceedings of the meeting and to transact business on the agenda.

23. This is a case where the Plaintiff has challenged the proceedings at various meetings of the Board. In fact these are enumerated in prayer (i) to the plaint. The

Plaintiff attended the Board Meeting on 6th August 2009, stated that she had sent her objection letter dated 4th August 2009, refused to sign the attendance register and left the meeting. This would disable the other Directors present for transacting any business. The main aim of the Plaintiff was, therefore, only to disable her Co-Directors from transacting any business. Upon such a case the Plaintiff has claimed the relief of injunction restraining the Directors from taking steps in furtherance of the decision taken at that Board Meeting by way of the resolution passed therein. Therefore, a party who has herself derailed the proceedings has come to Court to obtain its stamp of approval upon her act. The excuse of the Plaintiff is that she was ridiculed and jeered at. From the conduct of the Plaintiff in challenging almost everything which the Company does, as is evidenced in prayer (i) itself it could be seen that the Plaintiff has brought about a total and complete deadlock in the Company. It would otherwise be a case for winding up of the 1st Defendant Company as it would be just and equitable to wind it up under Section 433(f) of the Companies Act. However, the Plaintiff did attend the Board Meeting on 6th August, 2009. Having attended the Board Meeting, it was the Plaintiff's bounden duty as a Director and consequently an agent of the Company to go through the businesses which were sought to be transacted thereat. The Plaintiff would have then been entitled to vote against the resolution sought to be passed and the resolution could not have been passed by a unanimous vote as required by the Articles of Association of the Company. The Plaintiff has called upon the Court to do what she could have done but failed to do. The Plaintiff has seen that despite her attendance there would be no quorum.

24. In the case of *In re Hartley Baird Ltd.* 1955 Ch.D. 143 a similar case was considered. The argument that such a conduct would bring about an absurd situation, because that would enable a person to wreck a meeting where a quorum was present at the beginning of the meeting by leaving before the business of the meeting was transacted and thereby reducing the meeting to a number below a quorum required was considered and accepted in that case. The article relating to the transaction of business in a general meeting with regard to quorum was considered. A member who was opposed to the resolution left the meeting before the vote was taken. It was held that Article 52 was complied and the resolution

passed was a valid class resolution and the earlier Scottish case of *Henderson v. James Louttit & Co. Ltd.*, was not followed as the dictum therein was considered obiter. It was observed by Wynn- Parry J. that the expression "quorum is to be present when the meeting is to proceed business" would cover cases where the meeting proceeded to vote because, on the face of it, the condition of the Article is fulfilled if the quorum was present when a meeting proceeded to consider business for which it was convened. If there was no such quorum there would be an automatic adjournment for one week, then the members present would form a quorum. Consequently, it was observed that such an article was designed to save a meeting which was properly convened, but which could not proceed to business because no quorum was ever present, but it did not apply in a case of a meeting at which a quorum is present at the beginning when the meeting proceeds to business and has ceased to be present when it proceeds to vote on any resolution before it. Upon observing such a mandate in the Articles of Association of the Company and in the Scottish case the learned Judge nevertheless concluded upon the facts of the case before him that when the member opposing the resolution left the meeting before the vote was taken, the meeting in fact passed a valid class resolution because at the beginning of the meeting when it proceeded to business the quorum was present.

25. It is impossible to conclude that in this case the Plaintiff could be given protection by the Court for an act unbecoming of a Director and which was inconsistent with the duties of a Director. The quorum was therefore present and the business transacted cannot be challenged.

26. It is contended on behalf of the Plaintiff that Defendant No.12 who was the other Director present at the meeting could not have remained present as Director. He was an alternate to the Defendant No.2. He was appointed when Defendant No.2 was to leave India. Defendant No.2 is stated to be carrying on business in Singapore. After his appointment Defendant No.2 returned to India, but had not attended any Board Meetings thereafter.

27. The Plaintiff has shown on a separate single sheet of paper dated 12th April 1999 the signatures of Defendant No.2 with herself obtained by her with regard to

certain repairs to the building of the Company. It is the Plaintiff's case that that was a Board Meeting. The three signatures of the three Directors required to transact the business unanimously are not shown. A separate sheet of paper cannot be termed as minutes of the meeting of the board which are required to be kept as per the specific mandate contained under Section 193 of the Companies Act, 1956. Mr. D'vitre on behalf of the Plaintiff concedes that aspect. However he contended that the signature of Defendant No.2 would show his presence in the State of Maharashtra and merely by such presence, Defendant No.12 would ipso facto cease to be the alternate director of Defendant No.2.

28.It has been argued by Mr. Rao on behalf of the Defendant that the interpretation of Section 313 must be made such that the requirement for the alternate Director to cease to be the Director would be not when the Director appointing him merely returns to the State, but when the Director actually attends the Board Meeting held in that State.

29.A reading of Section 313 shows that that specific requirement is not made. For the alternate Director to cease to be a Director, the actual attendance at Board Meeting of the Director appointing him is not contemplated under the Section. Consequently, the return to the State would suffice though the Director does not commence attending Board Meetings held after his return.

30.However what would be the extent and quality of such return has to be seen.

31.Section 313 of the Companies Act, 1956 enables the alternate Director to hold office for the period that the Director appointed him would have held such office and to vacate that office when the Director appointing him returns to the State. The alternate Director is essentially appointed during the absence of the Director appointing him from the State in which the meetings of the Board are ordinarily held. Defendant No.2 returned to India for a short period. During that period the Plaintiff and Defendant No.2 are stated to have met when the signature of Defendant No.2 came to be obtained on a separate paper showing his agreement thereon. Defendant No.2 has thereafter left India for Singapore. The provision in Section 313 of the Companies Act, 1956 with regard to the absence of the Director

from the State in which the meetings of the Board are ordinarily held until the Director returns to the State in which the meetings of the Board are ordinarily held as set out in Sub Sections 1 & 2 thereof respectively would show not only a temporary return, but an intention to stay in that State so as to able him to transact the business of the Company in the State where board meetings are ordinarily held. If a Director such as Defendant No.2 merely comes to the State and leaves India again he would not be able to transact business. Hence the alternate Director would require to continue until the Director appointing him would have continued. In this case it would be permanently or until Defendant No.2 resigns or is removed is as Director or otherwise vacates office under Section 283 of the Companies Act.

32.What precisely the Section contemplates by the term "the original Director returns to the State", must be read as contemplating only such return which would have some amount of permanence. The Director must return to carry on the business. He must return for a length of time. The intent of the Director must be not to make his visit merely temporary when he does not partake in the management of the Company and when he intends to go abroad again. It should therefore, be the intention to return to India and the State in which the Board Meetings are ordinarily held (i.e where the registered office is generally situate) not for a temporary period e.g. on a holiday or on vacation. It will imply the intention akin to the intention required to be domiciled in the State. Therefore, when the original Director returned to India and the State in which the board meetings were held to carry on his business in India that the alternate Director would vacate his office under Section 313 (2) of the Companies Act, 1956.

33.Consequently, the interpretation sought to be put by Mr. D'vitre that even if Defendant No.2 came to India for a week on his holiday or to visit his family, the Defendant No.12 would ipso facto vacate his office is wholly unacceptable. Similarly the interpretation put by Mr. Rao that only when Defendant No.2 actually attended the Board Meetings of Defendant No.1 that Defendant No.12 would vacate his office as alternate Director cannot be accepted. It would be when Defendant No.2 ceased to have the global business that he is stated to have in

Singapore and would commence his business in India, in the State of Maharashtra so that he would be available for attending Board Meetings of Defendant No.1 Company held in Mumbai on an almost regular basis as required under Section 285 of the Companies Act, 1956 that Defendant No.12 would vacate his office under Section 313(2) of the Act.

34.That has not happened. The Defendant No.12 would, therefore, continue to act as a permanent Director of the Company which was the position held by Defendant No.2 prior to he going abroad and appointing Defendant No.12 as his alternate. Defendant No.12 has, therefore, validly attended the board meeting held on 6th August 2009. This was with the Plaintiff and Defendant No.3. The resolution could be passed unanimously, but for the wholly wrongful act of the Plaintiff.

35.Consequently, it is seen that the Plaintiff cannot take exception to the presence of Defendant No.12 at the Board Meeting.

36.Consequently as in the case of Perrott & Perrott, Ltd. v. Stephenson 1933 All E.R. Ch.D 549 relating to the true construction of such an article giving powers to the governing directors to be exercised unanimously which was held to be correctly exercised, the act of the directors in properly convening and commencing the meeting cannot be whittled down by the improper discontinuation of the meeting and the improper dis-allowance to continue the meeting by the Plaintiff.

37.Protection of the Court which would be a premium on the default of the Plaintiff cannot be granted. This has been similarly held when a tenant who had defaulted in making payments of rent under Section 13(4) of the Bombay Rent Act 1947, but whose defence was not applied to be struck off by the landlord was held not entitled to take advantage of the inaction on the part of the landlord (See in the case of Prakash Chand & Ors v. Firm Pohap Singh Kishan Sahai & Ors. RLW 2006(4) Raj 2763, 2006(4) WLC 248) Similarly the defaulting parties to an arbitration who sought to adopt their own procedure was not permitted to insist later that the Arbitrator should have been appointed as per procedure indicated in the arbitration clause on the same principal (See in the case of HBHL-VKS (J.V.) v. Union of India (UOI) & Ors. 2007(1) ARBLR 252 (Delhi). Also when parties

settled their dispute in a suit upon a mortgage requiring a preliminary decree to be passed, but which procedure was circumvented by their settlement, were held not entitled to contend that the provisions of Order 34 of the C.P.C relating to a mortgage decree did not apply to a compromise decree as that would be taking advantage of one's own wrong and putting a premium on the defaulter under the decree. (See in the case of *Rabindra Narain Lall v. Smt. Nirmala Sinha & Ors.* AIR 1978 Patna 162).

38. Consequently, reliance by Mr. D'vitre on behalf of the Plaintiff upon the judgment in the case of *Ranjit Sinh V Patil v. Collector, . Kolhapur* 2004(3) Mh.L.J. 642 at page 646 that for a meeting to be valid it must begun with the minimum number of persons fixed by provisions of law, rules or Bye-laws constituting the quorum and to continue the same to business and to validly transact its business would not apply in the case of an ulterior action meant to frustrate the board meeting. Of course, in the normal case a board meeting cannot be held such as to have the quorum only at the time of its commencement and later to continue the meeting of the board by passing resolutions in the absence of the minimum number of Directors required to constitute the quorum. Consequently, in a given case if it does so happen that if some of the Directors have left the venue of the meeting upon understanding that the proceedings at the meeting have come to an end and after some of those Directors, unknown to the other Directors who have left, mala fide or otherwise pass further resolutions in their absence, generally such resolutions would be rendered as invalid for want of quorum. In fact such resolution would not be valid even if there was quorum and some of the Directors on the board were not notified of the later resolutions. It is in that light that it has been held in paragraph 11 of the judgment in the case of *Ranjit Sinh (supra)* that the quorum is required to constitute a meeting or to continue the same to business or to validly transact its business. It is indeed, as observed in the case of *Punjab University, Chandigarh v. Vijay Singh Lamba* (1976) 3 SCC 344 referred to in the said paragraph, "to enable that body to transact its business validly so that its act may be lawful". It must, therefore, be concluded that in this case the quorum which was present at the beginning enabled that body to transact its business to pass resolutions lawfully after the Plaintiff who had notice of the meeting attended, but

failed to perform her functions as the Director attending that meeting.

39. Because of the continuous and persistent objections of the Plaintiff for holding any of the meetings and transacting any business there has been a complete deadlock in the Company. If the Plaintiff's contents were to be countenanced even for considering whether she has been oppressed, her singular act has resulted in and would result in a complete deadlock. In the case of *Krishan Lal Ahuja v. Suresh Kumar Ahuja* [1983] 53 Comp. Cases (Del.) 60 one such company started by four brothers as a family partnership and continued by their heirs who had irretrievably fallen from each other it was observed that collaboration in management of the company was out of question. Consequent upon the deadlock the brothers were directed to buy out the heirs upon a fair price being ensured.

40. In the case of *Sishu Ranjan Dutta v. Bhola Nath Paper House Ltd.* [1983] 53 Comp. Cases 883, at page 891 (Cal) there was a complete deadlock and two groups in the family could go together. It was observed that though the business was flourishing the Court had the power to wind up the company (as it would just and equitable to wind it up under Section 433(f) of the Companies Act) as it could not be managed in the "present situation" and therefore, it followed that there was mismanagement of the company amounting to oppression of one group by the other "whichever way it may be looked at". It was observed that the grounds were made out for the intervention of the court by exercising its extraordinary power under Sections 397-398 of the Companies Act, 1956 to put an end to the matter complained of, so that "no further prejudice could be caused to any of them".

41. The case of *Yashovardhan Saboo v. Groz-Beckert Saboo Ltd.* 1995 Company Cases 371 also had two rival groups having unequal shareholding, but equal participation under the articles. The requirement of unanimous resolution resulted in an impasse on issues resulting in consequent deadlock in management. The reliefs under Sections 397 and 398 of the Companies Act were held grantable.

42. In fact in this case also the Court suggested a fair settlement between the parties by paying off/selling off between the Plaintiff and the Defendants. However, the Court cannot allow the parties who do not call it a day despite the deadlock

created by at least one of them and seek relief to perpetuate the deadlock. If the company were to be a going concern it must run as a going concern. To frustrate such running of the company would be putting a premium on such default and aiding the party creating the deadlock.

43. Once it is seen that the board meeting held on 6th August 2009 was validly convened and properly continued, the resolutions passed thereat and the business transacted thereat are seen to be validly transacted and have to be effectuated. One of such businesses was the resolution issuing the notice for holding the EGM of the Company on 31st August 2009 inter alia for altering the Articles of Association to delete Article 51(e) enjoining resolutions as at board meetings by a unanimous vote.

44. The notice of the EGM has been posted on 21st August 2009 and received by the post office of the addressee on 25th August 2009. It is, therefore, sent by the company by post more than 7 days before holding of the EGM as required by Article 48(2)(i) of the Articles of Association of the Defendant No.1 Company. The Plaintiff claims that that was not received by her more than 7 days before the EGM was held and hence contends that the resolutions passed at the EGM held on 31st August 2009 are not valid and has applied for injunction restraining the Defendants from acting thereupon. This argument is wholly erroneous. What the Articles of the Company as well as the Section 171 of the Companies Act relating to notices for general meetings contemplate is the giving of the notice of the requisite period. If a notice is given of not less than 7 days in writing and is put in post it matters not that the addressee receives it much later or less than 7 days before the meeting or even thereafter. What matters is whether the Company has sent the notice more than 7 days in advance.

45. Under Section 53 of the Companies Act any document served upon any member of the Company by the Company sent by post shall be deemed to be properly effectuated by properly addressing, pre-paying and posting a letter containing the document in post. Under Section 53(2)(b) the service will be deemed to have been effected 48 hours after the same is posted in case of a notice of a meeting. The notice of the EGM is sent by the Company to the Plaintiff

is deemed to have been received by the Plaintiff on 23rd August 2009, more than 7 clear days prior to 31st August 2009, the date of EGM.

46. In the case of *Shailesh Harilal Shah v. Matushree Textiles Ltd.*, AIR 1994 Bombay 20 relied upon by Mr. Rao, the prejudice caused by a shorter notice came to be considered. In that case instead of the notice of 21 days the notice was sent 20 days prior to the meeting. Since no prejudice was shown to have been caused to the Plaintiff no relief was granted. It was held that the requirement of the service was directory and not mandatory.

47. Consequently, none of the meetings have been invalidly convened or held and no resolution passed at any of the meeting can be enjoined by the Court.

48. The Plaintiff has also sought an injunction against Defendant No.6 being restrained from acting as the Director of the Company. Defendant No. 6 has been appointed Director of Defendant No.1 Company also under the resolution passed at the board meeting held on 6th August 2009. His appointment also does not come up for challenge.

49. In fact strangely the Plaintiff has sought to restrain the convening and holding of all forthcoming meetings of Defendant No.1 Company also. It need hardly be said that that would tantamount to bringing about a complete deadlock without the company being wound up, without any proceedings having been taken before the competent forum upon proof of any other oppression or mismanagement and merely upon the whim of the Plaintiff. No such relief can be granted.

50. The Notice of Motion is, therefore, dismissed with costs of Rs. 25000/-.

51. Ad-interim order, if any, in force shall continue for 2 weeks.

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