

(1995) 02 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 1109 of 1994

Bhankerpur Simbhaoli Beverages P. Ltd. and Another	APPELLANT
Vs	
Sarabhjit Singh and Others	RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Companies Act, 1956 — Section 169, 190, 195, 284

Citation : (1996) 86 CompCas 842 : (1995) 109 PLR 662

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : G. Ramaswamy and M.L. Sarin and Alka, for the Appellant; A.M. Singhvi and Harbhagwan Singh, Senior Advs., S. Mitra, P.K. Bansal, Arun Bansal, Arun Monga and B.S. Jandu, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This shall dispose of Civil Revision No. 1109 of 1994 and also application under Order 39, rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, praying for ad interim injunction against the defendants in Civil Suit No. 460 of 1994 titled as Bhankerpur Simbhaoli Beverages Pvt. Ltd. v. Utpal Kumar Ganguly, pending in the court of the Additional Senior Sub-Judge, Rajpura. Civil Revision No. 1109 of 1994 has been directed against the ad interim order dated March 18, 1994, passed by Sh. G. S. Khurana, Additional District Judge, Patiala, in the pending appeal arising out of Civil Suit No. 33 of 1994 pending in the court of the Senior Sub-Judge, Patiala.

2. Initially, Civil Revision No. 1109 of 1994 directed against the order of the Additional District Judge, Patiala, was filed in this court, but before the matter could be finally decided, Civil Suit No. 460 of 1994 was filed in the court of the Additional Senior Sub-Judge, Rajpura. Since the matter involved was common in both the suits, i.e., the civil suit out of which Civil Revision No. 1109 of 1994 has arisen and Civil Suit No. 460 of 1994 learned counsel for the parties, on October

17, 1994, stated at the Bar that this court should finally decide the application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, filed by the plaintiff in Civil Suit No. 460 of 1994 and also the matter which was pending in appeal before the Additional District Judge, Patiala, arising out of the application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, in Civil Suit No, 33 pf 1994. They further stated that on decision by this court, the appeal pending before the Additional District Judge would become infructuous. Not only the counsel made a statement at the Bar, but also filed a joint application, Civil Miscellaneous No. 6474-CII of 1994 in which a prayer had been made for transfer of the application under Order 39, Rules 1 and 2 of the CPC in Civil Suit No. 460 of 1994 pending before Sh. Balbir Singh, Sub-Judge, 1st Class, Rajpura, to this court for decision along with Civil Revision No. 1109 of 1994. It may be mentioned at this stage that although this court while sitting on the revisional side was reluctant to decide the application under Order 39, Rules 1 and 2 of the CPC in Civil Suit No. 460 of 1994 at Rajpura and also the subject-matter of appeal arising out of application under Order 39, Rules 1 and 2 of the CPC at Patiala, but since the parties had made a joint prayer and also stated at the Bar before this court that both the matters be taken up and disposed of by a common order, this court vide order dated July 15, 1994, allowed the prayer and, therefore, both the matters are being disposed of finally in this revision petition.

3. The facts are taken from Civil Suit No. 460 of 1994 at Rajpura, titled as Bhankerpur Simbhaoli Beverages Pvt. Ltd. v. Utpal Kumar Ganguly.

4. The suit at Rajpura has been filed by Bhankerpur Simbhaoli Beverages Pvt. Ltd. (B.S.B. in short) through Sh. Sarabhjit Singh, stated to be managing director and ex-factory manager of B.S.B. The suit is for declaration with the prayer that extraordinary general meeting (E.G.M. for short) of B.S.B. pursuant to the alleged notice dated January 3, 1994, or January 27, 1994, was not held at 4, Community Centre, Lawrence Road, Industrial Area, New Delhi, or at any other place ; that resolutions alleged to have been passed at the said extraordinary general meeting on February 22, 1994, as claimed by defendants Nos. 1 to 9 are non-existent, fictitious and are of no effect; that resolution purported to be passed at the extraordinary general meeting of B.S.B. allegedly held on February 22, 1994, even if actually held, are illegal and void and are of no effect. A perpetual injunction is being sought to restrain defendants Nos. 1 to 10 or any of them or servants and agents from giving effect to or relying upon or touching within furtherance of the alleged resolution dated February 22, 1994, allegedly passed at the said impugned extraordinary general meeting of B.S.B. allegedly held on February 22, 1994, and further restraining defendants Nos. 1 to 9 from acting or holding themselves out as directors of B.S.B. in reliance upon the resolutions purported to be passed in the alleged extraordinary general meeting and further restraining defendants Nos. 1 to 10 from interfering with or obstructing or disputing "the acting of defendants Nos. 10 and 16 to 25 as directors of B.S.B. It has been averred in the plaint that B.S.B. is a company incorporated under the provisions of the Companies Act, 1956 (in short, the

Companies Act), and has its registered office at Bhankerpur Simbhaoli Beverages Pvt. Ltd., Bhankerpur, Dera Bassi, District Patiala, Punjab. The main objects of the company, i.e., B.S.B., are to carry on the business of brewers, distillers, bottlers, wine manufacturers and to prepare, buy, store, sell, distill, manufacture, redis-till and deal in all kinds of beers, wine, liquors, etc. B.S.B. was earlier owned by Simbhaoli Industries Pvt. Ltd, (S.I.L. in short). The shareholding position of B.S.B. immediately before the takeover of the same by S.I.L. was as under :

"1.

Mr. S. Sandhu

: 10 equity shares of Rs. 10 each.

2.

Mr. Gurpal Singh

: 10 equity shares of Rs. 10 each.

3.

Mr. G. S. Mann

: 10 equity shares of Rs. 10 each.

4.

Mr. J. S. Mann

: 10 equity shares of Rs. 10 each.

5.

Simbhaoli Industries Pvt. Ltd.

: 5,50,000 -do.-

Total

5,50,040"

5. The management of the Shaw Wallace group of companies entered into negotiation with S.I.L. and it was agreed that the entire issued equity shares amounting to 5,50,000 as held by S.I.L. would be taken over by a subsidiary company of Shaw Wallace and Company (in short, the SWC) under the control of the Shaw Wallace group at the face value aggregating to Rs. 55 lakhs. The management of the Shaw Wallace group selected one Budgam Finance and Investment Co. Pvt. Limited (in short, Budgam) for the said takeover of the shares. The said Budgam had no funds to pay the price of the said shares as the paid-up issued share capital of the Budgam was only Rs. 100 and the said company was having only a nominal amount in its bank account. One SICA

Breweries Private Limited advanced an amount totalling Rs. 60,50,000 as inter-corporate deposit to Budgam. It was from this amount that Budgam acquired its 5,50,000 shares from S.I.L. After the acquisition of shares by Budgam from S.I.L., the following was the shareholding position of B.S.B. :

"1.

Mr. P. S. Sandhu :

10 equity shares of Rs. 10 each

2.

Mr. Gurpal Singh :

10 equity shares of Rs. 10 each

3.

Mr. G. S. Mann :

10 equity shares of Rs. 10 each

4.

Mr. J. S. Mann :

10 equity shares of Rs. 10 each

5.

Mr. P. H. Pandya :

10 equity shares of Rs. 10 each

6.

Budgam Finance and Investment Co. :

5,50,000 - do. -

Total :

5,50,050 "

Ten equity shares of Rs. 10 each were allotted to one P. R. Pandya after the takeover of shares by Budgam. It has further been stated that Mr. P. S. Sandhu has since expired and is not a shareholder any more. It is further averred that as per the articles of association of B.S.B., there has to be a minimum of two directors and the maximum limit of directors has been fixed at 11 which can be changed. The first directors of the company were S/Sh. Pritam Singh Sandhu, Gurmeet Singh Mann, Jagraj Singh Mann and Gurpal Singh, However, after acquiring B.S.B., S.W.C. nominated its employees on the board of directors of B.S.B. Seven additional directors namely S/Sh. Y. P. Sud, T. K. Ramaswamy, M. G. Rama-chandran, Madan Mohan Suri, R. Ganesan, A. Roy Chowdhury and S. N.

Pandey were appointed on July 8, 1989. The original four directors of the B.S.B. namely S/Sh. Pritam Singh Sandhu, Gurmeet Singh Mann, Jagraj Singh Mann and Gurpal Singh ceased to be the directors with effect from June 27, 1990. It is further averred that presently, the lawfully constituted board of directors of B.S.B. are S/Sh. Sarabhjit Singh, managing director, P. R. Pandya, director (secretary, SKOL Breweries Ltd.-a subsidiary of SWC), A. S. Chatterjee, director (manager, SWC), A. Sadasivam, director, (asst. vice-president, SWC), V. Jayaraman, director (general manager, Cruickshank and Co.-A subsidiary of S.W.C.), Srijit Mullick, director (manager, SWC), M. M. Gupta, director (general manager, SWC), T. K. Ravishanker, director (general manager, SWC), A. Sabharwal, director (general manager, SWC), Rajiv K. Viz, director (deputy general manager, SWC) and Harsh Wardhan Sen, director (vice-president, SWC). It has been alleged that B.S.B. is/has been under the supervision and control of SWC as the whole of the board of directors consists of employees of SWC. Para 6 of the plaint then describes the name of the shareholders and also the board of directors of Budgam. In para 7 of the plaint, it has been averred that one Arun Kumar Jain, i.e., defendant No. 8 had been taken as director of B. S. B. on September 26, 1991, by the board of directors to fill a casual vacancy caused by the resignation of one of the directors of the board. The same was, however, subject to ratification at the annual general meeting which was to be done in the third annual general meeting to be held on September 29, 1992. However, the said Arun Kumar Jain ceased to be director with effect from September 29, 1992, i.e., the date when the annual general meeting was held and his name was not ratified/confirmed by said annual general meeting. B. S. B. also filed a civil suit in the court of Sh. J. S. Bhatia, Sub-Judge, 1st Class, Rajpura, for a declaration that the appointment of Arun Kumar Jain as a director of B. S. B. was invalid, illegal and void and that he has ceased to be a director. It has further been averred that one K. R. Chhabria was once the managing director of SWC. The said K. R. Chhabria was removed as such due to his diverse acts prejudicial to the company. On being stripped of his powers, due to abuse of his powers and for acts detrimental to the interest of SWC and due to acts for his personal gains, the said K. R. Chhabria started harbouring a grudge against SWC. Certain other employees who were his associates were also removed from SWC on discovery of their illegal acts prejudicial to the interest of SWC. All of them are acting in connivance with each other to destabilize SWC and its other associate companies. The said Arun Kumar Jain after his cessation, has also become hostile to the company and has joined hands with several people who were at certain points of time engaged at different executive positions with SWC. On February 21, 1994, the said Arun Kumar Jain filed a complaint u/s 145 of the Criminal Procedure Code, 1973, before the Sub-Divisional Magistrate, Rajpura, claiming himself to be a director of B. S. B. The said complaint was dismissed by the Sub-Divisional Magistrate on March 2, 1994, with the observation that the complaint filed by Arun Kumar Jain is an abuse of process of the court. Arun Kumar Jain also filed a civil suit on February 21, 1994, in the court of Sh. J. S. Bhatia, Sub-Judge, First Class, Rajpura, and tried to obtain an ex parte stay order against all the directors

of B. S. B. by misleading the court. However, he failed to do so. Hence, the ex parte stay order was declined on February 21, 1994. The said suit is titled as Arun Kumar Jain v. T. K. Ramaswamy. It has been averred that the said suit has been filed by Arun Kumar Jain to thwart the earlier suit filed by B. S. B. against him. Upon such failure on the very next day, i.e., February 22, 1994, Arun Kumar Jain got another suit filed purported to be on behalf of B. S. B., the plaintiff in the present suit through one of his associates, J. C. Vohra, which was also filed before Shri J. S. Bhaia, Sub-Judge, First Class. The said suit came up for hearing on February 23, 1994, and a prayer for an ex parte stay order, restraining the defendants therein from interfering in the affairs and management of B. S. B. was made, which too was declined. Thereafter, on March 2, 1994, Arun Kumar Jain, filed another suit before the Senior Sub-Judge, Patiala, purported to be on behalf of Budgam along with one Ashok Jain who purported himself to be a director of B.S.B. In that suit, an ex parte stay order dated March 2, 1994, was passed against the defendants therein. An appeal was filed by Sarbjit Singh against the said order and the learned Additional District Judge, vide his order dated March 18, 1994, modified the order of the trial court. Against the order passed by the Additional District Judge, Arun Kumar Jain has filed a revision petition, C. R. No. 1109 of 1994- In the suit filed before the Senior Sub-Judge, Patiala, Arun Kumar Jain claims to have convened an extraordinary general meeting of B.S.B. on February 22, 1994. Pursuant to the said extraordinary general meeting, he claims to have removed all the earlier lawfully constituted directors of B.S.B. and further claims to have appointed defendants Nos. 1 to 9 as directors of B. S. B. on the basis of resolutions alleged to have been passed in the said extraordinary general meeting. It is thus averred that defendants Nos. 1 to 9 are wrongly claiming to be directors of B.S.B. on the basis of resolutions alleged to have been passed in the extraordinary general meeting alleged to have been held at New Delhi on February 22, 1994. The purported claim of defendants Nos. 1 to 9 is absolutely illegal and void on the grounds that defendants Nos. 1 to 10 in collusion and conspiracy with each other have fabricated the records to create a claim that on February 22, 1994, an extraordinary general meeting was held, while in fact, no such meeting was at all held and also that even if the extraordinary general meeting was held on February 22, 1994, the holding of any such meeting and any resolution passed thereat is illegal and void ; that notice dated January 3, 1994, issued in the name of Budgam signed by Utpal Kumar Ganguly calling upon the B. S. B. to hold an extraordinary general meeting for removal and appointment of directors, was not in compliance with Section 169 of the Companies Act, 1956 ; that one member of B.S.B. alone could not call an extraordinary general meeting that the alleged notice dated January 3, 1994, was never circulated to the lawful board of directors of B.S.B., who were controlling the affairs of B. S. B. ; that notice dated January 3, 1994, was not issued by any valid board resolution from the board of directors of Budgam. Utpal Kumar Ganguly was not a director of Budgam ; that the decision to remove the existing directors and appoint new directors was for drastic reconstitution of the board of directors of B.S.B. and amounted to a policy

decision of Budgam. Under the orders of the Jammu and Kashmir High Court dated February 22, 1993, Budgam has been specifically directed not to take or execute any policy decision. The said notice dated January 3, 1994, having been issued in the name of Budgam in violation of the order of the Jammu and Kashmir High Court dated February 22, 1993, is illegal and void ; that the alleged notice dated January 27, 1994, issued in the name of Budgam by Utpal Kumar Ganguly as a purported director is again in violation of the order of the Jammu and Kashmir High Court dated February 22, 1993. The said notice dated January 3/January 27, 1994, contained a decision of Budgam to drastically reconstitute the board of directors of B.S.B. which was a matter of policy decision and which Budgam was expressly restrained from taking by the order of the Jammu and Kashmir High Court; that there being no valid notice for convening the extraordinary general meeting of the shareholders of B.S.B., the purported meeting alleged to have been held on February 22, 1994, is consequently illegal and void ; that the alleged notice dated January 27, 1994, was not served to S/ Sh. P. S. Sandhu, Gural Singh, J. S. Mann, Gurmeet Singh Mann and P.R. Pandya, i.e., five undisputed shareholders of B.S.B. and as such, the said extraordinary general meeting is illegal and void ; that the venue of the extraordinary general meeting is alleged to be : 4, Community Centre, Lawrence Road, Industrial Area, New Delhi, where B. S. B. never had nor has a registered office or even a branch office. The holding of the extraordinary general meeting at New Delhi is not in compliance with the provisions of Section 169 of the Companies Act; that no notice far from special notice or resolution to remove the directors of B.S.B. was ever given/sent to any of the existing directors sought to be removed, nor were they heard on the resolution for removal at the extraordinary general meeting ; that none of the directors sought to be removed, was present at the alleged extraordinary general meeting and they were not given opportunity to be heard at the alleged meeting, if at all held. It has also been averred that K.R. Chhabria is the ex-managing director of S.W.C. and he has ceased to be managing director of S.W.C. on and from April 19, 1992. K.R. Chhabria is only interested in hijacking the companies belonging to the S.W.C. group for his personal benefit and to the detriment of the S.W.C. group. Budgam and B.S.B, both belong to the S.W.C. group. The plaintiff has alleged in para 18 of the plaint that the validity of the alleged extraordinary general meeting and resolutions passed thereat on February 22, 1994, became the subject-matter of contempt proceedings initiated before the Jammu and Kashmir High Court. In the said contempt proceedings, the Jammu and Kashmir High Court passed order on April 18, 1994. Against the said order, the K.R. Chhabria group through Arun Kumar Jain in the name of Budgam filed a SLP in the Supreme Court. The Supreme Court, vide order dated May 16, 1994, observed that the validity of the said extraordinary general meeting was to be decided in a substantive proceeding to be filed before an appropriate court and not in contempt proceedings. The Supreme Court, while setting aside the contempt proceedings, did not disturb the order for stay of resolutions passed in the extraordinary general meeting dated February 22, 1994, passed by the Jammu and Kashmir

High Court and continued the order for stay for a period of two weeks from the said date to enable the appropriate substantive legal proceedings for challenging the said extraordinary general meeting and the resolution passed thereat to be taken in the appropriate court. The plaintiff has, thus, stated that pursuant to the stay order of the Supreme Court, the plaintiff is filing this suit for challenging the alleged extraordinary general meeting and the resolutions passed thereat.

6. The written statement has been filed on behalf of defendant No. 8, namely, Arun Kumar Jain and by defendant No. 15 purported to be on behalf of Budgam. Arun Kumar Jain in his written statement has taken exception to the filing of the suit by Sarbjit Singh, alleging to be the managing director of B.S.B. It has been alleged in the written statement that he has no right, title, interest, authority or competency to institute the suit, and the name of the said company shown as the plaintiff is illegal, unauthorised, wholly without jurisdiction and without authority. It has further been stated that the company, i.e., B.S.B., is wholly owned and controlled by Budgam having its registered office in Jammu which holds and owns 99.9% of the equity shares of B.S.B. In turn, one M.D. Chhabria and R.D. Chhabria hold and own respectively 39.87% and 60.08% of the shares in Budgam, i.e., 99.95% of the shareholding of Budgam and, consequently, the said company is wholly owned and controlled by M.D. Chhabria and R.D. Chhabria through the said Budgam. The said company in its meeting of 22nd February, 1994, reconstituted its board of directors. The said company has already filed a suit for injunction in the court of the Senior Sub-Judge, Patiala, for restraining the persons removed from directorship at the meeting dated February 22, 1994, from interfering in the affairs and management of the said company and from representing themselves as directors of the said company. In this suit, the said company was granted interim relief in the application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, and the removed directors were restrained as prayed by the said company. Against this order, Sarbjit Singh filed an appeal in his individual capacity in which the said company is one of the respondents and, thereafter, the matter is pending in this court and the stay application is also pending disposal with this court. In the appeal filed by Sarbjit Singh, as also the contempt proceedings and civil revision, the said company is represented by S/Sh. Ashok Jain and Arun Jain and not by Sarbjit Singh. It has also been stated in the suit that the same is liable to be stayed u/s 10, Civil Procedure Code, inasmuch as in the suit, the challenge is to the board meeting held by the said company on February 22, 1994, and actions and/or decisions taken at the said meeting, whereas the meeting held by the said company on February 22, 1994, is the subject-matter of the suit for injunction legally and validly filed by and on behalf of the said company in the court of the Senior Sub-Judge, Patiala, which is till date pending and is a previously instituted suit and the same is liable to be stayed. Arun Kumar Jain in his written statement has admitted that the issued, subscribed and paid-up capital of the said company is Rs. 55,00,500 divided into 5,50,050 equity shares of Rs. 10 each, out of which 5,50,000 shares are owned by Budgam which constitutes over 99.99% of the

equity capital in the said company. These shares were acquired by Budgam on September 27, 1989, and till date the same are owned by Budgam, The original four directors and P. R. Pandya own 10 shares each and nobody else has any share in the said company. It has also been stated that the said company has reconstituted its board of directors in the meeting of the board of directors on February 22, 1994, and since the removed directors were threatening interference in the affairs and management of the said company, the said company filed an injunction suit before the Senior Sub-Judge, Patiala, which is till date pending. Arun Kumar Jain has denied that the management of S.W.C. negotiated the purchase of the said company, as alleged in the plaint. He has also denied that Budgam had no funds to pay the price, though he has admitted that money advanced by Sica Breweries Pvt. Ltd. was a mere intercorporate deposit to Budgam. In para 5 of the written statement, Mr, Jain has given the names of nine persons alleged to be only directors of B.S.B., namely, S/sh. Arun Kumar Jain, T. K. Ramaswamy, M.D. Chhabria, U. K. Ganguly, N.D. Chhabria, Ashok Jain, Shyam Luthria, S. K. Basu and Shiv Shankar Sanyal. He has also denied that he has ceased to be a director as alleged by B.S.B. As regards the order of the Sub-Divisional Magistrate dropping the proceedings on March 2, 1994, he has stated that the same are arbitrary, non est and violative of the principles of natural justice. He has also stated that the cause of action and the matter in issue are different in both the suits and the proceedings are not liable to be stayed. According to him, the relief sought for in the Rajpura suit was for injunction as the defendants therein were trying to dispossess the lawful owners in violation of the status quo order dated February 21, 1994, passed by the Sub-Divisional Magistrate u/s 145, Criminal Procedure Code, whereas the case in the Patiala suit is that Budgam being 99.99% owner of B.S.B. had exercised its legitimate rights under the provisions of the Companies Act and had validly upon requisition being made in this regard had changes effected in the board of directors of B.S.B. It was to restrain the other persons who are acting as directors and representing and/or holding themselves out to be directors, that the suit for injunction was filed wherein certain interim orders were passed. He has denied the averment in the plaint that no extraordinary general meeting was held on February 22, 1994. Notices issued in this regard have been stated to be valid. Mr. Jain has further stated that Gurpal Singh is now seeking to retract from his presence at the said meeting because of threat and pressure which have been imposed on said Gurpal Singh. In order to show that the extraordinary general meeting was held, he has submitted that Form 32 dated February 22, 1994, was filed with the Registrar of Companies on March 2, 1994. However, he has denied that the said return is fictitious as alleged by B.S.B. In regard to the resignation of P.R. Pandya, Mr. Jain has averred that Mr. Pandya in fact had resigned and this he admitted in his affidavit filed before the Company Law Board, Principal Bench, New Delhi, in Company Petition No. 29 of 1993 and now wholly contrary to his said stand of resignation, P.R. Pandya turns around and in the present suit, takes an entirely new stand that he had not resigned from the plaintiff companies and continues to be director/shareholder. Hence, the affidavit

filed by P.R. Pandya is a concocted and fabricated document, wholly contrary to the truth. With reference to the order of the Jammu and Kashmir High Court, Arun Kumar Jain has submitted that no order from the Jammu and Kashmir High Court was necessary to have been obtained before exercise of voting rights in Budgam, since liberty to exercise voting rights had been reserved to Budgam by the said order. He has, thus, prayed that the suit filed by B.S.B. be dismissed being misconceived, arbitrary and fraudulent.

7. One S. S. Sanyal, purporting to be director of Budgam, has filed a written statement on behalf of defendant No. 15 which contains almost the identical averments as in the written statement filed by Arun Kumar Jain.

8. The plaintiff, B. S. B., has filed replication to the written statements filed by Arun Kumar Jain, defendant No. 8 and defendant No. 15 wherein the plaintiff has denied the averments made in the written statements and has reiterated the stand taken by it in the plaint. The pleadings in Civil Suit No. 33 of 1994 out of which Civil Revision No. 1109 of 1994 has arisen are "not necessary to be mentioned because the plaint and the written statements filed in Civil Suit No. 460 of 1994 cover the controversy raised in Civil Suit No. 33 of 1994.

9. From a perusal of the pleadings of the parties, it is evident that S/Sh. P. S. Sandhu, Gurpal Singh, G. S. Mann, J. S. Mann and P. R. Pandya hold 10 shares of Rs. 10 each, whereas Budgam holds 5,50,000 equity shares of Rs. 10 each. The total shareholding of the company is 5,50,050 shares of Rs. 10 each. P. S. Sandhu has since expired and on the date when the extraordinary general meeting is alleged to have been held, only five shareholders were in existence which includes Budgam. It may also be noticed at this stage that as to who owns Budgam, is a matter pending before the Additional District Judge, Jammu, in a suit filed on behalf of Budgam through its alleged directors, Arun Kumar Jain, R. D. Chhabria and M. D. Chhabria. The Additional District Judge, Jammu, vide his order dated January 20, 1993, restrained the defendants therein from acting or representing themselves as directors of the company, alienating, selling or altering, transferring or in any other manner, the assets of the plaintiff-company and interfering or inter-meddling with the smooth functioning of the plaintiff-company. Having felt aggrieved against this order, the defendants therein filed a petition before the Jammu and Kashmir High Court in C. I. M. Y. No. 14 of 1993 and Mr. Justice V. K. Gupta disposed of the appeal by an agreed order, which reads as under :

"(1) The appellants shall file written statement in the suit before the trial court before March 5, 1993. The suit shall be taken up by the trial court, along with the application for temporary injunction on March 5, 1993, irrespective of any date earlier fixed by him. Objections to the application for temporary injunction shall also be filed by the appellants before March 5, 1993.

(2) Uninfluenced by the order dated January 20, 1993, in any manner whatsoever and totally uninfluenced by any observations or comments, made by

this court in this order, the trial court shall reconsider the question of grant or otherwise of the temporary injunction in its entirety after perusing the pleadings on the file, the documents and after hearing the parties in all respects. The trial court shall not postpone the proceedings in the matter of consideration of the temporary injunction by more than a day till the order is ultimately passed. The order dated January 20, 1993, impugned in this appeal is modified and altered to the following extent :

(i) The plaintiffs in the suit, like the defendants in the impugned order are also restrained from alienating, selling, altering, transferring or encumbering in any manner, any assets, investment or property of the plaintiff's company.

(ii) The plaintiffs shall not take or execute any policy decision and if the plaintiff company has to exercise any voting right in other company, this right shall be exercised provisionally only and shall remain subject to the orders to be passed ultimately,

(iii) The operative part of the impugned order as also the arrangements made hereinabove shall immediately come to an end on the passing of fresh order by the trial court."

The issue as to who is the true owner of Budgam, is pending and hotly disputed before the Jammu and Kashmir court and does not call for consideration in the present proceedings. During the course of arguments of Dr. A. M. Singhvi, senior advocate, who argued on behalf of the plaintiffs in Civil Suit No. 460 of 1994 and contesting the respondents in Civil Revision No. 1109 of 1994 and Mr. G. Ramaswami, senior advocate, who argued on behalf of the contesting the defendants in Civil Suit No. 460 of 1994 and on behalf of the petitioners in Civil Revision No. 1104 of 1994, it was repeatedly clarified that no enquiry could be contemplated or conducted in the present proceedings to enquire as to who is the true owner of Budgam. In these proceedings, it was also fairly admitted by Mr. G. Ramaswami, senior advocate, that at no time prior to February 22, 1994, did the contesting defendants in the Rajpura suit come to control, run or manage the B.S.B. Mr. Ramaswami has accepted that the management, control and operation of B.S.B. at all times prior to February 22, 1994, was in the hands of the plaintiffs, i.e., S.W.C. employees. The sole issue raised in this case is prima facie the holding of the meeting on February 22, 1994, or its legal validity. It was also agreed that in case this court finds that in fact the valid extraordinary general meeting was held on February 22, 1994, then the plaintiffs in Civil Suit No. 460 of 1994 would not be entitled to any injunction, but in turn the contesting respondents, i.e., the plaintiffs in Civil Suit No. 33 of 1994 pending before the Senior Sub-Judge, Patiala, shall be entitled to the injunction.

10. It may also be mentioned at this stage that on April 18, 1994, the defendants in Civil Suit No. 33 of 1994 approached the Jammu and Kashmir High Court in a contempt petition, alleging that the convening of the extraordinary general meeting on February 22, 1994, was a violation of the order of Mr. Justice

V. K. Gupta, dated February 22, 1995. The Jammu and Kashmir High Court issued notice for contempt and stayed the giving of effect to the extraordinary general meeting. The matter was assailed by the plaintiff by way of SLP (C) No. 7925 of 1994 in the Supreme Court. The Supreme Court, vide order dated May 16, 1994, dismissed the contempt petition, but gave liberty to the respondents therein to file a suit. The operative part of the judgment of the Supreme Court is reproduced hereunder :

"5. On a consideration of the matter, it appears to us that if the respondents were aggrieved by the convening of the extraordinary general meeting of Bhankerpur and the subsequent resolution dated February 22, 1994, they ought to have had recourse to appropriately constituted, substantive proceedings to assail their validity and not invoke the contempt jurisdiction. It is a moot question whether that part in para 2(ii) of the earlier order, whose violation was complained of in contempt, merely constituted terms of agreement between the parties or whether there was, in addition, the imprimatur of the court placed on it and, whether it was a "direction" or only an "observation" of the court. In view of the latter part of para 2(ii) of the earlier order dated February 22, 1993, the subsequent convening and holding of the extraordinary general meeting of Bhankerpur and the resolution dated February 22, 1994, cannot be said to be a wilful disobedience of the said earlier order.

6. We, accordingly, set aside the order dated April 18, 1994, of the High Court of Jammu and Kashmir in CMP (COA) No. 139 of 1994. We also dismiss the contempt proceedings."

Pursuant to the order of the Supreme Court, Civil Suit No. 460 of 1994 has been filed.

11. Dr. A.M. Singhvi, senior advocate, has contended that no extraordinary general meeting of B.S.B. was held on February 22, 1994, and the minutes, if any, and notices alleged to have been sent under certificate of posting have been manipulated by the defendants. In the alternative, he has contended that the meeting, if any, held was illegal and was in violation of the Jammu and Kashmir High Court order dated February 22, 1993, whereby the two warring factions of Budgam were prohibited to take any steps of policy nature. He has also referred to certain provisions of the Companies Act to submit that the alleged removal of directors was not valid and the meeting could not be held at a place other than the one where the registered office of the company is situate. He has also contended that, the defendants are not entitled to relief of injunction in the suit at Patiala because of suppression of material facts and also that the court at Patiala lacked territorial jurisdiction.

12. The plaintiffs as well as the defendants have filed on record numerous documents in order to prove or disprove the factual existence of the extraordinary general meeting alleged to have been held on February 22, 1994. Thus, the first question which arises for consideration is with regard to the

factual existence of the holding of the extraordinary general meeting on February 22, 1994, at New Delhi. In order to support that the meeting was held, the defendants have placed on record notice dated January 3, 1994, alleged to have been served by Budgam to B.S.B. and to all those directors sought to be removed by notice. The certificates of posting in proof of posting of letters/notices dated January 3, 1994, have been placed on record. They have also placed on record notice dated January 27, 1994, alleged to have been served by Budgam on other shareholders of B.S.B, and also certificates of posting as proof of posting of notice dated January 27, 1994 ; copy of Form No. 32, dated February 22, 1994, filed with the Registrar of Companies, Jalandhar, intimating about the reconstitution of the board of directors of B.S.B. in the extraordinary general meeting ; the alleged minutes of the extraordinary general meeting of B.S.B. held on February 22, 1994 ; the affidavit of T. K. Ramaswamy, director of B.S.B. ; the affidavit of Shalendra Sharma, who was allegedly authorised by Budgam to vote and represent on behalf of Budgam at the extraordinary general meeting. It may be noticed that apart from Budgam who held 5,50,000 equity shares of Rs. 10 each on the date when the meeting is alleged to have been held, there were only four other shareholders in existence, namely, Gurpal Singh, G. S. Mann, J. S. Mann and P. R. Pandya, who held 10 equity shares of Rs. 10 each. In order to give a finding as to whether the extraordinary general meeting was held, it is necessary to find out first, as to whether at least two shareholders were present in the meeting because a single person cannot constitute a meeting. This proposition is not being disputed by Mr. G. Ramaswami, senior advocate, and rightly so, because in Stroud's Judicial Dictionary, 1973 edition, "meeting" has been described thus--(1) one swallow does not make a summer, nor does the presence of one shareholder constitute a "meeting" (Sanitary Carbon Co., In re [1877] CWN 223. The word "meeting" implies a concurrence, or coming face to face of "at least two persons" (per Coleridge C.J. in Sharp v. Dawes [1876] 2 QBD 26 . There is accordingly and speaking generally, no "meeting" of shareholders or other bodies, if only one attends ; though "no doubt in a particular statute the word might be used in a special sense, so that the attendance of one might satisfy it" (per Coleridge C. J. in Sharp v. Dawes [1876] 2 QBD 26 : see East v. Bennett Bros. Ltd. [1911] 1 Ch 163. In Oxford Companion to Law, 1980 edition, "meeting" has been described thus : "A gathering of two or more persons called to receive a report, take a decision or otherwise take some lawful action." According to Jowett's Dictionary of English Law, 1977 edition, a single person cannot constitute a meeting (Sharp v, Dawes [1876] 2 QBD 26 (CA)). In Venkataramaiya's Law Lexicon with Legal Maxims, 1983 (second edition), for a meeting, there must be at least two persons, and that this is the ordinary and natural meaning of the word.

13. One man could not hold a meeting within the meaning of the Companies Act.

14. According to The Law Lexicon, 1989 edition, "in the second case, East v. Bennett Bros. Ltd. [1911] 1 Ch. 163, Warrington J. following Sharp v. Dawes [1876] 2 QBD 26 (CA) and also the decision of Jessel M. R. in Sanitary Carbon

Co., In re [1877] WN 223 , observed that in an" ordinary case it was quite clear that a meeting must consist of more than one person, Awadhoot and Others Vs. State of Maharashtra and Others, ." In C. A. Lyon v. S. W. Oppenheim [1970] 1 Comp LJ (Ch D) edition, appointment of himself as liquidator at a meeting consisting of only one shareholder present was declared as nullity because when he proposed himself as liquidator, the other shareholders had left the meeting and from that moment, only one shareholder was present.

15. In State of Kerala Vs. West Coast Planters" Agencies Ltd., Cochin and Another, , the meaning of the word "meeting" has been described thus (headnote of AIR 1958 Ker 41) :

"The common sense view is that for a meeting there must be at least two persons. This common sense view is also the true view in law. According to the ordinary use of the English language, a meeting can no more be held by one person than it can be by none : [1876] 2 QBD 26 and [1911] 1 Ch 163, relied on."

The minutes of the extraordinary general meeting of the shareholders of B.S.B. alleged to have been held on Tuesday, February 22, 1994, at 10 a.m. at No. 4, Community Centre, Lawrence Road, Industrial Area, New Delhi, have been placed on record. A reading of the said minutes reveals that only three persons were present in the meeting, namely, T. K. Ramaswamy who has been described as director, B.S.B. ; Mr. Shalendra Sharma who has been described as authorised representative of Budgam, and Gurpal Singh, as member. The minutes of the meeting further show that T. K. Ramaswamy was elected chairman of the meeting and thereafter, the chairman declared the meeting open. Notice dated January 27, 1994, alleged to have been served by Budgam, convening of the extraordinary general meeting of the shareholders of B.S.B. was tabled and read. Notice dated January 3, 1994, was also tabled and read. Thereafter, in the meeting, special business of removal of directors and appointment of directors was allegedly taken up and resolutions to that effect were passed. The minutes of the meeting appear to have been signed by T. K. Ramaswamy, chairman.

16. A reading of the minutes shows that out of the shareholders who hold 10 shares of Rs. 10 each, only one shareholder, namely, Gurpal Singh was present and Shalendra Sharma, alleged authorised representative of Budgam, second shareholder, was present. On the record, there is a letter of Gurpal Singh dated April 7, 1994, whereby he had informed the board of directors of B.S.B. that he neither received notice regarding convening of the extraordinary general meeting of B.S.B., nor did he attend any such meeting purported to have been held on February 22, 1994, at New Delhi, either in person or by proxy. He has also mentioned that the question of his father, P. S. Sandhu, attending the meeting does not arise as he had expired last year. Gurpal Singh has also filed an affidavit dated July 27, 1994, in Civil Suit No. 460 of 1994 in which he has affirmed and sworn that he never attended any meeting, nor received notice of convening of the extraordinary general meeting alleged to have been held on February 22,

1994, at New Delhi. In his affidavit, he has stated that he contacted other shareholders who too have confirmed that they never received any notice, nor attended any such meeting. He has made mention of letter dated April 7, 1994, which he had written to the board of directors of B.S.B. in this regard.

17. If the contents of letter dated April 7, 1994, and affidavit dated July 27, 1994, are accepted, the extraordinary general meeting allegedly held on February 22, 1994, has to be declared as invalid for the reason that only one shareholder, namely, Shalender Sharma, representing Budgam, was present. Mr. G. Ramaswami, counsel for the defendants, has submitted that at the relevant time, Gurpal Singh not only attended the meeting, but was supporting the defendants. He is now seeking to get out of the same under the pressure of the plaintiffs. Mr. Ramaswami on the basis of presumption to be drawn u/s 195 of the Companies Act, as also on the basis of notice dated January 3, 1994, served by Budgam on B.S.B. and to all those directors sought to be removed, certificate of posting of letters dated January 3, 1994, notice dated January 27, 1994, served by Budgam on the other shareholders of B.S.B., certificate of proof of posting of letter dated January 27, 1994, copy of Form No. 32, dated February 22, 1994, filed with the Registrar of Companies, Jalandhar, minutes of the extraordinary general meeting of B.S.B., affidavit of T.K. Ramaswamy and affidavit of Shalendra Sharma, authorised by Budgam to vote and represent at the said extraordinary general meeting, has contended that this court should hold that a valid extraordinary general meeting was held and the board of directors were reconstituted. The course suggested by Mr. Ramaswami cannot be accepted for the reason that suspicious circumstances as pointed out by Dr. A. M. Singhvi, senior advocate, are so many and their consideration gives rise to an inference that the meeting was not held. The following are the suspicious circumstances ;

(i) Apart from certificate of posting-no evidence has been brought on record to show that notice of the extraordinary general meeting was served on Gurpal Singh or any other shareholder ;

(ii) No signature of Gurpal Singh are claimed to have obtained in any attendance register or any attendance slip or even by way of initials or in the so-called minutes book ;

(iii) Defendants in para 7 of their replication in Civil Suit No. 33 of 1994 have stated to the following :

"The plaintiffs reaffirm and reiterate that an extraordinary general meeting of the first plaintiff was held after compliance of all the provisions of the Companies Act, and the defendants who have no interest and/or can possibly claim no interest in the first plaintiff are making feeble attempts to attack the validity of the said meeting. The plaintiffs crave reference to the minutes book, attendance register and the other statutory records of (he first plaintiff to unequivocally demonstrate the veracity of the stand of the plaintiffs." Having averred that the attendance register was maintained, no attendance register has been placed on

record ; rather during the course of hearing of the matter, it was fairly conceded by counsel for the defendants that in fact there exists no attendance register.

(iv) Budgam had allegedly issued notice dated January 3, 1994, to the directors sought to be removed and notice dated January 27, 1994, to other shareholders for convening of extraordinary general meeting, but no mention of these notices calling for the extraordinary general meeting was made by Arun Kumar Jain in his application dated February 21, 1994, which he had filed before the Sub-Divisional Magistrate, Rajpura, u/s 145 of the Criminal Procedure Code, 1973. In his application u/s 145 of the Criminal Procedure Code, 1973, he has given the history of the litigation between the parties, but has conveniently not mentioned in regard to the meeting which had already been convened for February 22, 1994.

(v) Arun Kumar Jain filed Civil Suit No. 154 of 1994, on February 21, 1994, at Rajpura, praying for a declaration that he is a director and shall not be removed from the board of directors except in due course of law. If the extraordinary general meeting had already been convened for February 22, 1994, then where was the apprehension. In this suit, he had also prayed for ad interim injunction, but the same was not granted.

(vi) Again on February 22, 1994 itself, another suit, namely, Civil Suit No. 158 was filed at Rajpura, seeking permanent injunction, restraining the defendants therein (plaintiffs in Civil Suit No. 460 of 1994) from interfering in any manner in the affairs and management of the company. A reading of the plaint, Civil Suit No. 154 of 1994 reveals that no mention with regard to the extraordinary general meeting has been made. In this suit, relief of temporary injunction was sought for, but was not allowed. Later on, the suit was withdrawn after the filing of Civil Suit No. 33 of 1994 at Patiala.

It he noticed that in Company Petition No. 29 of 1993 before the Company Law Board, apart from other reliefs, the defendants had sought the relief of convening of the extraordinary general meeting and to restrain the respondents therein to act as directors and also from interfering in the affairs and management of the company. In this petition, they had prayed for interim relief, but the interim relief was not granted. One of the interim reliefs sought in the company petition was convening of the extraordinary general meeting. It appears that having failed to obtain that relief from the Company Law Board, the records have been manipulated by the defendants to show that the extraordinary general meeting was held on February 22, 1994. It may also be noticed at this stage that the Company Petition No. 29 of 1993 was filed with the specific averment that "the remaining 5 shareholders who holds 10 shares each in the first respondent-company have started acting according to the whims and fancies of SWC and MRC and consequently prejudicial to the interest of the petitioners who undisputedly hold 99.99 per cent. paid-up equity capital of the first respondent-company". The stand of the respondents thus clearly was that all the shareholders of B.S.B. except Budgam were colluding with the S.W.C. group. The stand now taken that Gurpal Singh had come to attend the meeting, seems to be

improbable. Moreover, having made the averment that the remaining five shareholders including Gurpal Singh were colluding with the S.W.C. group, the simplest thing for the defendants to have done would have been to take signatures of Gurpal Singh on the requisition notice or on the attendance register. The contention of Mr. Ramaswami is that the modes provided u/s 53 of the Companies Act for serving of notice or documents by the company are either by way of certificate of posting or by registered post, with or without acknowledgment due and in this case, the requisitionists having sent the notice under certificates of posting, the presumption in law is required to be drawn. According to him, once a certificate of posting has been placed on record, the court has to presume valid service of notice. It is true that u/s 53 of the Companies Act, the only modes for the service of documents/notices are the one as suggested by Mr. Ramaswami, but the presumption to be drawn u/s 53 of the Companies Act is not absolute, but rebuttable. The court, on the facts and circumstances of a case, may refuse to draw a presumption. In *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, in the context of certificates of posting and drawing of presumption under Sections 16 and 114 of the Evidence Act, the Supreme Court, opined that (at page 318) :

"The certificate of posting might lead to a presumption that a letter addressed to the Assistant Collector of Customs was posted on August 14, 1980, and in due course reached the addressee. But, that is only a permissible and not an inevitable presumption. Neither Section 16 nor Section 114 of the Evidence Act compels the court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of the case, the court may refuse to draw the presumption. On the other hand, the presumption may be drawn initially, but on a consideration of the evidence the court may hold the presumption rebutted and may arrive at the conclusion that no letter was received by the addressee or that no letter was ever despatched as claimed. After all, there have been cases in the past, though rare, where postal certificates and even postal seals have been manufactured". Again, in *Shiv Kumar v. State of Haryana* [1994] 87 FJR 66 : JT [1994] 4 P&H 162 , the apex court held that "we have not felt safe to decide the controversy at hand, about the service of notice on employees, on the basis of the postal certificates produced before us, as it is not difficult to get such postal seals at any point of time". In *Malleswara Finance and Investments Company P. Ltd. v. CLB* [1995] 82 Comp Cas 836, a Division Bench of the Madras High Court in some dispute between some parties to these proceedings had also an occasion to deal with the presumption required to be raised in regard to service of notice/ documents sent under certificate of posting. Before the Division Bench, it was argued that reading of the section amounts to a deemed fiction and once a certificate of posting is produced with the address of the addressee, there is a deemed fiction that the cover is received by the addressee. The learned judges of the Division Bench repelled the argument by saving that (at page 881) : "A presumption can be drawn only if there is no other evidence available. In this case, the primary evidence regarding the posting of the letter is not produced.

The best evidence that can be produced in this case is the despatch register of the company and the books of account showing the expenses incurred by the company for posting the letters, etc. None of these documents is produced. When the primary evidence is not produced, a presumption on the basis of Section 53(2) of the Companies Act cannot be made use of since the posting of the letter is in dispute. Only if a document is sent by post, the presumption u/s 53 of the Companies Act can arise. When there is no evidence regarding the posting of the letter, the document relied on by the appellant cannot be made use of". In the circumstances of that case, service of documents/letters sent under alleged certificates of posting was not accepted. In this case, what has been produced are the plain papers on which addresses are typed, containing seals of one post office situate at New Delhi, and the postal stamps are also of one type, though there is a gap of 24 days in sending of the first notice and the second notice. The despatch register or books of account showing the expenses incurred by the requisitionists towards the posting of letters have not been produced. These circumstances read with other circumstances as detailed in the earlier part of the judgment, lead to an inference that these notices were not sent. No reliance whatsoever can be placed on the certificates of posting under which notices were allegedly sent to the directors and the shareholders. In this view of the matter, the contents of the letter of Gurpal Singh, shareholder, dated April 7, 1994, and his affidavit dated July 27, 1994, deserve to be accepted in preference to the affidavits of T. K. Ramaswami and Shalendra Sharma. Gurpal Singh has 10 shares of Rs. 10 each and has no interest as such in the affairs of the company, but T. K. Ramaswami and Shalendra Sharma are certainly interested persons and have reasons to support the cause of their masters. So far as the presumption u/s 195 read with Section 193 of the Companies Act in regard to minutes of the alleged extraordinary general meeting is concerned, the same is neither applicable nor available to the requisitioned extraordinary general meeting u/s 169 of the Companies Act. In V.G. Balasundaram and others Vs. New Theatres Carnatic Talkies Pvt. Ltd. and others,), it has been held by the Madras High Court that (at page 345) : "No presumption of the minutes would arise with reference to the minutes of the requisitioned meeting. Sections 193 and 195 of the Companies Act will not be applicable to the minutes of the requisitioned meeting and the minutes have to be proved as a matter of fact". Mr. G. Ramaswami then referred to internal FAX message of one Gurpal Singh to one S. C. Majumdar of S.W.C., to contend that the plaintiffs in Civil Suit No. 460 of 1994 had the knowledge of convening and holding of the extraordinary general meeting. The FAX message referred to by Mr. Ramaswami, is dated March 4, 1994, by which date the civil suit at Patiala had been filed wherein reference was made to the alleged E.G.M. The contempt petition too had been filed on March 3, 1994, again in which, reference had been made to the convening and holding of the extraordinary general meeting. Counsel for the plaintiffs in Civil Suit No. 460 of 1994 had appeared on behalf of the caveator on March 3, 1994, when the matter was taken up in contempt proceedings. The FAX message merely raised a query as to the convening and holding of the

extraordinary general meeting and is neither of any consequence nor in any way establishes that the plaintiffs knew the factum of convening and holding of the extraordinary general meeting, before February 22, 1994.

18. In order to determine as to whether proceedings of the meeting and resolution passed therein are valid, it is necessary to notice the provisions of Section 169 of the Companies Act. Under the section, the board of directors of the company on requisition of such number of members of the company as is specified in Sub-section (4), has the duty to call forthwith the extraordinary general meeting of the company. If the board does not, within 21 days from the date of valid requisition, proceed to call the meeting for consideration of the matter set out in the requisition, the requisitionists themselves are empowered to call a meeting of the company. Under Sub-section (7), the meeting of the requisitionists is to be called in the same manner as nearly as possible, in which meetings are to be called by the board. The meeting held in pursuance of a valid requisition is an extraordinary general meeting of the company. In the present case, the record reveals that Budgam vide notice dated January 3, 1994, addressed to B.S.B. and to the directors, called upon the company to convene the extraordinary general meeting. The operative part of it reads--"Pursuant to Section 169 of the Companies Act, 1956, we, Budgam Finance and Investment Co. Pvt. Ltd. holding 5,50,000 out of the total 5,50,050 paid up equity shares of Bhankerpur Simbhaoli Beverages Pvt. Ltd., amounting to 99.9 per cent. of the paid-up equity capital of (and voting rights in) Bhankerpur Simbhaoli Beverages Pvt. Ltd., require you to convene an extraordinary general meeting and if thought fit, passing ordinary resolutions, the resolutions set forth of which we give you special notice in accordance with Sections 190 and 284(2) of the said Act". The notice appears to have been sent by one Utpal Kumar Ganguly, director. Along with the notice, the explanatory statement has been annexed, giving the purpose of calling of the extraordinary general meeting. In the explanatory statement, it has been mentioned that the directors who are employees/associates of S.W.C., namely, S. Roy, A. S. Chatterji, A. Sadasivam, Deepak Das Gupta, Srijit Mullick, R. S. Ahluwalia, V. Jayaraman and P. R. Pandya (who is alleged to have resigned with effect from May 29, 1992), are acting against the interest of the company and their removal and acceptance of the resignation of P. R. Pandya from the board is sought by the requisitionists. It has further been mentioned therein that persons proposed to be appointed as directors of the company are--S/Sh. M. D. Chhabria, Utpal Kumar Ganguly, Ashok Jain, Shyam Luthria, C. K. Viasu, Shiv Shankar Sanyal and Nandu "S. Chhabria. It is the case of the defendants that after they had served notice, dated January 3, 1994, along with the explanatory statement on the company and the directors sought to be removed, the board of directors failed to convene the extraordinary general meeting as sought for by the requisitionists within 21 days of the sending of notices and, therefore, as provided under Sub-section (7) of Section 169 of the Companies Act, the requisitionists convened the extraordinary general meeting and notice dated January 27, 1994, in this regard was sent to the other shareholders, namely, P.

S. Sandhu, Gurpal Singh, G. S. Mann, J. S. Mann and P. R. Pandya, who hold 10 shares of Rs. 10 each. Notice dated January 27, 1994, has not been addressed to any other person except the shareholders and on the U.P.C. receipts, the names of these very persons are mentioned, meaning thereby that notice dated January 27, 1994, had not gone to anybody else except the shareholders. The business to be transacted in the extraordinary general meeting was for the removal of directors and appointment of new directors. The manner in which directors may be removed, is laid down in Section 284 of the Companies Act. As per Sub-section (1), a director may be removed by ordinary resolution, but under Sub-section (2), special notice is required to be given to the company of any resolution to remove a director or to appoint somebody instead of directors so removed at the meeting at which he is removed. Under Sub-section (3), on receipt of notice of resolution to remove a director, the company has to forthwith send a copy thereof to the director concerned and the director, whether or not he is a member of the company, is entitled to be heard at the resolution of the meeting. Thus, to remove a director u/s 284 of the Companies Act, certain essential requirements are to be fulfilled. The director concerned must be given a reasonable opportunity to make a representation against the proposal for his removal and the shareholders should have also adequate opportunities of being acquainted with such representation(s) before they subscribe to such resolution for removal. u/s 190 of the Companies Act, special notice of the resolution to remove directors as required by Section 284 of the Companies Act, has to be given to the company not less than 14 days before the date of meeting at which he is to be removed, On receipt of notice of intention to move any such resolution, the company has to give its members notice of the resolution in the same manner as it gives notice of the meeting and if that is not practicable, then notice is required to be given either by advertisement in a newspaper having appropriate circulation or in any other mode allegedly the requisitionists, not less than seven days before the meeting. Admittedly, no special notice of the resolution was given to the company. It has been held by the Kerala High Court in *Queens Kuries and Loans (P.) Ltd. Vs. Sheena Jose and Others*, , that "omission to serve special notice is a serious error in the conduct of the proceedings. The directors have been denied their statutory right to the notice of making representation and to persuade the members to reject the resolution. A resolution removing the directors is violated by failure to fulfil the requirement of law. The resolution in removing the directors is, therefore, invalid". Respectfully agreeing and following the view taken in *Queens Kuries and Loans (P.) Ltd.*'s case [1993] 76 Comp Cas 821). I hold that the resolution, removing the directors, alleged to have been passed in the extraordinary general meeting held on February 22, 1994, is invalid. Yet there is another aspect of the matter with regard to removal of the directors. Form No. 32 filed with the Registrar of Companies, pursuant to Section 303(2) of the Companies Act, placed on record shows that as on March 12, 1992, the directors, namely, S. Roy and R. S, Ahluwalia had resigned and on July 30, 1993, in their place, T. K. Ravishankar and M.M. Gupta had been appointed as such. On September 16, 1993. D.

Dasgupta had resigned. However, in notices dated January 3, 1994. and January 27, 1994, served u/s 169 of the Companies Act, S. Roy, R. S. Ahluwalia and D. Dasgupta were sought to be removed and were allegedly removed in the extraordinary general meeting stated to have been held on February 22, 1994. But, as is apparent from Form No. 32 filed with the Registrar of Companies, on March 12, 1992, S. Roy and R. S. Ahluwalia and on September 16, 1993, D. Dasgupta had already resigned. This fallacy in the resolution alleged to have been passed in the extraordinary general meeting dated February 22, 1994, was brought to the notice of the defendants by the Registrar of Companies when Form No. 32 regarding reconstitution of the board of directors in the extraordinary general meeting dated February 22, 1994, was sought to be registered with the Registrar of Companies. The minutes of the meeting of the extraordinary general meeting show that T. K. Ramaswamy attended the alleged extraordinary general meeting and indeed presided over it. However, he was not even sent U.P.C. notice. T. K. Ramaswamy is admittedly not a shareholder of B.S.B. It is not understood as to in what capacity he had attended the extraordinary general meeting and had presided over the meeting, whereas Section 175 of the Companies Act, provides that shareholders may elect a chairman from amongst themselves. I have my doubts that the minutes alleged to have been signed by T. K. Ramaswamy who presided over the meeting, can be said to be valid minutes of the meeting or any presumption u/s 195 of the Act can be raised on these minutes.

19. Dr. A. M. Singhvi, senior advocate, as well as Mr. G. Ramaswami, senior advocate counsel, had cited various judgments for and against the proposition that under Sub-section (2) of Section 166 of the Act, the meeting could be held only at the registered office of the company or at some other place of the city, town or village in which the registered office of the company is situate. In view of my finding that the meeting was not held and that the resolution, if any, passed was not valid, it is not necessary to go into the merits of contentions of the respective counsel and also the judgments cited by them.

20. The question of suppression of material facts is not academic as has been contended by Mr. G. Ramaswami, learned counsel. Civil Suit No. 33 of 1994 was filed on March 2, 1994, purporting to be on behalf of B.S.B. and Budgam through Arun Kumar Jain, director. The relief sought in the suit was for injunction against the defendants therein restraining them from holding out as directors/representatives of B.S.B. and from interfering in any manner in the management and affairs of the company. It was in this case for the first time that it was revealed that the extraordinary general meeting was held on February 22, 1994, in pursuance of notices dated January 3, 1994, and January 27, 1994, and the board was reconstituted on February 22, 1994. A suit was filed before the Senior Sub-Judge, Patiala, but in the plaint, no mention has been made about Civil Suit No. 154 of 1994, dated February 21, 1994, which Arun Kumar Jain had filed at Rajpura, and relief of interim injunction was not given. A mention has also not been made of Civil Suit No. 158 of 1994, dated February 22, 1994, filed at

Rajpura, seeking injunction restraining the defendants therein from interfering in any manner in the affairs and management of the company. In this suit too, interim relief was not given. It was to the knowledge of Arun Kumar Jain that B.S.B. through Sarabhjit Singh had filed a suit at Rajpura against Budgam and others, i.e., Suit No. 831 of 1993 and also Civil Suit No. 261 of 1993 against Arun Kumar Jain, seeking the declaration of his appointment as director as void and illegal and also injunction against the defendants for restraining them from interfering in the affairs and management of the company, but no mention of these suits too was made. The filing of Company Petition No. 29 of 1993 before the Company Law Board and declining of the prayer for the interim relief of convening the extraordinary general meeting too was within the knowledge of Arun Kumar Jain, but this fact has been omitted. The Senior Sub-Judge, Patiala, registered the suit on March 2, 1994, and on the application, pending notice to the other side, granted interim injunction restraining the defendants therein from holding out as directors/representatives of B.S.B. and from interfering in any manner in the affairs and management of the company. Aggrieved by the aforementioned order of interim injunction, an appeal was filed on behalf of Sarabhjit Singh and others. The learned additional District Judge, Patiala, vide his order dated March 18, 1994, vacated the order of the trial court, by an interim order pending the appeal. Aggrieved against the order of the Additional District Judge, Civil Revision No. 1109 of 1994 has been filed in this court wherein with the consent of the parties, the revision petition is being disposed of along with application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, filed in the court at Patiala. The contention of Mr. Ramaswami that the suits filed earlier at Rajpura were on a different cause of action, whereas the suit at Patiala is based on another cause of action and as such, the filing of the earlier suits was not a material fact requiring disclosure, and that being so, there is no suppression of material facts, cannot be accepted. In the earlier suits filed at Rajpura, the relief sought was similar to the one claimed in the Patiala suit, i.e., for restraining the defendants from interfering in the management and control of the company. It is a well recognised principle that for the grant of equity relief the plaintiff must come to the court with clean hands and he must disclose all the facts for and against him in order to claim the discretionary relief of injunction. A reference may be made to the decision in *King v. General Commissioners for the purposes of the Income Tax Acts for the District of Kensington* [1917] 1 KB 486, wherein the court held that "if on the argument showing cause against a rule nisi the court comes to the conclusion that the rule was granted upon an affidavit which was not candid and did not fairly state the facts, but stated them in such a way as to mislead and deceive the court, there is power inherent in the court, in order to protect itself and prevent an abuse of its process, to discharge the rule nisi and refuse to proceed further with the examination of the merits". The Madras High Court in *V. Tamilselvan v. State of Tamil Nadu* [1993] 1 MLJR 26, refused the relief in a writ petition by saying that the court would be fully justified in refusing to exercise its discretion in favour of a person who has abused the process of a court and suppressed the relevant facts and obtained

orders. It also held that the court should not be a party and extend help to a party who is playing fraud on the court. In *Udai Chand Vs. Shankar Lal and Others*, , special leave was obtained by making false and misleading assertions in the petition. The Supreme Court relying upon *Hari Narain Vs. Badri Das*, and *Rajabhai Abdul Rehman Munshi Vs. Vasudev Dhanjibhai Mody*, , revoked the leave and held that "a party who approaches this court invoking the exercise of this overriding discretion of the court must come with clean hands. If there appears on his part any attempt to overreach or mislead the court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the court would be justified in refusing to exercise the discretion or if the discretion has been exercised, in revoking the leave to appeal granted even at the time of hearing of the appeal". In *All India State Bank Officers Federation and Others Vs. Union of India (UOI) and Others*, , and *G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another*, , the Supreme Court not only disapproved of the conduct of the petitioner therein in making statements in the petitions and affidavits recklessly and without proper verification, but also refused to grant relief, when it found that the petitioner therein seeking relief had not come to the court with frank and full disclosure of facts. In this context, a Full Bench of this court in *Charanji Lal and Others Vs. Financial Commissioner Haryana, Chandigarh and Others*, , held thus (headnote):

"Mala fide and calculated suppression of material facts which, if disclosed, would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits of both the interim and ultimate relief claimed--Failure to mention all these material facts was neither inadvertent nor was occasioned by any bona fide omission--Held that the writ petitioners, in the present case, had by their own conduct disentitled themselves to the relief which they sought to claim".

Although some of the judgments, referred to earlier, are in regard to special leave petitions and writ petitions, there is no reason as to why the principle as laid down in the said judgments cannot be applied to suits and applications for injunction filed under Order 39, Rules 1 and 2 of the Code of Civil Procedure. For this (see *M/s. Seemax Construction (P) Ltd. Vs. State Bank of India and another*,), As already noticed, in the Patiala suit, the plaintiffs therein have not chosen to mention about the proceedings pending in various suits at Rajpura and that they were unsuccessful in getting interim relief from the court at Rajpura and also from the Company Law Board in Company Petition No. 29 of 1993. The reason for not mentioning the above facts is obvious. If they had disclosed about the earlier proceedings, in all probability the Senior Sub-Judge, Patiala, would not have granted the interim relief. Although in the light of the aforementioned judgments, I would be justified in not embarking on the merits of the case, but having considered the case on the merits too, I am of the view that the plaintiff in Civil Suit No. 33 of 1994 has failed to make out any ground for grant of interim relief as prayed for in the civil suit.

21. Last, but not least, "forum-shopping" by the plaintiffs in Civil Suit No. 33 of 1994 deserves to be taken note of. In para 20 of the plaint, the plaintiffs have mentioned "that the cause of action to file the present suit has arisen to the plaintiffs when the defendants hatched the conspiracy at Patiala Moreover, the branch offices of two of defendants Nos. 13 and 14, who are interfering in the management, are at Patiala, whereas all other defendants are the agents/employees of defendants Nos. 13 and 14". Again in para 21, it has been stated that the registered office and the factory unit of the first plaintiff is situated in District Patiala and the cause of action has arisen to the plaintiffs within the local limits of the jurisdiction of the court and thus, the court has ample jurisdiction to entertain and try the suit. The description of defendants Nos. 13 and 14 as given in the plaint is, "13. Shaw Wallace Company Ltd., 4, Bankshall Street, Calcutta-700 001, with branch office at Patiala, and, 14. Cruickshank and Company Ltd., 40, Bankshall Lok Community, Vasant Vihar, New Delhi-110 057, with branch office at Patiala". It has not been disclosed as to at what place, the branch office at Patiala of defendants Nos. 13 and 14 is situate. Admittedly, the industrial unit and the registered office of B.S.B. is at Dera Bassi which falls within the jurisdiction of the civil courts at Rajpura. Sections 15 to 20 of the Code of Civil Procedure, regulate the forum for institution of the suits. Section 15 of the Code states that every suit shall be instituted in the court of the lowest grade competent to try it. Section 16 states that a suit shall be instituted where the subject-matter is situate. Section 20, inter alia, provides that subject to the limitations prescribed in Sections 16 to 19 of the Code of Civil Procedure, a suit shall be instituted in a court within the local limits of whose jurisdiction the defendant or each of the defendants, where there are more than one, at the time of commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain ; or any of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain ; provided that in such case either the leave of the court is given, or the defendants who do not reside or carry on business or personally work for gain, acquiesce, in such institution. The Explanation to Section 20 of the Code provides that a corporation shall be deemed to carry on business at its sole or principal office in (India) or in respect of any cause of action at any place where it has also a subordinate office at such place. On a perusal of the averments made in the plaint and in the light of the aforementioned provisions of the Code of Civil Procedure, I am of the view that the plaintiff has failed to show that cause of action had accrued to the plaintiff within the territorial jurisdiction of the court at Patiala. What has been stated in paras 20 and 21 of the plaint is that the defendants had hatched a conspiracy at Patiala. The averment is not only vague but also gives no particulars of the kind and nature of conspiracy. The registered office and factory unit of B.S.B., no doubt, is situated within the jurisdiction of Patiala district, but the registered office and factory unit falls within the territorial jurisdiction of the Rajpura court, and the Rajpura court alone has jurisdiction to entertain and try the suits where the subject-matter is situate. In Shrikant Gupta

v. Subodh Kumar Gupta [1993] 2 PLR 621, a suit was entertained by the Senior Sub-Judge, Chandigarh, on the mere allegation that the branch office of the firm is situate within the territorial jurisdiction of the Chandigarh court. The order entertaining the suit was set aside in revision by this court. The Supreme Court in Subodh Kumar Gupta v. Shrikant Gupta [1993] 2 PLR 728, while affirming the judgment of this court in Shrikant Gupta's case, held that a mere bald allegation that the firm was having a branch office at Chandigarh, will not confer jurisdiction unless it is shown that a part of the cause of action arose within the territorial jurisdiction of that court. In this case too, the only allegation is that branch offices of two of defendants Nos. 13 and 14, who were interfering in the management, are at Patiala and the other defendants are the agents/employees of defendants Nos. 13 and 14. This bald allegation cannot confer jurisdiction on the court at Patiala when no cause of action had accrued within the territorial jurisdiction of the Patiala court. No doubt, the District Judge, Patiala, has the administrative control over the courts at Rajpura, but for the matters relating to the subject-matter falling within the territory of Rajpura, powers have been given to the civil courts at Rajpura to entertain and try the civil suits. It was for this reason that the earlier suits were filed by the parties at Rajpura. Since the plaintiffs had failed to obtain any interim relief from the court at Rajpura, the suit at Patiala was filed. Thus, I am prima facie of the view that the court at Patiala has no territorial jurisdiction to entertain and try the suit.

22. During the course of arguments, some controversy was raised as to who was in possession as on the date when the suit at Patiala was filed, but it was fairly conceded by Mr. G. Ramaswami that the plaintiffs in the Patiala suit, at no time prior to February 22, 1994, came to control, run or manage B.S.B. The reason for this concession is apparent from the proceedings before the Sub-Divisional Magistrate, Rajpura. Arun Kumar Jain filed a complaint on February 21, 1994, u/s 145 of the Criminal Procedure Code, in the Court of the Sub-Divisional Magistrate, Rajpura, and the prayer made in this complaint was for restraining the respondents therein from interfering in the peaceful possession of the property in dispute, besides a prayer for police protection. On this complaint, the Sub-Divisional Magistrate vide his order of even date, having found a prima facie case for taking action u/s 145 of the Criminal Procedure Code, ordered the summoning of the respondents therein for March 17, 1994, and meanwhile, the respondents were restrained from interfering in the possession of the rightful claimants, including Arun Kumar Jain who described himself as the director of B.S.B. The order also mentions that a copy of the order be sent to the S.H.O. of P. S, Dera Bassi for compliance. It was on the strength of this order that the plaintiffs in the Patiala suit tried to take control of the industrial unit. It further appears from the record of the proceedings before the Sub-Divisional Magistrate, Rajpura, that on March 2, 1994, the Sub-Divisional Magistrate on a fresh consideration of the matter, as also on a perusal of the report of the S.H.O., P. S. Dera Bassi, felt satisfied that the proceedings initiated at the behest of Arun Kumar Jain are vitiated and an intended abuse of the process of the court. In his

order dated March 2, 1994, the Sub-Divisional Magistrate recorded that "as a matter of fact there is no such dispute with regard to possession of the subject-matter referred to above which is likely to cause breach of peace or disturb the public tranquillity. Even as per the latest report of the S.H.O. P. S. Dera Bassi dated February 9, 1994, as also the report as recent as February 28, 1994, Shri Sarabhjit Singh representing party No. 2 is in peaceful possession along with his work force and no imminent danger to peace is apprehended. Being satisfied that it is unnecessary to carry on these proceedings u/s 145 of the Criminal Procedure Code, I hereby drop all the proceedings in respect of the above said distillery". It was only on March 2, 1994, when the Sub-Divisional Magistrate decided to drop the proceedings, that the suit at Patiala was filed and on that very date the plaintiffs were successful in obtaining the interim injunction. After having obtained the interim injunction from the Senior Sub-Judge, Patiala, C.O.C.P. No. 199 of 1994 was filed in this court on March 3, 1994. On March 4, 1994, G. R. Majithia J. on finding that the parties were at issue as to which of the parties is in actual physical possession of the company, on agreement of counsel for the parties directed the Chief Judicial Magistrate, Patiala, to supervise the working of the company till March 9, 1994, and that order is continuing till date. In view of the order in the contempt petition, none of the parties is in control of the company. As a matter of fact, no manufacturing activity took place between February 22, 1994, and presently too, no manufacturing is being done in the industrial unit and, therefore, as to who was in possession at the time of filing of the Patiala suit is not very important for the decision of the revision petition and the application under Order 39, Rules 1 and 2 of the Code of Civil Procedure.

23. Mr. G. Ramaswami, senior advocate, has also contended that the civil suit at Rajpura is liable to be stayed because the same was filed subsequent to the filing of the suit at Patiala. Both the suits are at the initial stage and it would cause no prejudice to any of the parties if both the suits are ordered to be consolidated for purposes of evidence and decision. Accordingly, it is ordered that Civil Suit No. 33 of 1994 pending in the Court of the Senior Sub-Judge, Patiala, shall stand transferred to the Court of the Additional Senior Sub-Judge, Rajpura, whereafter it shall be tried and decided along with Civil Suit No, 460 of 1994.

24. In view of what has been discussed above, I am of the considered view that the plaintiffs in Civil Suit No. 33 of 1994 have miserably failed to satisfy this court that they have in their favour a prima facie case or the court's interference is necessary before their rights can be established on trial. On the other hand, I am also of the considered view that the plaintiffs in Civil Suit No. 460 of 1994 have a prima facie case and the balance of convenience is also in their favour and they would suffer an irreparable loss and injury in case the defendants in that suit are not restrained from interfering with the working/affairs of the company on the basis of the alleged resolutions passed in the extraordinary general meeting purportedly held on February 22, 1994. Thus, during the pendency of the suit, an ad interim injunction is granted in favour of the plaintiffs in Civil Suit No. 460 of 1994 restraining the defendants from interfering in the

affairs of the company and acting on the basis of the alleged resolutions passed in the extraordinary general meeting purportedly held on February 22, 1994. The Chief Judicial Magistrate, Patiala, who is in possession of the industrial unit, under the orders of this court in the contempt petition, is directed to give physical possession of the industrial unit to the plaintiffs in Civil Suit No. 460 of 1994.

25. In consequence of the aforementioned order, the revision petition and also the application for injunction filed in Civil Suit No. 33 of 1994 shall stand dismissed. As a result of dismissal of the revision petition and application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, the appeal pending before the Additional District Judge, Patiala, having become infructuous too shall stand dismissed. There shall, however, be no order as to costs.

26. It is made clear that the decision given in this revision petition is only for the purpose of deciding the revision petition as also the application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, filed in Civil Suit No. 460 of 1994 as had been agreed by learned counsel for the parties, Therefore, any observation made herein shall not be construed to be an expression on the merits of the cases.

27. Records of the civil suits and also the documents which have been filed in this court be sent to the Court of the Additional Senior Sub-Judge, Rajpura, who has been ordered to decide both the suits on the merits.