

(1952) 03 CAL CK 0009
In the Calcutta High Court
Case No : A.F.O.O. No"s. 19 and 20 of 1951

Bimal Singh Kothari and Another	Vs	APPELLANT
Muir Mills Co. Ltd. and Others		RESPONDENT

Date of Decision : 05-03-1952

Acts Referred:

Companies Act, 1913 — Section 79, 79(1)
Company Regulations, 1956 — Regulation 112

Citation : AIR 1952 Cal 645 : (1952) 1 CALLT 37 : (1952) 22 CompCas 248 : 56 CWN 361 : (1954) 1 ILR (Cal) 185

Hon'ble Judges : Harries, C.J; Banerjee, J

Bench : Division Bench

Advocate : S.M. Bose, General and A.K. Sen, for the Appellant; G.K. Mitter, for the Respondent

Judgement

Banerjee, J.—This is an appeal from an order made by S. R. Das Gupta J., on January 5, 1951, revoking leave granted to the plaintiffs to institute the suit under Clause 12 of the Letters Patent. That clause provides that if the cause of action shall have arisen in part within the local limits of the Ordinary Original Jurisdiction of this Court, the plaintiffs may file the suit with leave of the Court first obtained. The leave under this clause is a condition precedent to jurisdiction. Unless the condition is fulfilled by obtaining the necessary leave to sue, the Court will have no jurisdiction to entertain the suit. If the suit is instituted with the leave, and thereafter the leave is revoked, the Court will have no jurisdiction to try the suit. The revocation of leave deprives the plaintiff of his right to have his suit tried by the Court of his choice. The matter, therefore, is very serious to the plaintiff.

2. The granting and revocation of the leave is a matter in the discretion of the Court, to be exercised on well established judicial principles.

3. In our Court, the practice is that such leave is asked for at the time, of the presentation of the plaint to the Master. The Master goes through the plaint, and

if he finds that the allegations in the plaint require that such leave should be obtained, he makes an endorsement on the plaint to the effect that such leave has been asked for. Then the plaint is presented before a Judge of this Court sitting on the Original Side for the grant of the leave. The Judge after perusal of the plaint grants such leave, if he thinks fit. But the whole thing in the first instance is done "ex parte", and naturally so, because until the leave is granted, there is no suit filed, and, therefore, no question arises as to hearing the defendant on an application for granting the leave. If the defendant is so advised, he may make an application to the Court for revocation of the leave, and the matter is then heard on notice to the plaintiff, and suitable orders are made. If a case is made out, the leave granted is revoked.

4. The plaintiffs in this case allege in their plaint that as all the defendants do not reside or carry on business within the local limits of the Ordinary Original Jurisdiction of this Court, and inasmuch as it may be contended that a part of the cause of action has arisen outside the jurisdiction, they ask for leave under Clause 12 of the Letters Patent to file the suit. The leave was asked for and, as usual, it was granted "ex parte."

5. The defendants took out a Master's summons dated August 5, 1950, for, "inter alia" revocation of the leave. The summons was supported by the petition of the defendant Company duly affirmed, and an affidavit was filed in opposition to the petition. The matter came up before S. R. Das Gupta, J., who after hearing the parties made the order revoking the leave. From this order, the appeal which we have heard has been taken.

6. The plaintiffs are small share-holders of the defendant company, Muir Mills Co. Ltd.,- referred to in this judgment as the defendant company, - described in the cause title as carrying on business through its Managing Agents the Indian Textile Syndicate Ltd., and its sole selling agent, the Cotton Textile Corporation Ltd., at 9-A, Esplanade East, Calcutta, within the local limits of the Ordinary Original Jurisdiction of this Court. The first plaintiff is described in the cause title as a merchant residing at No. 26, Indian Mirror Street, Calcutta. It is also alleged that the second plaintiff carries on business at 7, Lyons Range, Calcutta. They have filed the suit in their individual capacity as share-holders of the defendant company, and, also on behalf of all other shareholders of the defendant company, except those shareholders who are defendants to the suit. Besides the defendant company, there are nine defendants.

The second defendant is the said Indian Textile Syndicate Ltd., a company registered under the Indian Companies Act, having its registered office at 9-A, Esplanade East aforesaid. Defendant No. 5, Hanuman Prasad Dhanuka, is described in the cause title as of 180, Chitta Ranjan Avenue, in Calcutta, within the said jurisdiction. The sixth defendant is described as of 7, Wellesley Place, Calcutta within the said jurisdiction. Thus, the plaintiffs, defendants 1, 2, 5 and 6 either reside or carry on business within the local limits of the Ordinary original Civil jurisdiction of this Court. The other defendants, six in number, are described

in the cause title as either being residents of, or carrying on business at, places outside the said jurisdiction. Hence, according to the plaintiffs, was the necessity for obtaining the leave.

7. The plaintiffs' case as pleaded in the plaint, shortly put, is as follows:

8. Prior to September 25, 1947, two Directors of the Company, called the Managing Directors, were in charge of the management of the affairs of the company. They have since retired. Some time prior to February 1947, the defendant Hanuman Prasad Dhanuka and two Nepalese gentlemen entered into a partnership for the purpose of buying the majority of the shares of the defendant company with a view to get a controlling power in the affairs of the company. Pursuant to the agreement, the partners acquired 19540 Preference Shares and 5085 Ordinary Shares of the Company. As the Preference Shares carry with them the right to vote, it is alleged that the three partners have got a controlling interest in the affairs of the company.

9. On or about February 15, 1947, defendant Dhanuka was appointed a Director of the defendant company. On or about June 20, 1947, a Company under the name of the Cotton Textile Corporation Ltd., was registered under the Indian Companies Act. On July 5, 1947, another Company, namely, the said Indian Textile Syndicate Ltd., was likewise incorporated. The shares of both these Companies were held by the partners in equal shares, each having an one-third share in his name or in the name of his nominee.

10. On or about July 1, 1947, the Directors of the defendant Company appointed the Cotton Textile Corporation Ltd. as the selling agent of the defendant company. The said appointment has been accepted by the Cotton Textile Corporation Ltd. It is alleged in the plaint that having acquired a controlling power in the defendant company, the defendants Nos. 3, 5, 6 and 7 decided to appoint the Indian Textile Syndicate Ltd. as its Managing Agent and also to change the Articles of the defendant company in such a manner as would give them the entire control of the defendant company and stifle the minority shareholders. It is further alleged that with that end in view, they issued a Notice and a Circular on September 25, 1947, for a meeting to be held on October 20, 1947. The said notice and Circular were sent to and received by the plaintiffs at their residence in Calcutta. It is alleged in the plaint that there was no Managing Agent before this time, and the Directors were proposing to get their nominee appointed as the Managing Agent. The plaint further alleges that the Notice was misleading and was intended to be so

In the Notice, it was alleged that the proposed changes in the Articles were necessary for the management of the Company's affairs by a Managing Agent instead of the Managing Directors. It is also alleged that the real object of the Meeting and of the proposed changes and the Managing Agency agreement was not disclosed to the plaintiffs or the other shareholders. It is submitted that such non-disclosure amounted to fraud and was made with the deliberate object of

misleading the shareholders into the belief that no important or unusual or extraordinary change was going to be made in the Meeting. The plaintiffs allege that they did not attend the meeting being misled by the Notice into the belief that no radical change would be made in the Articles of Association nor any extra provision would be made in respect of the remuneration, and terms of appointment, of the Managing Agent.

11. The changes in the Articles made at the Meeting held on October 29, 1947, are large in number, two of them at least are very important, namely, relating- to (1) the appointment of the Managing Agent and (2) the voting right.

Under the old Articles, each share carried with it the right to vote. Under the new Article that was not so. The old Article 97 read as follows:

"97. On a show of hands, every member present in person shall have one vote, and upon a poll, every member present in person or by proxy shall have one vote for every share held by him, provided that no company shall vote by proxy so long as a Resolution of its Directors under the provisions of Section 80 of the Act is in force."

The new Article which replaces the old Article reads:

"99. Subject to any special rights or restrictions as to voting upon which any shares may be held on a show of hands, every member present in person or by general proxy (as defined by Article 103 hereof but who is not a member of the company or who is a member not qualified to vote) shall have one vote and upon a poll, every member present in person or by proxy shall have one vote provided that no Company shall vote by proxy so long as a Resolution of its Directors under the provisions of Section 80 of the Act, is in force."

12. The difference in the two Articles is obvious. The right to vote is a very important right of a shareholder, and the new Articles have restricted that right.

13. There is no dispute before, us that the changes are many and are material.

14. The Notice which was served on the shareholders on September 25, 1947, did not disclose the changes that were intended to be effected in the Articles of the defendant company at the meeting, which was held on October 20, 1947. The Notice ran as follows :

" THE MUIR MILLS COMPANY LIMITED Notice is hereby given that an Extraordinary General Meeting of the above-named Company will be held at the registered office of the Company, Kanpur, on Monday, the 20th day of October, 1947 at 3 P.M. to consider and, if thought fit, to pass, with or without modification, the following Resolutions : -

1. (As a Special Resolution) -that the Regulations contained in the document submitted to this Meeting, and for the purpose of identification subscribed by the Chairman thereof, be and the same are hereby approved and that such Regulations be and they are hereby adopted as the Articles of Association of the

Company in substitution for and to the exclusion of all existing Articles thereof.

2. (As a Special Resolution) - that Indian Textile Syndicate Ltd., be appointed Managing Agents of the Company for the period, at the remuneration, and, on the terms contained in the draft of an agreement, providing for the same, submitted to this Meeting and signed in the margin by the Chairman of the Meeting by way of identification, which said agreement be and the same is hereby approved and that the Directors shall be and they are hereby authorised to carry the said agreement into effect as on and from the 1st day of October 1947, with full liberty, subject nevertheless to the provisions of the Indian Companies Act, 1913, to agree to any modification of such agreement before the same is executed"

Along with the Notice, there was a Circular in which it was, "inter alia", stated that copies of the proposed new Articles of Association and of the Managing Agency agreement were available for inspection at the office, - meaning the registered office of the defendant Company, which is at Kanpur.

15. The plaintiffs claim various reliefs, inter alia", a declaration that the Special Resolutions Nos. 1 and 2 passed on 20th October 1947 are void, inoperative "and should be set aside. There is no dispute in this case between counsel who appear for the parties that that is the main prayer. The other reliefs claimed in the plaint follow as a matter of course. Indeed, it has been admitted by the counsel for the plaintiffs who are the appellants before us, that this declaration is the real relief claimed.

16. The defendant company was under no misapprehension as to the contents of the plaint and the nature of the relief claimed. In the defendant company's petition for revocation, it summarises the plaint as follows: -

"The plaint alleges --

(1) that the appointment of the Selling Agents and the Managing Agents was not in the interest of the Company

(2) that the Articles were altered to stifle the minority.

(3) that due notice of the changes proposed to be brought about in the Articles was not given to the shareholders.

(4) that the full terms on which the Managing Agents were going to be appointed were not disclosed to the shareholders.

(5) that the non-disclosure mentioned above was fraudulently made with the deliberate object of misleading the shareholders.

etc. etc. "

It is quite clear from the summary given by the defendant Company that it understood that the plaintiffs had based their suit on the ground that by not making a frank and free disclosure in the Notice of the changes that were going

to be made at the Meeting, the defendant Company had misled the shareholders including the plaintiffs, thereby preventing them from attending the Meeting at which the changes were made on October 20, 1947.

17. Mr. G. K. Mitter, counsel for the respondent, has not denied that the Notice did not convey a true picture of what was done at the Meeting, but he said that inasmuch as information had been given to the shareholders that a copy of the proposed changes could be inspected at the registered office of the defendant company, it was incumbent on the plaintiffs to go to the registered office and inspect, if they so desired, the new Articles of Association and the proposed changes. Therefore, according to counsel, there was no non-disclosure at all. If the plaintiffs did not come to know what changes were going to be, made, it was their fault.

18. In support of this contention, Mr. Mitter relied on a passage in Palmer's Company Precedents, 15th Edition, Part I, page 1002, where it is said:

"Where a large number of alterations have to-be made, it is generally more convenient to adopt a new set of Articles altogether. Where this course is adopted, a copy of the new Regulations should lie for inspection at the office, and the Notice convening the Meeting should state the fact."

Relying on this passage, Mr. Mitter argued that that was the course which the defendant Company followed. The alterations were large in number. So a new set of rules was adopted and a copy of the new Regulations was kept for inspection at the registered office of the Company. It was available for the inspection of the plaintiffs, and, if they did not take inspection, they cannot complain of the alleged non-disclosure.

19. But Mr. Mitter has overlooked a further statement which occurs in the same paragraph in Mr. Palmer's book:

"And, in some cases, it may be deemed expedient to send printed copies of the proposed new Articles with the Notices. According to the. decision of Kekewich, J. in "NORMANDY v. IND. COOPE & CO. LTD." (1908) 1 Ch 84, the notice should call attention to any material alterations and in "BAILIE v. ORIENTAL TELEPHONE AND ELECTRIC CO. (1915) 1 Ch 503, the Court of Appeal (in England) held that the notice of a proposed resolution" to alter Articles involving a large increase in the remuneration of the Directors was invalid on the ground that the proposed increase was not fully and frankly disclosed."

20. In "BAILIE'S CASE" (1915 1 Ch 503) a shareholder brought an action on behalf of himself and all the other shareholders of a Company for a declaration that certain resolutions were not binding on the ground of insufficient notice of the Meeting at which they were passed, and, for an injunction to restrain the Company and the Directors from acting upon them. The plaintiff moved for an interim order. The Court of Appeal held that the notice did not give a sufficiently full and frank disclosure to the shareholders of the facts upon which they were

asked to vote; and that the resolutions were invalid and not binding upon the Company. Baker J. considered this case in *Narayanlal Bansilal Vs. The Maneckji Petit Manufacturing Co. Ltd.*, and also reviewed other English cases. In that case the Directors convened an Extraordinary General Meeting of the shareholders to pass the necessary resolution for substitution of a new set of up-to-date Articles for the old ones & fixing the duration of the Agency & defining the Agent's power. The Notice convening the Meeting set out the necessary resolutions and was accompanied by a Circular, but sufficient particulars regarding important changes to be effected were not set out. The resolutions were passed and confirmed.

In a suit by a shareholder suing on behalf of himself and other shareholders for a declaration that the resolutions were inoperative on the ground of insufficiency of notice and for injunction restraining the Directors from acting upon them, it was held that the notice should have given sufficiently full and frank disclosure of the facts and the effect of the resolutions and the agreement, and, consequently, the resolutions were inoperative and not binding upon the Company. The learned Judge observed that if the Directors issued a Circular in which they referred to certain alterations and said that the only alterations were with regard to Clause "X" of the Articles of Association, whereas there were equally important alterations in Clause "Y", it could not be said that the shareholders had sufficient notice of the alterations in clause "Y".

21. In the case before us, the documents referred to in the clauses of the notice which we have set out above, were not sent to the shareholders. Mr. Mitter's contention was that that might be so, but the shareholders had notice that the new Regulations were lying at the registered office of the company; so it was not necessary to send the documents to them. According to counsel, it was quite sufficient to tell them that they could have inspection of the new Regulations at the registered office of the company, and, for this contention he relied on Mr. Palmer's observation which I have already set out.

22. But it should be observed that Mr. Palmer did not say that it was not necessary to send copies of the proposed Articles with the Notice. All that he said was that where a large number of alterations had to be made, it was generally, more convenient to adopt a new set of Articles altogether and that where this course was adopted, a copy of the new Regulations should lie for inspection at the registered office of the Company, and the notice convening the Meeting should state that fact. But nowhere did he say that it was not necessary to send copies of new proposed Regulations with the notices. On the other hand, from the latter passage which I have quoted, it is clear that the learned author said that in some cases it was expedient to send printed copies of the proposed new Articles with the notices and he has cited two English cases for that proposition.

Assuming, however, that Mr. Palmer's observation supports Mr. Mitter's contention, it may not be possible for us to adopt that view in India, having regard to the local conditions and variety of other considerations that prevail in

India. It will not in all cases be sufficient in India to leave a copy at the registered office and state that fact in the notice, inviting the shareholders to inspect the proposed changes at the registered office. The travelling facilities here are not the same as in England, neither the country is so small as England. There are various difficulties that prevent the shareholders from going to the registered office and having inspection. Besides whether such a course should be adopted or not depends on the facts of each case. For example, it may be that the shareholders of a Company live very near the registered office. In such a case, possibly, it would be sufficient to give them notice that the proposed changes could be inspected at the registered office.

But, in a case like the one under our consideration, where there is a large body of shareholders who reside at great distances from the registered office of the Company, we do not think it would be fair on the part of the Company to leave the proposed Regulations at the registered office and give the shareholders notice of that fact. In a case like this, we entirely agree with Mr. Palmer that printed copies of the proposed new Articles should be sent with the notice. In this case that was not done, and therefore, we take the view that the notice did not disclose fully and frankly the facts upon which the shareholders were asked to vote.

23. It is quite possible to argue in this case that the notice in question was a "tricky" notice, as was said in "KAYE v. CROYDON TRAMWAYS CO." (1898) 1 Ch 358 and in "BAILIE'S CASE" (1915 1 Ch 503). In this case, there is no dispute that there was partnership between defendant No. 5 and the two Nepalese gentlemen. There is no dispute further that they acquired a very large number of shares in the defendant Company. There is no dispute that the partners have acquired and now control the majority of the shares in the two Companies, namely, the Indian Textile Syndicate Ltd., and the Cotton Textile Corporation Ltd., one of which Companies has been appointed the Selling Agent of the defendant company.

It is quite clear therefore that the three partners through the said two Companies have acquired a preponderance of voting power in the defendant Company and are in a position to divide practically the entire profit of the Company amongst themselves. On these facts, we are of opinion, that it was necessary for the defendant Company to disclose to the shareholders the controlling interest of the partners in the two Companies. But that was not done. An argument is quite plausible that the notice deliberately withheld material facts from the knowledge of the shareholders including the plaintiffs and committed fraud on the plaintiffs. In this case, it may be fairly argued that not only there has been a suppression of true facts, but also a false suggestion. Such an argument we cannot say would be unreasonable.

24. In the Contract Act, "fraud" means and includes the suggestion, as a fact of that which is not true by one who does not believe it to be true; the active concealment of a fact by one having knowledge or belief of the fact. A fraud may

consist of the suppression of what is true as well as the representation of what is false. Therefore, it can be fairly argued that this notice comes within the mischief of "BAILLIE'S CASE" (1915 1 Ch 503) and may be called a "tricky" notice.

25. The main question then is: Has any part of the cause of action arisen within the jurisdiction of this Court? For, if no part of the cause of action has arisen within that jurisdiction, leave or no leave, this Court cannot entertain or try the suit. On this part of the case, Mr. Mitter's contention is that no part of the cause of action arose within the jurisdiction of this Court and consequently the learned Judge was right in revoking the leave which the plaintiffs obtained by representation that a part of the cause of action had arisen within the jurisdiction.

26. Let us analyse the position. (1) The plaintiffs are shareholders of the defendant company, however small their shares may be. (2) They reside within the jurisdiction of this Court (3) They are entitled to get at their place of residence a Notice which frankly and fully discloses all material facts.

27. The plaintiffs have stated in their plaint that, they received a notice in Calcutta. There is no denial of this fact in the written statement which the defendant company has filed. Therefore, this is an undisputed fact, namely, that the notice was received by the plaintiffs within the jurisdiction of this Court.

28. Mr. Mitter's argument is that it is perfectly immaterial that this notice was received by the plaintiffs in Calcutta. According to him, all that mattered was the posting of the notice. He contends that the service of the notice took place at Kanpur where the letter was posted and for this contention he relies on Article 182 (now replaced by Article 18G). Article 182 of the old Articles reads as follows:

"182. (1) A notice may be given by the Company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address, in British India) to the address, if any, within British India, supplied by him to the Company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice and in proving such service, it shall be sufficient to prove that the letter or wrapper containing the notice was properly addressed, prepaid and put in the post office."

In the new Article the word "British" has been omitted and the words, "in proving such service.....in the post office" have been replaced by the words-"Unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post". This change has been made in view of Regulation 112 of the Companies Act. But Mr. Mitter relying on the Articles contended that immediately the notice was posted, the plaintiffs were served.

29. In this case, there is no dispute that the notice was posted at Kanpur and therefore, according to Mr. Mitter, the service was effected at Kanpur. We cannot

accept this contention. The old Article is contrary to the Regulation which reads as follows:

"Reg. 112 (2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

What does this mean? It means that if a notice is sent by post, the service of it shall be deemed to have been effected, at the time when in the ordinary course of post the letter would be delivered. If the Company proves the posting of the notice, it has not to prove the service. The Court is to presume that the addressee has received the letter when it should have been delivered to him in the ordinary course of post. The word "deem" is significant. What does it mean? It means-"to think of as existing": "to believe a thing to be true till the contrary is proved": The Articles only raise the presumption as to the time of service and not the place. The presumption only goes this far and no further: namely, until the contrary is proved, it should be presumed that the addressee received the notice at the time when the letter would be delivered to him in the ordinary course of post. That is all. But the question arises, where did the service take place? At Kanpur or in Calcutta? Neither the Regulations nor the Articles on which Mr. Mitter relies give him any assistance on this point. The service must be at the place where the notice is received.

Further it was held in "LONDON AND STAFFORDSHIRE FIRE INSURANCE CO." (1883) 24 Ch 149. that the provisions "of Articles 95 and 97 of Table A to the Companies Act, 1862", for the service of notices by a Company on its members, apply only to notices relating to the ordinary business of the Company, and service in the way there pointed out is not sufficient for the purpose of fixing a shareholder with knowledge of a misrepresentation which would entitle him to repudiate his shares, unless he had been guilty of laches after notice of the misrepresentation. The Article or Reg. 112 does not apply so as to affect the member with notice of misrepresentation (which notice was in fact given by the document), if the document does not reach his hands; in other words, the misrepresentation by non-disclosure or otherwise must be taken to have been made at the place where the letter was received, and this is only common sense. "A" sends a letter to "B" containing misrepresentation. Can it possibly be said that the misrepresentation was made at the place where the letter was posted? It must be at the place . where the letter reaches him. For there only the letter is read or may be supposed to have been read by the addressee. This argument applies to cases of misrepresentation where there is suppression of what is true as well as a representation of what is false.

30. The defendant company was bound to give a notice containing all the material facts. The defendant Company did post the notice at Kanpur and under the Articles the defendant Company need not prove the actual receipt of the notice by the plaintiffs. It will be presumed to have been received by them. But,

then the misrepresentation is made when the letter reaches the hands of the plaintiffs and at the place where it is read. Consequently, a part of the cause of action of this suit has arisen within the jurisdiction of this Court.

31. For, what is a cause of, action? It means every fact which, if traversed, it will be necessary for the plaintiff to prove in order to get a judgment of the Court. It means every fact which the plaintiffs must prove to get a decree and which, if not proved, would entitle the defendant to get a judgment in his favour. It is a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed. It has no relation whatsoever to the defence which may be set up by the defendants. The test for determination of what a cause of action is, has been thus stated by Rankin C. J. in the "ENGINEERING SUPPLIES LTD. v. DHANDHANIA & CO." 58 Cal 539:

"The only definition that will work, if it has to be applied to cases of all kinds, is the entire set of facts that gives rise to an enforceable claim, or in the words of Fry L. J., "everything which if not proved gives the defendant an immediate right to judgment"; every fact which is material to be proved to entitle the plaintiff to succeed, every fact, which the defendant could have a right to traverse."

32. Now, apply this test to the present case. The plaintiffs must prove in order to succeed: (a) that they received the notice; (b) that the notice did not disclose all the material facts. Where was the notice received: The answer must be, in Calcutta. Where was the misrepresentation made? It must be in Calcutta. These two facts are material to be proved and they must be proved by" the plaintiffs otherwise the defendant company would be entitled to get judgment in its favour forthwith. There cannot be any doubt, therefore, that a part of the cause of action has arisen within the local limits of the Ordinary Original Civil Jurisdiction of this Court, and if so, the plaintiffs with leave of the Court obtained under Clause 12 of the Letters Patent can file the suit on the Original Side of the High Court. The plaintiffs have the right to file the suit in the High . Court subject to the Court granting them leave for the purpose. They have obtained the leave and filed the suit.

33. It must be remembered that it is entirely for the plaintiff to- choose his forum. The plaintiff as "arbiter litis" or "dominus litis" has the right to choose his own forum or rather any forum the law allows him. Of course this right is subject to control under the provisions of the Code of, Civil Procedure or the Letters Patent as the case may be.

34. The next question is whether the leave granted should be revoked.

35. On this point, in recent years, there have been several-decisions of this Court, and it is sometimes said they are not consistent. I am unable to see that there is any difference, though the decisions have been couched in different words. It is unnecessary for me to discuss these cases. It is quite sufficient if I rely on the last pronouncement on the subject of our Court of Appeal. In "MANINDRA BHUSAN v. BENARES HINDU UNIVERSITY", A F O O No. 119 of 1949

(Cal) my Lord, the Chief Justice observed:

".....The learned Judge in my view expressed quite accurately the principles governing cases of this kind. He pointed out that before leave can be revoked on the ground of balance of convenience in favour of a trial elsewhere, something more is required than a finding that, on balancing the evidence for and against, there is a balance in favour of one side or the other. In other words, in dealing with this matter, the convenience of the respective parties must not be weighed too carefully.....This was a matter in which the learned Judge had a discretion. As I have said, he has stated the principle upon which the discretion has to be exercised with absolute accuracy."

35-A. The judgment which was thus affirmed by the Court of Appeal contains the following statement of the law:

"In considering the question whether leave granted should be revoked or not, the question of convenience is a material factor, though the convenience of the parties is not to be weighed in a delicate balance. The nature of the suit and the question of comparative expenses are material considerations. But mere balance of convenience is not enough. It must be proved to the satisfaction of the Court that either the expenses or the difficulties of trial in this Court are so great that injustice will be done to the defendant. But, at the same time, the Court ought not to exercise the jurisdiction, if by so doing; an injustice is caused to the plaintiff"

36. Unless the inconvenience is so great as to cause injustice to the defendant, the leave granted by the Court should not be revoked.

37. In another case, the learned Chief Justice observed "BHUALKA BROS LTD. v. GOBINDRAM BROS LTD." (Unreported)

"The plaintiff is the "dominus litis" and has the right to choose his own forum. This right of choice is, however, not absolute, and the Court has the power in a proper case to interfere with the plaintiff's choice and revoke leave if the Court considers that the forum has been chosen by the plaintiff "mala fide" or that the forum chosen is such that if the Court permits the suit to go on, the other party would be so handicapped in his defence that it would lead to injustice or that the balance of convenience is decidedly or overwhelmingly against the suit going on in the forum chosen by the plaintiff".

38. The law on this point therefore is well settled, so far as our Court is concerned.

39. It remains for us only to apply that law to the facts of this case. In this case the learned Judge has held that the convenience is to allow the suit to go on at Kanpur. And he says that convenience is great. With great respect to the learned Judge we are unable to agree with him on this point. For, what have the plaintiffs to prove in this case? They have to prove that the notice was defective. The notice is proved by its production. The service has been admitted. The changes

in the Articles are proved by a comparison of the old Articles with the new and it becomes at once clear what the changes are and whether the changes are material. On a persual of these two documents the learned Judge who will try the suit will be able to decide as to whether or not the notice frankly and freely discloses the material facts. I do not think any other evidence is necessary on this part of the plaintiffs' case.

The learned Judge has observed that witnesses have to be called from Kanpur the books of account would have to be brought down from Kanpur. But why? The books of account will not throw any light on the question as to whether there has been nondisclosure or not. The witnesses will not be able to say whether there was non-disclosure or not. These points are proved by the notice and the old and the new Articles. It is not the defendant Company's case that the plaintiffs had inspected the new Articles at the defendant Company's registered office and with that knowledge went to the Meeting and cast their vote. If that was the defendant Company's case, it would have been necessary to bring down witnesses from Kanpur to prove that the plaintiffs had inspected the new Articles, attended the Meeting and voted. But that is not the defendant's case. Therefore, with great respect to the learned Judge, I cannot see why it should be necessary to bring witnesses from Kanpur or bring down the books of account from that place to disprove this part of the plaintiffs' cause of action.

40. As to the three partners having a preponderating voting power, it would be proved by the production of the partnership deed, the fact of purchase of the shares, the certificates of incorporation of the two Companies (the Textile and the Cotton Companies), the selling agency agreement, the managing agency agreement. The rest is a matter of inference. On this part of the cause of action also, "prima facie", no witness nor any books of account need be brought down from Kanpur.

41. That being the case, we are unable to agree with the learned Judge that the convenience of the trial being held at Kanpur is so great that the leave should be revoked.

42. Mr. G. K. Mitter may be right in his criticism of the plaint that it contains many paragraphs not strictly relevant. But it is not for us at this stage to enter into a critical review of the plaint or the allegations it contains.

43. I have not overlooked the fact that the revocation of leave was entirely a matter of discretion with the learned Judge and a Court of Appeal would be very slow to set aside the discretion, unless it is proved that he has misdirected himself as to the facts or on the law.. It may be that the Court of Appeal does not see eye to eye with the trial Judge in such a matter. But, that is no ground for setting aside the discretion exercised by the learned trial Judge. But in this case, with great respect to the learned Judge, we think there has been a misdirection as to the facts and therefore we are bound to set aside the order.

44. Mr. G. K. Mitter then contended that this was a "mala fide" suit. He drew our

attention to a petition filed on behalf of the plaintiffs (paragraphs 14 and 15) on 26th June 1950 in this suit. Arguing on those paragraphs, he said that the suit was "mala fide". But we are unable to discover anything in those two paragraphs which support Mr. Mitter's contention. We are unable to agree with him that the suit is a mala fide one.

45. Mr. Mitter also said that as result of a quarrel between two sets of rich people, the Singhanias and the Baglas of Kanpur, the plaintiffs have filed the suit at the instigation of the Singhanias and that the Singhanias are helping the plaintiffs in the conduct of the suit, and the suit really is a suit of the Singhanias. Assuming that the Singhanias are helping the plaintiffs financially or otherwise, I cannot see how the suit can be called a "mala fide" suit, if the plaintiffs have a cause of action. If they have chosen a forum which the law allows them to choose, what does it matter if the plaintiffs are helped by the Singhanias or the Baglas, to institute the suit or in its conduct? What does it matter, if either of these two sets of people help"" the plaintiffs with money or material? There may be various reasons for which pecuniary help may be given to the plaintiffs. But for that only, I cannot hold that the suit is a "mala fide" one.

46. It is to be noted, however, that the selling agent and the managing agent of the defendant company have all of a sudden removed their office from Calcutta to Tollygunge. It is denied that their office is now located at the residence of a member of the firm of solicitors of the defendant company. Why did they remove their office? It has been suggested on behalf of the appellants that the defendant company has removed the office in order to deprive the plaintiffs of a contention that the suit has been properly filed in this Court inasmuch as the defendant company carries on business within the jurisdiction of this Court. This point is of minor importance in view of the broad facts of the case, which I have already analysed. But we have mentioned it as it was suggested by counsel.

47. Since the learned Judge in exercise of his discretion revoked the leave, we have taken great care to consider the matter, and have given it our fullest consideration. But, we are constrained to hold that the learned Judge was not right in the exercise of his discretion. We must, therefore, set aside the order revoking the leave, with the result that the leave granted to the plaintiffs to file the suit under Clause 12 of the Letters Patent remains.

48. The appellants are entitled to the costs of this appeal. Certified for two counsel.

49. There is another appeal which was preferred from an order of the learned judge refusing to grant an injunction. The learned Judge revoking the leave, rightly held that he could not grant the injunction, because the Court had no jurisdiction to entertain the suit, and therefore, naturally had no jurisdiction to make any order in the suit. The learned Judge accordingly dismissed the application for injunction. He has not expressed his views on the merits of that application. We send back that application to be heard by the learned Judge

according to his convenience. We set aside the order of the learned Judge dismissing the application for injunction. The costs of the appeal preferred from the order refusing the injunction will be costs in the suit.

Harries, C.J.

50. I agree.