
(2014) 09 BOM CK 0146

In the Bombay High Court

Case No : First Appeal No. 1526 Of 2011

Alcon Electronics Pvt. Ltd.

APPELLANT

Vs

Celem S.A.

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 10, Order 1 Rule 3, Order 1 Rule 4, Order 1 Rule 5
Companies Act, 1956 — Section 142, 291, 298, 397, 398
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 1 ALLMR 70 : (2015) 4 BomCR 107 : (2015) 1 MhLj 852

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : P.S. Dani, Advocate for the Appellant; S.S. Bijlani and Manish Rai, Advocate for the Respondent

Final Decision : Allowed

Judgement

R.D. Dhanuka, J.—Admit. Learned counsel appearing for respondent waive service. Returnable forthwith and is heard finally.

2. This appeal is directed against the order and judgment dated 7th April, 2011 passed by the learned District Judge 1, Nashik allowing the application filed by the respondent under order 7 rule 11(d) of the Code of Civil Procedure, 1908 and thereby rejecting the plaint. Some of the relevant facts for the purpose of deciding this appeal are as under :-

3. On 18th August 2005 the appellant (original plaintiff) filed a suit against the respondent (original defendant) being Civil Suit No.216 of 2005 in the District court Nashik inter alia praying for a declaration that the threats of the defendant of infringement proceedings against the plaintiff are baseless and unjustified prayed for perpetual injunction and money decree. In paragraph 35 of the plaint it is averred that Mr. Siddharth Sachdev who is a director of the plaintiff company and who is aware of and is able to depose the facts of this case has signed and

declared the plaint. The plaint is signed and verified by said Mr. Siddharth Sachdev on behalf of the plaintiff company. Parties in this order are described as were described in the impugned order.

4. Sometimes in the year 2006 the defendant filed an application under order VII rule 11 of the CPC 1908 read with section 151 of the CPC 1908 in the said suit inter alia praying for dismissal of the suit for want of jurisdiction without prejudice to its contention that the District Court at Nashik did not have territorial jurisdiction to try entertain and dispose of the said suit.

5. The said application was resisted by the plaintiff by filing a detailed reply. By an order dated 25th September 2006 passed by the learned District Judge II Nashik the said application filed in the year 2006 by the defendant under order VII rule 11 read with section 151 of CPC came to be rejected. It is ordered that the issue as to territorial jurisdiction will be framed and decided alongwith other issues. The learned District Judge on perusal of the pleading, document produced on record and admitted fact rendered a prima facie finding that the defendant had issued letter to the plaintiff about alleged infringement of its patent which gave cause of action for the plaintiff to file the said suit. The defendant did not challenge the said order passed by the learned District Judge rejecting the said application filed by the defendant.

6. On 28th October, 2009 the defendant filed an application under order VII rule 11(d) of the Code of Civil Procedure, 1908 inter alia praying for rejection of the plaint. It is averred in the said application that the plaint was filed by Mr. Siddharth Sachdev claiming to be a director of the plaintiff company. It is submitted that order 29 rule 1 of CPC does not authorise persons mentioned therein to institute suits on behalf of the companies but authorises them only to sign and verify the pleadings on behalf of the companies. The power to institute the suit on behalf of the companies rests only with the board of directors. It is submitted that there is no resolution of the board of directors of the plaintiff company authorizing the filing of the present suit. It is submitted that there is no averment in the entire plaint that the board of directors had authorised Mr. Siddharth Sachdev to file the present suit and submitted that the said Mr. Siddharth Sachdev had no authority to file the present suit on behalf of the plaintiff company.

7. The plaintiff resisted the said application by filing a reply on 26th April, 2010. The plaintiff contended that a similar application was filed for rejection of plaint on the ground that the District Court at Nashik had no jurisdiction which application was rejected by the learned District Court. It is averred in the reply that the application did not fall under any of the clauses of rule 11 of order 7 and is liable to be dismissed at the threshold.

8. The plaintiff in the said reply denied the averments made in paragraph 2 of the application. It was denied that there was no resolution of the board of directors authorising filing of the suit. It is submitted that the resolution of the

board of directors for filing of the suit is not the requirement of law. The plaintiff denied that Mr. Siddharth Sachdev had no authority to file the suit. In the meeting of the board of directors of the company held on 28th March, 2005 Mr. Siddharth Sachdev was appointed as a director of the plaintiff w.e.f. 1st April 2005. In the said meeting a power of attorney executed in favour of Mr. Siddharth Sachdev was placed before the board of directors which was duly approved by the board. It is submitted that the said power of attorney specifically authorised Mr. Siddharth Sachdev to do certain acts including initiating legal proceedings to protect the company's interests. It is averred that the present suit is obviously to protect the interest of the company. The plaintiff annexed a certified true copy of the minutes of the meeting to the said reply duly certified by the chairman and managing director of the company Mr. Anup Sachdev. Clause 4 of the said power of attorney is extracted as under :-

" 4. To initiate legal proceedings to protect the Company's interests and in this regard to make, declare, swear, affirm, sign, verify, initiate and facilitate civil suits, criminal complaints and petitions on behalf of the company; appear before appropriate government authorities, tribunals, courts; and if thought fit to initiate arbitration and/or conciliation proceedings in any matter and in all aforesaid matters, to retain and appoint advocates, solicitors and other legal practitioners and advisors, and to sign vakalatnamas and other all necessary documents in this regard."

9. By an order dated 7th April 2011 the learned District Judge-1 Nashik allowed the application (Exhibit 28) filed by the defendant under order 7 rule 11(d) of the CPC 1908 and rejected the plaint. The appellant has impugned the said order and judgment dated 7th April, 2011 in this appeal which order and judgment is deemed to be decree within the meaning of section 2(2) of the CPC 1908 or is having force of a decree.

10. Mr. Dani, learned counsel appearing for the plaintiff submits that the application filed under order 7 rule 11(d) of CPC 1908 itself was not maintainable. It is submitted that u/s 9 of CPC the courts have jurisdiction to try all suits of a civil nature except suits of which their cognizance is either expressly or implied barred. It is submitted that under order 7 rule 11(d) court has power to reject plaint only if from the statement in the plaint the suit appears to be barred by any law. It is submitted that even if the learned trial judge was right in holding that there was no specific resolution passed by the plaintiff authorising Mr. Siddharth Sachdev to file suit against the defendant, filing of such suit without any such specific resolution authorising a board of director to file a suit, verify plaint etc. is not barred under any provisions of law. Learned counsel submits that at the most it may amount to a defect which is a curable defect and thus plaint could not have been rejected on that ground.

11. Learned counsel submits that the plaintiff company had already passed a resolution approving the power of attorney empowering the said Mr. Siddharth Sachdev to file legal proceedings to protect the interest of the company and in

that regard to declare, swear, affirm, sign, verify, initiate and facilitate civil suits etc. on behalf of the company. A certified copy of the resolution approving the power of attorney was filed before the trial court which was duly certified by the chairman and managing director of the plaintiff company. It is submitted that the suit was not filed by the said Mr. Siddharth Sachdev but was filed by the company and was signed and verified by the said Mr. Siddharth Sachdev as a director of the plaintiff company pursuant to such power of attorney duly approved by the plaintiff by passing a resolution.

12. Learned counsel submits that similar attempt made by the defendant even earlier by filing an application under order 7 rule 11 for rejection of plaint came to be rejected and the said order has not been admittedly impugned by the defendant.

13. Mr. Dani learned counsel for the plaintiff submits that whether such resolution passed by the plaintiff authorised the said Mr. Siddharth Sachdev to file a suit on behalf of the plaintiff against the defendant herein or not would not be a lacuna for presentation of a plaint under any of the provisions of law and in any event was curable. It is submitted that even under the provisions of Companies Act, 1956 filing of such suit by a director is not barred.

14. It is submitted that in any event the resolution approving the power of attorney which empowered the said Mr. Siddharth Sachdev to file a legal proceeding on behalf of the plaintiff was an adequate compliance of the provisions of the Companies Act 1956. The company being a juristic person has to act by passing a resolution authorising the members of board to adopt such proceedings and represent the company. It is submitted that the learned trial judge did not give any opportunity to cure such alleged curable defect. It is submitted that the plaintiff had already filed an affidavit before the learned District court denying the allegation of the defendant that the said Mr. Siddharth Sachdev was not an authorised director to file a suit against the defendant. The plaintiff had reiterated that the said Mr. Siddharth Sachdev was authorised to file the said suit and the same was maintainable.

15. Mr. Dani, learned counsel placed reliance on the judgment of Supreme Court in case of Prem Lala Nahata and Another Vs. Chandi Prasad Sikaria, and in particular paragraphs 11, 14 and 15 and would submit that unless the institution of the suit itself is barred under any provisions of law, application under order 7 rule 11(d) of the CPC is not maintainable. It is submitted that at the most the objections raised by the defendant could be considered as a procedural objection which could be rectified at any stage of the suit. Paragraphs 11, 14 and 15 of the said judgment of Supreme Court read thus :-

11. Thus, in a case where a plaint suffers from the defect of misjoinder of parties or misjoinder of causes of action either in terms of Order I Rule 1 and Order I Rule 3 on the one hand, or Order II Rule 3 on the other, the Code itself indicates that the perceived defect does not make the suit one barred by law or liable to

rejection. This is clear from Rules 4 and 5 of Order I of the Code; and this is emphasised by Rule 9 of Order I of the Code which provides that no suit shall be defeated by reason of non-joinder or misjoinder of parties and the court may in either case deal with the matter in controversy so far as it regards the rights and interests of the parties actually before it. This is further emphasised by Rule 10 of Order I which enables the court in appropriate circumstances to substitute or add any person as a plaintiff in a suit. Order II deals with the framing of a suit and Rule 3 provides that save as otherwise provided, a plaintiff may unite in the same suit several causes of actions against the same defendant and any plaintiffs having causes of actions in which they are jointly interested against the same defendant may unite such causes of action in the same suit. Rule 6 enables the Court to order separate trials even in a case of misjoinder of causes of action in a plaint filed.

14. Order VII Rule 11(d) speaks of the suit being "barred by any law". According to the Black's Law Dictionary, bar means, a plea arresting a law suit or legal claim. It means as a verb, to prevent by legal objection. According to Ramanatha Aiyar's Law Lexicon, "bar" is that which obstructs entry or egress; to exclude from consideration. It is therefore necessary to see whether a suit bad for misjoinder of parties or of causes of action is excluded from consideration or is barred entry for adjudication. As pointed out already, on the scheme of the Code, there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of action. The court is still competent to try and decide the suit, though the court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action. On the scheme of the Code of Civil Procedure, it cannot therefore be held that a suit barred for misjoinder of parties or of causes of action is barred by a law, here the Code. This may be contrasted with the failure to comply with Section 80 of the Code. In a case not covered by Sub-section (2) of Section 80, it is provided in Sub-section (1) of Section 80 that "no suit shall be instituted". This is therefore a bar to the institution of the suit and that is why courts have taken the view that in a case where notice u/s 80 of the Code is mandatory, if the averments in the plaint indicate the absence of a notice, the plaint is liable to be rejected. For, in that case, the entertaining of the suit would be barred by Section 80 of the Code. The same would be the position when a suit hit by Section 86 of the Code is filed without pleading the obtaining of consent of the Central Government if the suit is not for rent from a tenant. Not only are there no words of such import in Order I or Order II but on the other hand, Rule 9 of Order I, Rules 1 and 3 of Order I, and Rules 3 and 6 of Order II clearly suggest that it is open to the court to proceed with the suit notwithstanding the defect of misjoinder of parties or misjoinder of causes of action and if the suit results in a decision, the same could not be set aside in appeal, merely on that ground, in view of Section 99 of the Code, unless the conditions of Section 99 are satisfied. Therefore, by no stretch of imagination, can a suit bad for misjoinder of parties or misjoinder of causes of action be held

to be barred by any law within the meaning of Order VII Rule 11(d) of the Code.

15. Thus, when one considers Order VII Rule 11 of the Code with particular reference to Clause (d), it is difficult to say that a suit which is bad for misjoinder of parties or misjoinder of causes of action, is a suit barred by any law. A procedural objection to the impleading of parties or to the joinder of causes of action or the frame of the suit, could be successfully urged only as a procedural objection which may enable the Court either to permit the continuance of the suit as it is or to direct the plaintiff or plaintiffs to elect to proceed with a part of the suit or even to try the causes of action joined in the suit as separate suits.

16. Mr. Dani placed reliance on the judgment of the Supreme Court in case of United Bank of India Vs. Naresh Kumar and others, and in particular paragraphs 4 and 9 to 12 in support of his submission that the defect of the plaintiff company not having passed a resolution if any under order 29 rule 1 would be a curable defect and the suit would not suffer from any jurisdictional infirmity. Paragraphs 4 and 9 to 12 of the said judgment reads thus :-

4. On the pleadings of the parties the following issues were framed:

" 1. Whether the plaint is duly signed and verified by a competent person? OPP

2. Whether the defendant No. 1 raised a loan of Rs. 50,000 from the plaintiff bank on 12.4.84 and executed a demand promissory note, hypothecation of goods agreement, letter of loan and other documents in favours of the plaintiff bank? OPP

3. Whether the defendants No. 2 and 3 stood as guarantors for the repayment of the loan and if so, what is the extent of their liability? OPP

4. What is the balance amount? OPP

5. Whether the plaintiff varied the terms of loan and if so, its effect qua the liabilities of defendants No. 2 and 3, Onus on Parties.

6. Whether the statement of account produced by the plaintiff is admissible in evidence? OPP

7. Whether the defendants agreed to pay interest if so, at what rate and to what amount? OPP

8. Whether the plaintiff has no cause of action? OPP

9. Relief. "

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the CPC, to ensure that injustice is not done to any party who has a just case as far as possible a substantive right should not be allowed to be

defeated on account of a procedural irregularity which is curable.

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the CPC a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the CPC, therefore, provides that in a suit by or against a corporation the secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the CPC it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the CPC, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the CPC. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

11. The courts below could have held that Sh. L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant bank must have ratified the action of Sh. L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27(1)(b) of the CPC and should have directed a proper power of attorney to be produced or they could have ordered Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.

12. The Courts below having come to a conclusion that money had been taken by respondent No. 1 and that respondent No. 2 and husband of respondent No. 3 had stood as guarantors and that the claim of the appellant was justified it will be a travesty of justice if the appellant is to be non suited for a technical reason which does not go to the root of the matter. The suit did not suffer from any jurisdictional infirmity and the only defect which was alleged on behalf of the

respondents was one which was curable.

17. Mr. Bijlani learned counsel for the defendant on the other hand submits that though the suit filed by the director of the company without any specific resolution authorising the director Mr. Siddharth Sachdev to file suit against the defendant, such defect was a curable defect, the plaintiff did not bother to cure such defect when such objection was raised by the defendant before the trial court by filing an application under order 7 rule 11(d) of the Code of Civil Procedure, 1908. Learned counsel invited my attention to the stand taken by the plaintiff in the affidavit in reply filed opposing the application filed by the defendant in support of his this submission. It is submitted that the defendant is entitled to raise such plea in the suit filed by the plaintiff which plea goes to the root of the jurisdiction of the trial court. It is submitted that though there is no specific bar under any of the provisions of law from filing of such suit without passing a specific resolution by a company authorising the office bearers to file a suit against a particular party, the view taken by the Supreme Court and this court would support the plea of the defendant that such suit was barred and thus application filed under order 7 rule 11(d) of the CPC 1908 was maintainable.

18. Learned counsel placed reliance on section 291 of the Companies Act, 1956 then in force which is extracted as under :-

291. General powers of Board.

(1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do: Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting: Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulation made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

19. Order 7 Rule 11(a) and (d) of Code of Civil Procedure, 1908 read thus :-

11. Rejection of plaint :- The plaint shall be rejected in the following cases :-

(a) where it does not disclose a cause of action ;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

20. Learned counsel placed reliance on the judgment of Supreme Court in case of Dale and Carrington Invt. (P) Ltd. and Another Vs. P.K. Prathapan and Others, and in particular paragraphs 11 in support of the plea that since no specific resolution of the board of directors of the plaintiff company was passed giving specific power to Mr. Siddharth Sachdev to file specific suit against the defendant, suit was not maintainable as barred. Paragraph 11 of the said judgment of the Supreme Court reads thus :-

Issue 1. Validity of allotment of equity shares

11. This is the main issue which arises for consideration in this case. As already noted Ramanujam who was the Managing Director of the company got allotted 6865 equity shares to himself in a meeting of the Board of Directors of the company alleged to have been held on 24th October, 1994. Again on 26th March, 1997 he managed to get allotted further 9800 equity shares to himself. Prathapan has challenged these allotments of shares in favour of Ramanujam as acts of oppression on the part of Ramanujam, the Chairman and Managing Director of the company for which he filed a petition under Sections 397 and 398 of the Companies Act before the Company Law Board. A doubt has been cast about whether the alleged meetings in which additional equity shares were allotted to Ramanujam were held at all. In this behalf the following facts are noticeable:-

(a) The appellants have filed a photocopy of the minutes of the alleged meeting of the Board of Directors said to have taken place on 24th October, 1994. As per the photocopy the minutes appear to be signed by Ramanujam as Chairman. The presence of Suresh Babu as a Director of the Company has been shown in the minutes. However, there is no evidence of presence of Suresh Babu in the said meeting. Article of the Articles of Association of the company requires that a notice convening the meetings of the Board of Directors shall be issued by the Chairman or by one of the Directors duly authorized by the Board in this behalf. Suresh Babu filed an affidavit in the proceedings before the Company Law Board wherein he has categorically stated that at no point of time he was involved in the affairs of the company and in running the business of the company. Further he has stated in the said affidavit that at no point of time he was informed that he had been appointed as Director of the company. He had never received any notice of any Board Meetings nor had he ever attended any Board meeting. In view of this categorical denial by Suresh Babu about attending any meetings of the Board of Directors of the company, it was incumbent on the part of

Ramanujam who was the Chairman and Managing Director of the company and was in possession of all the records of the Company, to place on record a copy of a notice calling a meeting of the Board of Directors in terms of Article No copy of the notice intimating Suresh Babu about the meeting of the Board of Directors and asking him to attend the same, has been placed on record to show that Suresh Babu was informed about holding of the meeting in question.

Here reference is required to be made to certain other Articles of the company which are relevant for the controversy. Article provides that shares of the company shall be under the control of the Directors who may allot the same to such applicants as they think desirable of being admitted to membership of the company. Article provides that allotment of shares "shall exclusively be vested in the Board of Directors, who may in their absolute discretion allot such number of shares as they think proper..." Article requires that the Directors present at the Board Meeting shall write their names and sign in a book specially kept for the purpose. Article (iii) prohibits any invitation to the public to subscribe for any shares or debentures of the company. The above provisions of the Articles of Association show that the Board of Directors have an absolute discretion in the matter of allotment of shares. But this pre-supposes that such a decision has to be taken by the Board of Directors. The decision is taken by the Board of Directors only in meetings of the Board and not elsewhere. Ramanujam, the Managing Director cannot take a decision on his own to allot shares to himself. If Suresh Babu was present in the meeting, as is the case of Ramanujam, he must have signed a book specially kept for recording presence of the Directors at the Board Meeting in terms of Article Ramanujam should have been the first person to produce such a book to show the presence of Suresh Babu at the alleged Board meeting said to have been held on 24th October, 1994 specially when Suresh Babu was denying his presence at the meeting. Nothing has been produced. Thus neither a copy of a notice convening the Board meeting nor the log book meant to record signatures of Directors attending the meeting of the Board of Directors were produced. In the absence of these documents and any other proof to show that a meeting was held as alleged we are unable to accept that a meeting of the Board of Directors was held on 24th October, 1994. If no meeting of the Board of Directors took place on that date, the question of allotment of shares to Ramanujam does not arise. We are inclined to believe that photocopy of the minutes of the alleged meeting dated 24th October, 1994 produced by appellants, is sham and fabricated. The alleged allotment of additional equity shares of the company in favour of Ramanujam is, therefore, wholly unauthorized and invalid and has to be set aside. Normally this Court would not have gone into these questions of fact. However, the learned counsel for the appellant in the course of his arguments drew our attention to the various Articles of Association of the company, which unfortunately neither the Company Law Board nor the High Court considered. We cannot help referring to them, particularly in view of the fact that the Articles of a company are its constituent document and are binding on the company and its Directors.

The facts on record show that the company was being run as one man show and Ramanujam was maintaining the Minutes Book of meetings of Board of Directors only to comply with the statutory requirement in this behalf. The minutes were being recorded by him according to his choice and at his instance. The minutes do not reflect the actual position. Article mandated that a book should be maintained to record presence of Directors at meetings of the Board of Directors. If a book for recording signatures of Directors attending meetings of the Board of Directors was not maintained, it was in clear violation of Article of the Articles of Association of the company. The Company Law Board without going into these relevant aspects, proceeded on an assumption that a meeting of the Board of Directors did take place on 24th October, 1994. This assumption of the Company Law Board is clearly without any basis.

(b) When no meeting of the Board of Directors of the company was held on 24th October, 1994, the question of validity of the meeting does not arise. On the relevant date Suresh Babu was the only other Director of the company. He denies having attended any meeting of the Board of Directors of the company. There is nothing to rebut this stand of Suresh Babu. In his absence no valid meeting of the Board of Directors could be held.

(c) For considering this point let us assume that a meeting of the Board of Directors of the company did take place as alleged by Ramanujam. First question that arises is whether the company required additional funds for which the shares were issued. We have already referred to Balance Sheets of the company, copies whereof have been placed on record. Till 31st March, 1993 the Balance Sheets did not show any investment of substantial amounts of money in the company. It is the Balance Sheet for the year ending 31st March, 1994 which for the first time shows an advance of Rs. 6,86,500/- towards share capital pending allotment. Nothing has been placed on record to show that during the financial year 1993-94 i.e. 1st April, 1993 to 31st March, 1994 suddenly need had arisen for a substantial investment. The company was running a hotel, the property whereof was owned by the company. No particular reason for making a major investment has been shown. Nothing has been shown as to how the amount of Rs. 6,86,500/- was utilised. It appears that Ramanujam who was managing the affairs of the company single handedly, realized that the company had turned around and the Hotel property had appreciated in terms of its market value. He started working on a strategy to get controlling shares in the company. It was in furtherance of this objective that Ramanujam managed to show the entry regarding advance against shares in the Balance Sheet as on 31st March, 1994. For this amount, he allotted equity shares to himself to gain control of the company. In these facts it is difficult for us to appreciate that the additional funds were required by the company. In our view the finding of the High Court that no funds were needed by the company is fully justified. The only purpose was to allot additional shares in the company to himself to gain control of the company and to achieve this objective, the books of the company appear to have been manipulated. The High Court was right in holding that the entire manipulation of

records of the company by Ramanujam was an act of fraud on his part.

(d) We may also test the alleged act of allotment of equity shares in favour of Ramanajum from a legal angle. Could it be said to be a bona fide act in the interest of the Company on the part of Directors of the Company?

At this stage it may be appropriate to consider the legal position of Directors of companies registered under the Companies Act. A company is a juristic person and it acts through its Directors who are collectively referred to as the Board of Directors. An individual Director has no power to act on behalf of a company of which he is a Director unless by some resolution of the Board of Directors of the Company specific power is given to him/her. Whatever decisions are taken regarding running the affairs of the company, they are taken by the Board of Directors. The Directors of companies have been variously described as agents, trustees or representatives, but one thing is certain that the Directors action behalf of a company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the company. They are agents of the company to the extent they have been authorized to perform certain acts on behalf of the company. In a limited sense they are also trustees for the shareholders of the company. To the extent the power of the Directors are delineated in the Memorandum and Articles of Association of the company, the Directors are bound to act accordingly. As agents of the company they must act within the scope of their authority and must disclose that they are acting on behalf of the company. The fiduciary capacity within which the Directors have to act enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent. They have a duty to make full and honest disclosure to the shareholders regarding all important matters relating to the company. It follows that in the matter of issue of additional shares, the directors owe a fiduciary duty to issue shares for a proper purpose. This duty is owed by them to the shareholders of the company. Therefore, even though Section 81 of the Companies Act which contains certain requirements in the matter of issue of further share capital by a company does not apply to private limited companies, the directors in a private limited company are expected to make a disclosure to the shareholders of such a company when further shares are being issued. This requirement flows from their duty to act in good faith and make full disclosure to the shareholders regarding affairs of a company. The acts of directors in a private limited company are required to be tested on a much finer scale in order to rule out any misuse of power for personal gains or ulterior motives. Non-applicability of Section 81 of the Companies Act in case of private limited companies casts a heavier burden on its directors. Private limited companies are normally closely held i.e. the share capital is held within members of a family or within a close knit group of friends. This brings in considerations akin to those applied in cases of partnership where the partners owe a duty to act with utmost good faith towards each other. Non-applicability of Section 81 of the Act to private companies does not mean that the directors have absolute freedom in the matter of management of affairs of

the company.

21. Learned counsel for the respondent placed reliance on the judgment of the Supreme Court in case of Azhar Hussain Vs. Rajiv Gandhi, and in particular paragraphs 11 and 12 in support of the same submissions which read thus :-

11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the CPC. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the CPC can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Shri Udhav Singh Vs. Madhav Rao Scindia, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

Ground B :

12. Learned Counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the CPC should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the CPC for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned Counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or

such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The Courts in exercise of the powers under the CPC can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the Court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matters pertaining to ordinary Civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging an elected member of the Legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in a campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to wind the vote of the people but also to win the vote of the Court in a long drawn out litigation before he can whole-heartedly engaged himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity. He may even have occasions to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern metal, the constraint introduced by the pendency of an election petition may have some impact on his sub- conscious

mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law. To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The Court cannot accede to such a proposition. The submission urged by the learned Counsel for the petitioner in this behalf must therefore be firmly repelled.

22. Mr. Bijlani learned counsel placed reliance on the judgment of Supreme Court in case of Popat and Kotecha Property vs. State Bank of India Staff Association in Appeal (C) No.3460 of 2000 dated 29th August 2005 in support of the same submission. The relevant paragraphs relied upon read thus :-

Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

The above position was highlighted in *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*,

When the averments in the plaint are considered in the background of the principles set out in *Sopan Sukhdeo's* case (*supra*), the inevitable conclusion is that the Division Bench was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years need evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or

subtraction must show that is barred by any law to attract application of Order VII Rule 11. This is not so in the present case.

We do not intend to go into various claims in detail as disputed questions in relation to the issue of limitation are involved.

The appeal is accordingly allowed with no order as to costs. We make it clear that we have not expressed any opinion on the merits of the case which shall be gone into in accordance with law by the Trial Court.

23. Learned counsel placed reliance on the judgment of this court in case of Shri Ashok Bampto Pagui Vs. Agencia Real Canacona Pvt. Ltd. and State, Paragraphs 6 and 21 of the said judgment read thus :

6. However, in support of the complaint, one Nishakant Pednekar was examined pursuant to a power of attorney given by Shri Deelip Shirodkar and Vinod Shirodkar, Managing Director and Director of the Complainant-Company, respectively. The said power of attorney which was produced on behalf of the Complainant at Exh.PW1/B indicated that the said Nishakant Pednekar was appointed to act for and on behalf of the Company pursuant to a Resolution dated 10-2-2003. A copy of the said Resolution was not filed along with the said power of attorney. Likewise, at the time of filing of the complaint by the said Director Shri Prashant Shirodkar, no Resolution nor any power of attorney was filed nor was there any statement made in the said complaint to the effect that the said Director Shri Prashant Shirodkar was authorized by the Complainant-Company to lodge the said complaint.

21. A Director, as an individual Director, has no power to act on behalf of the company. He is only one of a body of Directors called the Board of Directors and alone he has no power except such as may be delegated to him by the Board of Directors or given to him by the articles of association of a company. In the case at hand, the complaint was filed by one of the Directors and as already stated by a Director who had initially complained to the Police that the subject cheque was forged by the accused, and, without any resolution of the company or any authorization from the Board of Directors. The view held by me is consistent with the views expressed in the decisions referred to herein above, namely, those of the Madras High Court in Ruby Leather Exports v. K. Venu(supra), Andhra Pradesh High Court and Delhi High Court which is now confirmed by the view held by the Apex Court in Dale and Carrington Inv.(P) Ltd. and Anr. v. P. K. Prathapan and Ors. (supra) and therefore I hold that the complaint in this case was not filed by the company as required under Clause (a) of Section 142 of the Act and on such a complaint no process could have been issued much less a conviction imposed. The said Shri Prashant Shirodkar could not have filed the same merely in his capacity of a Director. He had to file the same only with authorization from the Board of Directors. As already stated, prima facie, it appears that such authorization was issued by the complainant company in favour of Shri Pednekar as can be seen from the copy of power of attorney

produced.

24. Learned counsel for the respondent placed reliance on the unreported judgment of this court dated 19th March 2009 in Chamber Summons No. 1705 of 2008 in Suit No. 3382 of 2007 in case of M/s. Hari Shree Enterprises vs. Ms/.Vikas Housing Limited and others and in particular paragraphs 6 to 11 and would submit that a blanket authority cannot be given to a particular managing director or director to sign the papers and documents including the power to sue. Paragraphs 6 to 11 of the said judgment read thus :-

6. In the case of H.P.Horticultural produce Marketing and Processing Corp. Ltd. A 2000 HP 11 it was held that the onus is on the person suing on behalf of the company as M.D. to show the powers of management held by him either by virtue of an Agreement, or a resolution of the company or under the Memorandum and Articles of the Company, in the absence of which the suit was held not filed by an authorised person on behalf of the company and was dismissed. Similarly in the case of M. Lakshman Vs. Shanmuga Priya Textiles Pvt Ltd. 2001 CC 121 (Mad) was held that a Criminal complaint u/s 138 of the Negotiable Instruments Act could not be filed by a person claiming to be a MD or a CA of a MD, if he was not apparently authorised by a Resolution of the company and consequently the complaint was held liable to be quashed.

7. It is argued by Mr. Kapadia that since he is the Managing Director, he is entrusted with substantial powers of management and those powers of management include the power to sue on behalf of the Company. The management of the Company would mean and include the day to day affairs of the Company. A Company is not required to sue as a part of its day to day affairs. The action in law is required to be filed only upon the cause of action accruing in favour of the Company. It cannot, therefore, be said that the power to sue is one of the substantial powers of "management". The power to sue must, therefore, be separately given by the Company. Such power can be given only under the Articles and Associations of the Company. No such power is shown. If Articles empower the Managing Director to file suits on behalf of the company, the position would have been different. See All India Reporter Ltd. Vs. Ramchandra Dhondu Datar, A 1961 Bom 292 in which case upon such Articles of Association, the Managing Director was held entitled to sue or execute an authority to another to sue on behalf of the company. That power may be given by the Company to any officer including a Director, Managing Director, Secretary, etc. A Company acts only through its resolution. Hence power of the Company can be given only by the Company resolving to sue. That resolution may be passed by the Directors in the Board meeting or by the Company itself in its General Meetings. No resolution of the Company to sue is shown. The contention of Mr. Kapadia that because K.V. Mohan is the Managing Director he does not need a resolution of the Company to sue cannot be accepted aside from the fact that in this case K.V. Mohan, who has sought to sue on behalf of the Company as its Managing Director, is not shown to be appointed as such also.

8. K.V. Mohan has relied upon a copy of the Resolution dated 11.7.2001 of the Board of Directors of Four Season Farms Ltd. resolving that the Managing Director of the Company is authorised and allowed to sign papers and documents in connection with acts and deeds of the Partnership Firm on behalf of the Company in which the Company is a partner. Mr. Kapadia contends that signing of the papers in the Suit is included in that authority. The Resolution is dated 11th July 2001. A reading of the resolution does not show that the Company at all contemplated in 2001 that its Managing Director could sue in 2007 (the year in which this Suit was filed). The Managing Director may have changed at such length of time. The Resolution cannot empower any Managing Director at the relevant time to sue if the then Managing Director K.V. Mohan was given the authority to sign the papers and documents in connection with acts and deeds of the Partnership Firm. Hence even through that resolution, the resolution of the Company to sue is not shown.

9. In the case of Leela Capital and Finance Ltd., Mumbai vs. Modiluft Limited, Mumbai, 2003 (1) Maharashtra Law Journal 551 relied upon by Mr. Madon, the Director, who was not specifically authorised by the Company to sue under any resolution of the Company was held not so entitled. Relying upon the case of M/s. Nibro Limited vs. National Insurance Company Ltd., 1991 Company Cases page 388, it was held that the Director suing on behalf of the Firm is required to be authorised by the Board Resolution to file a Suit. That judgment observes that the question of authority to institute the Suit on behalf of the Company was not a technical matter. It has far reaching effects. It would affect the policy and events of the Company. Unless the power to sue is conferred upon a particular Director, he would have no authority to sue and such a power could be conferred only by the Board of Directors by passing a resolution in that regard.

10. In the case of Nibro Ltd. Vs. National Insurance Co. Ltd., , it has been held, upon considering the scope of Section 291 of the Companies Act, that unless a power to institute the Suit is specifically conferred on a particular Director, he has no authority to institute the Suit on behalf the Company.

11. The essential requirement of this provision is that the Company which is a juristic person must itself decide to sue. Once that is done, it would authorise one of its Directors who is the agent of the Company or its principal officers the Secretary of the Company or the Managing Director to file the Suit. The suing in each case is a separate act. The Company acts only through its meetings. Hence the Board of Directors in the day to day management of the company must decide and resolve to sue or not to sue. A blanket authority cannot be given to a particular Managing Director or Director to sign the papers and documents, including the power to sue. The power to sue requires application of mind upon the particular cause of action. It requires the Company to pay the requisite Court fee. It requires the Company to be represented by a legal officer being an Advocate of the Court. It is an act which, therefore, is not a part of the day to day management of the Company. A Company would decide in a given case upon

legal advice or otherwise whether or not it would sue upon a given cause of action. Such exercise is imperatively required to be performed if the intention of the Company, which is only a juristic person, is to be deciphered. That act, of course, may be undertaken even after the filing of the Suit and ratified by the Board as all other acts of management. However, the seminal requirement is to see the act of the Company through its Board or members (dependent upon whether the resolution is passed in the Board meeting or a general meeting) or is given by the Company itself (under its Articles of Association).

25. Learned counsel for the respondent submits that in so far as judgment of Supreme Court reported in *Prem Lala Nahata and Another Vs. Chandi Prasad Sikaria*, relied upon by Mr. Dani learned counsel for the plaintiff is concerned, the said judgment does not apply to the facts of this case as the same deals with mis-joinder of parties or causes of action. In this case the authority of Mr. Siddharth Sachdev to file the suit on behalf of the plaintiff itself is in dispute. Learned counsel distinguished the judgment of the Supreme Court reported in *United Bank of India Vs. Naresh Kumar and others*, on the ground that the Supreme Court was considering a case of a public limited company whereas in this case plaintiff is a private limited company.

26. In rejoinder Mr. Dani learned counsel for the appellant submits that even if the trial court would have come to the conclusion that specific resolution was required to be passed by the plaintiff authorising a director to file a specific suit against the defendant, such defect being a curable defect, the learned trial judge could not have rejected the plaint on that ground. Learned counsel distinguished the judgments relied upon by the learned counsel for the respondent.

27. Questions that arise for consideration of this court is (i) whether suit could be filed by the plaintiff company against the defendant through one of the director without passing a specific resolution empowering a director to file a suit against a particular party and if no such resolution is passed, what is the consequence thereof (ii) whether application under order 7 rule 11(d) was at all maintainable on the ground that suit was bad for want of specific resolution in favour of a director to file a such suit against the defendant company (iii) whether defect if any was curable and plaint could not be rejected on that ground.

28. The learned counsel for the defendant placed reliance on section 291 of the companies act 1956. The defendant did not produce any copy of the memorandum of association or articles of plaintiff company providing for passing of a specific resolution by the board of directors empowering a director to file a specific suit. A perusal of section 291 of the Companies Act makes it clear that the board of directors of a company are entitled to exercise all powers and to do all things and acts as the company is authorised to exercise and to do subject to the provisions of the Act and unless the memorandum and articles of company provides for compliance of any other condition. The learned counsel appearing for the respondent could not point out any provisions in the Companies Act or any other provision which mandates passing of any such specific resolution for

filing a suit against a particular party.

29. The plaintiff has produced on record before the trial court certified true copy of the minutes of the meeting of the board of directors of the plaintiff company held on 28th March 2005. In the said meeting a power of attorney executed in favour of Mr. Siddharth Sachdev was placed before the board of directors which was duly approved by the board. The learned trial judge has referred to clause 4 of such power of attorney in the impugned order. A perusal of clause 4 of the power of attorney clearly indicates that Mr. Siddharth Sachdev was authorised by the plaintiff company to initiate legal proceedings to protect the interest of the company and in that regard to make, declare, swear, affirm, sign, verify, initiate and facilitate civil suits etc. on behalf of the company.

30. It is not the case of the respondent that the suit is filed by the said Mr. Siddharth Sachdev. The submission of the respondent is that though the suit was filed by the company, such suit could not have been filed without specific resolution. The plaint is verified by the said Mr. Siddharth Sachdev. It is not in dispute that the said Mr. Siddharth Sachdev was a director of the plaintiff company when the suit was lodged against the defendant. The authority of Mr. Siddharth Sachdev to file such suit has been already confirmed by the plaintiff company in the affidavit in reply filed opposing the application made by the respondent under order 7 rule 11(d) of the Code of Civil Procedure, 1908. In my view the board of directors of the said company having confirmed the authority in favour of Mr. Siddharth Sachdev to file such suit against the respondent, plea of the defendant could not have been accepted by the trial court. Be that as it may, since there is no specific bar under any provisions of the law from filing such suit without any specific resolution to file a suit against a particular party, in my view application under order 7 rule 11(d) itself is not maintainable. In my view the said provision can be invoked only when the suit appears from the statement in the plaint to be barred by any law. While dealing with any such application under order 7 rule 11, court has to consider the averments made in the plaint. A perusal of the plaint does not indicate that any statement made therein would indicate that the suit was barred by any law. In my view the learned trial judge has thus committed a patent illegality in entertaining such application which is not maintainable under order 7 rule 11(d) of the Code of Civil Procedure, 1908 at all.

31. Be that as it may, it is not in dispute that the defendant had already filed an application in the same suit in the year 2006 under order 7 rule 11(a) of the Code of Civil Procedure, 1908 relying upon the averments made in the plaint and inter alia praying that the plaint did not disclose any cause of action and was thus liable to be rejected. The defendant never raised any issue at that stage that the plaint itself was liable to be rejected on the ground that no specific resolution was passed by the company authorising the director to file specific suit against the defendant. The learned District Judge after considering the submission of both parties rejected application under order 7 rule 11(a) of the

Code of Civil Procedure, 1908. It is not in dispute that the respondent did not challenge the said order passed by the District Court as far back as on 25th September 2006. It is thus clear that the defendant had accepted the fact that no such specific resolution was required to be passed authorising a director to file specific suit against the defendant. In my view the respondent not having raised such issue in the earlier application filed under order 7 rule 11(a) of Code of Civil Procedure, 1908 and having relied upon the plaint could not have file another application under order 7 rule 11(d) though earlier application having been rejected holding that the plaint disclosed cause of action.

32. A perusal of the record indicates that after expiry of about three years the respondent filed this frivolous application under order 7 rule 11(d) for rejection of plaint obviously with the purpose of delaying the outcome of the suit filed by the plaintiff.

33. Supreme Court in case of Union Bank of India (supra) after considering order 29 rule 1 of the CPC has held that as a company is a juristic entity, it can duly authorise any person to sign the plaint or written statement on its behalf and that would be regarded as sufficient compliance with the provisions of order 6 rule 14 of the Code of Civil Procedure. It is held that even if any pleading is signed by a director without passing a resolution to that effect, the corporation can ratify the said action of it's officer in signing the pleadings. Such ratification can be expressed or implied. In my view the plaintiff company having filed an affidavit before the learned trial judge confirming the authority of the director Mr. Siddharth Sachdev to file such suit, such act on the part of the director having been ratified by the plaintiff, the learned trial judge could not have rejected the plaint. In my view the suit did not suffer from any jurisdictional infirmity and even if there was any such defect in not passing a specific resolution for filing a suit against the defendant, the same was curable and thus plaint could not have been rejected on the ground of non compliance of passing of a specific resolution.

34. Supreme Court in case of Prem Lala Nahata and Anr. (supra) has quoted the dictionary meaning of "bar" from the Black's Law Dictionary and also quoted the meaning of "bar" according to Ramanatha Aiyar's Law Lexicon with approval which indicates that the expression "bar" would mean that which would obstruct entry or egress, to exclude from consideration. Supreme Court in the same Judgment has also given an illustration of Section 80 of the CPC which provides for specific bar to the institution of the suit. It is held in such an event for want of notice u/s 80 which is mandatory, the plaint can be rejected if the same is indicated in the plaint itself. In my view, Court has to see while dealing with applications under Order VII Rule 11(d) of the CPC 1908 whether plaint itself would indicate bar of such suit and its entry itself would indicate its exclusion from consideration. In my view, even if there is no specific resolution passed by the plaintiff company authorising its director to file a suit on behalf of the company, plaint cannot be rejected on that ground on the face of it. In my view, it may amount, at the most a procedural irregularity in filing a suit which can be

cured even during the pendency of such suit and the plaint therefore cannot be rejected on such ground.

35. In so far as Judgment of Supreme Court in case of M/s Dale and Carrington Invt. (P) Ltd. and another (supra) is concerned, the Supreme Court has considered the provisions of Section 397 and 298 of the Companies Act and has held that a company is a juristic person and it acts through its Directors who are collectively referred to as the Board of Directors and has no power to act on behalf of a company of which he is a director unless by some resolution of the Board of Directors of the Company specific power is given to him. It is held that the Directors of the companies have been variously described as agents, trustees or representatives, but one thing is certain that the Directors act, on behalf of a company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the company. It is held that as agents of the company they must act within the scope of their authority and must disclose that they are acting on behalf of the company. A perusal of the resolution produced before the trial Court clearly indicates that the Director of the company was given Power of Attorney by the company to file a suit and to represent the company. The Judgment relied upon by the learned counsel appearing for the respondent in case of M/s Dale and Carrington Invt. (P) Ltd. (supra) thus does not assist the case of the respondent.

36. In so far as Judgment of Supreme Court in case of Azhar Hussain v. Rajiv Gandhi (supra) relied upon by the learned counsel for the respondent is concerned, the Supreme Court has considered an election petition filed under the provisions of Representation of the People Act. The supreme Court after considering the provisions of the said Act and in particular Sections 83 and 86 which provide as to what shall be the contents of the petition, held that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. Supreme Court held that the plaint did not disclose the cause of action and accordingly dismissed the plaint. There is no such bar provided under any of the provisions of law as canvassed by the learned counsel for the respondent in so far as filing of suit is concerned. The said Judgment in case of Azhar Hussain therefore does not assist the respondent and is clearly distinguishable in the facts of this case.

37. In so far as Judgment of this Court in case of Ashok Bampto Pagui (supra) relied upon by the learned counsel for the respondent is concerned, it is held by this Court that a Director as an individual Director, has no power to act on behalf of the company. The Director in that case had filed a criminal complaint. The Power of Attorney produced by the Director indicated that he was appointed to act for and on behalf of the company pursuant to a resolution. A copy of the resolution however, was not filed along with the said Power of Attorney. In this case, the plaintiff company had already clarified by filing affidavit before the trial court bringing on record a copy of the resolution approving the Power of Attorney by which the Director was authorised to file a suit on behalf of the company and

to file pleadings etc. Thus, the Judgment in case of Ashok Bampto Pagui (supra) does not assist the respondent and is clearly distinguishable in the facts of this case.

38. In so far as the Judgment of Supreme Court in case of Popat and Kotecha Property (supra) is concerned, the Supreme Court has held that disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11(d) of the Code of Civil Procedure. Such provision applies in cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. The averments in the plaint are the germane, the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. Supreme Court has held that it should appear from the averments in the plaint itself that the same is barred by any law. It is not the case of the respondent that the suit, from the averments in the plaint itself, can be said to be barred by law. Learned counsel appearing for the respondent does not dispute the statement of the appellant that the defect if any in not passing any specific resolution authorising a Director to file a suit on behalf of the company against the defendant is a curable defect. The Judgment of Supreme Court in case of Papat and Kotecha Property (supra) in my view supports the case of the appellant and not the respondent.

39. In so far as judgment of this Court in case of M/s Hari Shree Enterprises (supra) relied upon by the respondent is concerned, it is held that a company which is a juristic person must itself decide to sue. Once that is done, it would authorise one of its Directors who is an agent of the company or its principal officers the Secretary of the Company or the Managing Director to file the suit. It is held that the suing in each case is a separate act. A blanket authority cannot be given to a particular Managing Director or Director to sign the papers and documents including the power to sue. In the said Judgment it is also held that that act, of course, may be undertaken even after the filing of the suit and ratified by the Board as all other acts of management. A perusal of the reply filed by the appellant before the trial Court in response to the application filed by the respondent under Order VII Rule 11(d) would indicate that the appellant company has confirmed before the trial Court the authority granted to its Director to file the said suit. Once the company had accepted and confirmed the authority granted to one of his Director to file such suit, the objection raised by the respondent was taken care of. The learned trial Judge therefore could not ignore such confirmation on the authority of the director or in the alternative ought to have render a finding about ratification by the board of the acts of its Director for filing such suit on behalf of the company. Be that as it may, the said affidavit itself was in the nature of a ratification by the board of the acts of the director who had filed and signed the plaint on behalf of the company. The Judgment of this Court in case of M/s Hari Shree Enterprises thus does not assist the respondent.

40. In the result, I pass the following order.

- (a) F.A. No.1526 of 2011 is allowed. Civil Application does not survive.
- (b) Application dated 20/10/2009 "Exhibit 28" filed by the respondent under Order VII Rule 11(d) of the CPC is dismissed.
- (c) Plaint is restored to file.
- (d) The trial Court is directed to dispose of the suit expeditiously.
- (e) There shall be no order as to costs.
- (f) The R and Ps of the suit if called in this Court, shall be transmitted to the trial Court immediately.