

(1997) 11 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : O.M.P. No's. 94 and 305 of 1997 in Execution Petition No. 7 of 1997
and O.M.P. No. 306 of 1997 in Execution Petition No. 6 of 1997

B.K. Malhan and Mrs. Surjeet Malhan

APPELLANT

Vs

John Tinson and Co. and Others

RESPONDENT

Date of Decision : 27-11-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, 144, 151, 47
Contract Act, 1872 — Section 177, 69, 70, 72

Citation : (1997) 3 ShimLC 421

Hon'ble Judges : P.K. Palli, J

Bench : Single Bench

Advocate : D.K. Khanna and Pratima Malhotra, for the Appellant; P.N. Lekhi and K.D. Sood, for Judgment Debtor Nos. 1 and 2, for the Respondent

Judgement

P.K. Palli, J.—Before examining the questions, involved in the two Execution Petitions, a brief narration of events, prior thereto, is necessary. Civil Suit No. 1 of 1973 was filed by Mrs. Surjeet Malhan whereas Civil Suit No. 2 of 1973 was filed by her husband B K Malhan. In the suit filed by Mrs. Malhan, M/s. John Tinson and Co was impleaded as Defendant No. 1 whereas R. D Bhagat, Mrs Salocbna Bhagat and B. K. Malhan were added as Defendants No. 2, 3 and 4 respectively. In Civil Suit No 2 filed by B. K Malhan, Defendant No. 4 in the earlier suit, Mrs: Malhan was not impleaded. The two suits were consolidated and were dismissed by a common judgment by this Court vide judgment and decree dated March 4, 1985.

2. In the two suits it was alleged by the Plaintiffs that M/s. John Tinson and Co. had its registered office at Solan as a Private Ltd. Company. In the year 1946 there was some change in the Company in sequence of which both the Plaintiffs alongwith their family members and other relations came to acquire all the shares and B .K. Malhan became the Managing Director. As per Plaintiffs, there were certain financial crisis for which money was required as additional working capital.

3. In the course of events, R.D. Bhagat, Defendant, who desired to set up his business in Delhi, was looking for some business premises and after certain negotiations, an agreement is said to have been arrived at between the two on September 11, 1970 In sequence, R. D. Bhagat acquired effective representation on the Board of Directors. Both the Plaintiffs were desired by him to pass on their entire share-holdings which were handed over. The terms and conditions in respect of the sale price were to take place on September 12, 1970. Mrs. Malhan held 1500 ordinary shares out of which 900 shares were in her name and 600 shares held* by her belonged to Ors. . In addition to this, she had 10 preferential shares also. According to her, her husband took from her the shares and blank transfer forms alongwith share-scripts and in sequence, were passed on to R.D. Bhagat.

4. In the suit filed by B. K Malhan, the pleas taken were identical. He, admittedly, held 2230 ordinary shares and 64 preferential shares in his name These shares were also handed over to R D. Bhagat. It is said that a token consideration of Re. 1 only was received and a written contract between the parties was to be arrived at on September 12, 1970.

5. According to Mrs Malhan, her husband had no authority from her for handing over the shares to R. D. Bhagat. The entire deal was said to be wholly void and without consideration and the Plaintiffs prayed that the Defendants be directed to deliver back the share certificates which they had obtained from them and further amend the register of share-holders. A decree for permanent injunction was further claimed restraining the Defendants from disposing of by sale, lease, mortgage etc. any immovable property owned by the Defendant-Company It was further said by the Plaintiffs that after obtaining the possession of these shares in a clandestine manner, R .D. Bhagat and his wife Mrs. Salochna Bhagat got over the control of the Company and became its Directors They further planned to sell the immovable assets of the Company and have entered into leases in respect of valuable property situated at 54, Janpat New Delhi which is said to be the assets of the Company.

6. The Defendants contested the suits raising identical pleas to the effect that the shares were validly transferred/sold, As the Company was in financial crisis, the Plaintiffs were keen to sell the shares to R. D. Bhagat for which he agreed The information regarding the purchase of the shares is said to have been given to the Registrar of Companies and some amount is said to have been deposited to meet pressing demands for the creditors It was also said that no written agreement was executed on September 12, 1970 and the transaction of sale was completed for consideration of Re. 1.

7. After the dismissal of their suits, the Plaintiffs filed to Regular First Appeals which were allowed by the learned Division Bench of this Court on November 14, 1496. The judgment and decree passed by the learned Single Judge was set aside and the suits were ordered to be decreed. The Defendants filed two Civil Appeals before the Hon"ble Supreme Court of India and both these appeals

stand dismissed vide order dated February 3, 1997 affirming the decree passed by the learned Division Bench of this Court. The decree passed by the learned Division Bench of this Court has, thus, attained finality and the stage was now set for the Plaintiffs/decreed holders to file the present execution petitions

8. In the execution petitions the prayer made is that the judgment debtors be directed to hand over the shares as per decree in their favour. They be further directed to hand over statutory books of the Company which they have refused and the decree be executed by attachment and sale of 9-Link Road, New Delhi which is the property of judgment debtors No. 2 and 3 and they be further confined to civil prison for not obeying the decree

9. The decree-holders have also moved O. M. P. No. 94 of 1997 under Order 39, Rule 2-A read with Sections 144 and 151 of the CPC for taking action for wilful disobedience of the breach of injunction granted by this Court and for restoring the property of the Company M/s. John Tinson and Co. Pvt. Ltd. , i. e. 54, Janpat, New Delhi. In the said application nine Respondents have been impleaded. The first two are R. D. .Bhagat and his wife who were Defendants in the suit. Respondents No. 3 to 9 have been further added on the allegations that after a visit to the Company's registered office which was earlier known as Tinson House, 54, Janpath, New Delhi", it was discovered that the property had been transferred to Respondents No 3 to 9 whose names had been prominently displayed outside the building and name of the building has also been changed to "B. I. House" This is said to be a wilful disobedience of the injunction whereby the Defendants had been mandated not to transfer in any manner the assets of the Company This act on the part of the Defendants calls for action under Order 39, Rule 2-A of the CPC and entitles them to the restoration of their property,

10. Respondents No. 1 and 2 in their reply to this miscellaneous application have stated that the petition is not maintainable and is an abuse of the process of the Court It has been said by them that there is no disobedience to the injunction granted by this Court. It has been said by them that there was injunction order granted by this Court way back on January 18, 1973 which stood vacated when the suits were ordered to be dismissed. In the appeals no stay order was granted till the decree passed by the learned Division Bench These Respondents have also said that the Court has no territorial jurisdiction as the property is situated in Delhi and objections filed by them be read to decide the present application. These Respondents have further refused to recognise the legality of the proceedings of the extraordinary general meeting held on March 12, 1997 at 54, Janpath, New Delhi. No such meeting, according to them, was ever held According to the Respondents they have served a legal notice on the decree-holders on April 14, 1997 to pay Rs. 633.02 lacs failing which action will follow.

11. On merits, it is said that the Directors were co-opted on September 11, 1970 on which date they acquired the qualifications of the shares under the provisions of the Articles of Association of the Company and provisions of the Companies Act were complied with The allegations in respect of the visit of the decree-

holders alongwith their Notary Public is denied and the appointments of the Directors in the alleged meeting is said to be void.

12. It has been denied that there has been transfer of the property to any of the Companies as stated by the decree-holders The name written outside is for the purpose of addresses including those who are tenants since 1970 In their separate replies to this application Respondent No. 3 M/s Bhagat Industrial Corporation Ltd. claims itself to have been inducted as a tenant by M/s John Tinson and Co in the year 1970 and claims itself to be in physical possession of the second floor of the premises and the agreed rent is stated to be being paid to M/s. John Tinson and Co It is said that this Corporation cannot be disturbed except in due process of law.

13. Respondent No. 4 M/s. B. I. Publication Pvt. Ltd. has said that no relief can be granted to the applicants nor any restoration can be made as Respondent No 4 is wholly owned subsidiary of M/s. British Institute of Engg. and Technology and the said Company had given its first cheque of Rs. 1 lac on September 4, 1970 to M/s. John Tinson and Co Pvt. Ltd. for opening a bank account being advance rent for use of the office premises at 54, Janpath, New Delhi

14. In its separate reply, Respondent No. 6 M/s. S. B., Jewels Pvt. Ltd. has stated that it is one of the group of Companies of M/s. B .I. Group of Companies and has only a correspondence address at 54, Janpath, New Delhi and nothing is being performed by it there.

15. Respondent No. 7, M/s. Digvijay Chemicals Pvt. Ltd. has also said that no employee was working with them in the premises nor any premises are occupied by it. It being one of the group Companies of M/s B. I. Group of Companies, has only its correspondence address there. Exactly similar is the reply filed by Respondent No, 8, M/s Office Machines Pvt. Ltd.

16. In the reply filed by Respondent No. 9, M/s. B. I, Cherchill Livingstone Pvt. Ltd., it is said that there is no transfer made in their favour. It is only a subsidiary of M/s. B.I. Publication.

17. The judgment debtors No. 1 to 3 have also placed on record objections/questions to be determined by this Court u/s 47 read with Section 39 of the Code of Civil Procedure. These objections have been separately registered as O. M. P. No. 305 of 1997 in Execution Petition No. 7 of 1997. In the objections it is stated that the decree has to be transferred to Delhi, i. e. within the local limits where the property is situated The registered office of the Company which was earlier at Solan, is said to have been shifted to 54, Jahpath, New Delhi It is admitted by these Respondents that decree holder B. K. Malhan became the Managing Director of the Company and continued in that capacity till January 15, 1971. The shares of the two Plaintiffs are admitted. According to the judgment debtors, the Company had accumulated debts more than its paid up capital and they were duped and defrauded in transfer of shares of the bankrupt company without the formality of previous sanction,

18. The judgment, debtors further claims that they have incurred huge expenditure after the transfer of shares to wipe out the existing liabilities of the Company. They are said to have, washed their hands from the affairs of the Company and no restitution can be claimed by them as they have invested huge amount to keep the Company solvent. It is said that there is an order of this Court dated June 1, 1984 passed by Hon'ble Mr. Justice V. P. Gupta whereby the Plaintiff Smt Surjeet Malhan was permitted to withdraw the suit qua 600 ordinary shares which were in her name jointly with Ors. with liberty to file fresh suit on the same cause of action if otherwise permissible under the law on Rs. 1000 as costs.

19. No fresh suit, according to the judgment betors, was ever filed by Mrs Surjeet Malhan and in sequence, 600 ordinary shares are no longer her property or of any other person except of the judgment debtor R. D. Bhagat. It is also said that there were losses to the tune of Rs. 16.95,603 and without any contribution from the decree holders, these losses have been wiped off including sundary payments to the creditors for Rs. 6,23,404 The secured loan from Bank of India Rs. 19,16,889 was also paid by the judgment debtors The stock of the Company was over-valued. In this manner the judgment debtors taking mid point of 14 years and adding bank rate of 20% per annum (compound), an amount of Rs. 633 02 lacs is said to be the liability of the decree holders and is to be paid to the judgment debtors. It is said that the judgment debtors have exercising lien on the shares unless the amount claimed by them is paid.

20. Reply has been filed by the decree holders to these objections wherein it is said that the subject matter of the decree is not any immovable property but pertains to shares. The registered office of the Company is said to have been unauthorisedly shifted from Solan to New Delhi during pendency of the suit. In respect of the transfer of shares in favour of the judgment debtors, it is said that the matter stands concluded upto the Supreme Court and the judgment debtors could not be permitted to be heard on that point. Lastly, it has been prayed that the objections, being frivolous, should be dismissed.

21. As the objections, miscellaneous applications and their replies are common in both these execution petitions, common arguments have been addressed by the learned Counsel and these are proposed to be disposed of by a common judgment.

22. Mr. P. N. Lekhi, learned Senior Advocate, appearing for the objectors/ judgment debtors and other Respondents, while opening his address of arguments, contends that the decree is contrary to the record and assistance of the Court is being sought in respect of shares to be given back to the decree holders. It is being highlighted that the decree has become redundant and in support of these contentions, reliance is being placed on para 9 of the objections where it is said that Mrs. Surjeet Malhan has played a fraud on the Court by not inviting to the notice of the Court an order passed way back on June 1, 1984 by this Court whereby the said Plaintiff was permitted to withdraw the suit in

respect of 600 ordinary shares which were in her name jointly with Ors. with liberty to file a fresh suit on the same cause of action, if otherwise permissible under law.

23. It has been argued that in the given facts and circumstances of this case, the Court in order to give appropriate relief, can even go behind the decree since the question involved is in respect of the construction of the decree and it has to be governed by the judicial record. It is further highlighted that the debt was seven times more than the capital and the objectors/judgment debtors have invested huge amounts from time to time to keep the Company running and till the amount which the judgment debtors have invested to keep the Company floating is paid to them, they cannot be directed to hand over the shares to the decree holders as they have a lien on it.

24. In further support of the arguments raised, reliance is being placed on *Biswanath Vs. Smt. Uttara Bewa and Others*, paragraph 6 for the proposition as to how much the Court can go behind the decree. The learned Court in that case, after observing that the executing Court cannot go behind decree, proceeded to observe that the Court executing the decree within its competence, can interpret it and for that purpose reference can be made to the relief sought in the plaint and discussed in the judgment to ascertain true import of the decree. In that case the Plaintiff was found to be in possession and was granted declaration that he has got right, title and possession over the land. There was somehow no direction in respect of delivery of possession and while interpreting, it was found that the executing Court was justified in interpreting the decree to mean that the relief sought in the plaint was granted and since one of the reliefs sought was to direct delivery of possession, the execution application for delivery of possession was maintainable even in the absence of specific direction for delivery of possession in the decree. In that situation, it was held that the observations were so made.

25. Reliance is next placed on *Hrushikesh Panda Vs. Indramani Swain and Another*, para 10. In that case a money decree had been passed against the Company and its Managing Director making them liable jointly as well as severally, in the facts and circumstances, while construing the decree the execution was dis-allowed in respect of personal property of the Managing Director. It was, in this situation, found that under the Company Law, in addition to the statutory duties, the Directors owe to their Company fiduciary duties similar to those owed by an agent to the principal. These duties are owed exclusively to the Company of which the Defendant is a Director. In the given facts, it was found that there was no personal liability attached to the Appellant in that case in an individual capacity and the personal properties could not be attached.

26. Mr. Lekhi points out that there is apparent error of jurisdiction as this Court had no jurisdiction to decide in respect of (sic) shares and this objection could be gone into. According to the learned Counsel. 600 shares were taken out of

contentions raised and the Plaintiff Smt. Malhan voluntarily gave up the shares.

27. It is being argued that the subject matter is a part of the questions raised in Section 47 of the CPC and requires consideration of this Court, Reliance in this respect is being placed on AIR 1963 Bom 129 , Mahadeo Subhanji Adekar v. Akaji Undersa Umathe; Kiran Singh and Others Vs. Chaman Paswan and Others, ; Haji Sk. Subhan Vs. Madhorao, .

28. In Mahadeo Subhanji Adekar Vs. Akaji Undersa Umathe, the anomaly arising out of passing of the decree on the basis of a suit, the cause of action in which had abated, was held to be avoided at all costs. In the given situation, it was held that the decree had become void and unenforceable by reason of the order passed by the High Court. The High Court had set aside the findings of the appellate authority in a writ petition by the tenant.

29. In Kiran Singh and Others Vs. Chaman Paswan and Others, it was held that it is a fundamental principle that a decree passed by a Court without jurisdiction, is a nullity and that its invalidity could be set up when-ever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. Emphasis is being applied to the words, "that where it is a defect of jurisdiction, whether pecuniary or territorial, or is in respect of the subject matter matter of action, it strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of the parties "

30. In the third case, i.e. Haji Sk. Subhan Vs. Madhorao, stress is being laid at para 39 at page 1237 of the said report There in that case objection was not in respect of the invalidity of the decree or with respect to the decree being wrong. The objection was based on the effect of the provisions of the Act which deprived the Respondent of his proprietary rights, including the right to recover possession over the land in suit and under the provisions the Respondent obtained the right to remain in possession. In the given circumstances, it was held that the executing Court can refuse to execute the decree as it had become inexecutable on account of the change in law and its effect.

31. Mr. Lekhi further strongly relies on Sections 69, 70 and 72 of the Indian Contract Act and the argument is directed to the payments for which the, judgment debtors are to be reimbursed as they paid huge debts to the bank and the creditors of the Company It is being argued that John Tinson and Co. was a sick Company, the efforts made by the judgment debtors to revive it by investing huge funds, could not be lost sight of and for which judgment debtors have made out a case for reimbursement. It is, thus, being argued that there cannot be any restriction on the power and authority of the Court to grant any appropriate relief to the judgment debtors before they are ordered to surrender the shares of the Company to the decree holders Karur Jai Hind Pictures Vs. A.M. Shahul Hameed, is further relied upon for this proposition. In that case the word "interested" was interpreted to mean wide enough to include the apprehension of any kind of loss

or inconvenience or at any rate of any detriment capable of being assessed in money Provisions of Section 69 of the Contract Act were noticed. In this case it was found that when a person pays an amount, which Anr. is bound by law to pay or averts some loss or protects some interest which would otherwise be loss to him or to avert a sale about to take place, it is a clear case of the said person having an interest in the payment of the money. In that case the mortgagee had not paid the taxes, the Plaintiff had purchased the property and taken its possession. Taxes were not paid even thereafter. Had he not paid it, coercive steps might be taken against him and the property. It was, in the given set of circumstances, that the word "interested" was so interpreted

32. Reliance is next placed on the All England Law Reports 1935, page 185, Alexander v. Rayson. At page 193 para-B, it was held that the Plaintiff could not maintain his action without asserting and relying upon the unlawful agreement. Recovery without showing the true character of deposit; and, that being upon an illegal consideration, to which he himself was a party, he was precluded from obtaining the assistance of law to recover it back. The money which the Plaintiff was claiming, had been earned out of illegal business but it had become his property and was held entitled to recover it. It was not a case to enforce illegal contract but solely on justifiable detention of his money by the Defendant.

33. The All England Reports 1993 (3) 65, Tinsley v. Milligan is also pressed for the proposition that the property can pass under a contract which is illegal and, therefore, would have been unenforceable as contract. The observations were being made as to the impact of illegality on the acquisition and enforcement of proprietary rights as it was the Appellant's case there that different principles apply in equity.

34. In respect of law of restitution, reliance is being placed on the Book by Lord Goff and Gareth Jones. Stress is being laid on the law of restitution which is the law relating to all claims, quasi contractual and otherwise, which are founded upon the principle of unjust enrichment. Restitutionary claims are said to be found in equity as well as in law.

35. To further high-light the law of restitution and unjust enrichment, reliance is being placed on Renusagar Power Co. Ltd. Vs. General Electric Co., ; Mahabir Kishore and others Vs. State of Madhya Pradesh, ; Thomas Abraham and Others Vs. The National Tyre and Rubber Co., Kottayam, ; and Wataiti Ram Mahabir Parshad Vs. State of Punjab and Others,

36. Taking out the ratio from the aforesaid judgments, the thrust is on undue enrichment which, according to the learned Counsel, is to be avoided and for that purpose reimbursement has to be made for what the objector has invested. The judgment debtors are said to be bona fide purchasers in good faith for valuable consideration and are entitled to protection against prior disability.

37. In respect of lien on shares, reliance is being placed on Section 177 of the Indian Contract Act by Mulla, Eleventh Edition, page 1042 and on Snell's

Principles of Equity, 28th Edition, page 430 Equitable lien is said to be conferring a charge upon property until certain claims are satisfied and differs from an equitable, charge, only in that case it arises by operation of equity from the relationship between the parties rather than by act of parties.

38. Syndicate Bank Vs. Vijay Kumar and others, is further pressed in respect of what lien means, In para 6, their Lordships have taken its definition from Halsbury's Laws of England, Vol. 20, 2nd Edn , p. 552, para 695, where lien is defined as follows:

Lien is in its primary sense a right in one man to retain that which is in his possession belonging to Anr. until certain demands of the person in possession are satisfied. In this primary sense it is given by law and not by contract.

39. Mr. D. K. Khanna, in reply to the contentions. raised by Mr. Lekhi, submits that these objections cannot be permitted to be agitated and the transfer of decree can be made only on an application of the decree holders and not on an objection by the judgment debtors. It is also being argued by Mr. Khanna that the judgment debtors shifted the registered office of the Company from Solan to Delhi without consent and approval of the decree holders. This is said to be wholly unauthorised as it was done during the pendency of the suit. Mr. Khanna also states that the subject matter of the decree which is under execution, is not any property but is in respect of shares of the Company and the shares, according to the learned Counsel, is movable property and included in the definition of goods under the Sale of Goods Act.

40. Mr. Khanna has brought to my notice the observations appearing in the judgment of the learned Division Bench of this Court that nothing was brought from the side of, the Defendants that Plaintiff Mr. Malhan had ever agreed for transfer of her shares and her husband B. K. Malhan had no authority either express or implied on her behalf to transfer her shares. Mr. Khanna is at pains to contend that despite the mandate handed down by this Court, the judgment debtors refused to hand over the share-scripts of the shares to the decree holders and in case these, have been transferred in their names or their nominees, the Company has been directed to rectify the register by substituting her name by amending register of the share-holders and showing her to be holder of these shares According to the learned Counsel, the judgment debtors, armed with the judgments in their favour and accompanied by their Notary, visited the Company's office and met R.D. Bhagat and apprised him of the situation, but he refused to comply with the terms of the decree and stated that the same is the domain of the executing Court and unless his lien is discharged, he shall not comply with the terms Mr. Khanna further contends that these objections basically are tended to take the executing Court behind the decree which is not permissible.

41. After hearing the learned Counsel for the parties at length and after going through the record and the case law cited at the Bar, I find that the learned

Division Bench in its exhaustive judgment on appreciation of the entire material placed on record, has observed at pages 18 and 19 like this:

Admitted case of the parties is that there was no sanction accorded by the Board of Directors of Defendant No. 1 Company authorising the transfer of all shares, held by Plaintiff to alienate those in favour of Defendants No. 2 and 3. Sh. P. N. Lekhi has urged that there was implied sanction on the part of Defendant No. 1 and Plaintiff Sh. B. K. Malhan who was the Managing Director never agitated against such transfer of shares in favour of his clients. We are not impressed by this argument raised on behalf of the Defendants. Needless to point out in this behalf that when the law requires a particular thing to be carried out in a particular manner, there is no question of there being any implied sanction. In this view of the matter, we are of the view that there was no transfer of shares in accordance with Ext. PW-6/1, as such, no benefit can be derived by the Defendants therefrom.

42. Immediately thereafter the document Ext. PW-5/1 which is a letter dated September 11, 1970, was scrutinised. It was found that B. K. Malhan alone was not the share-holder of the Company; His father, wife, relations and other persons were also share-holders. A perusal of this letter does not show that there was anything which could mean that B. K. Malhan had any authority on their behalf to transfer the shares at a price of Re. 1 and secondly the transaction of transfer was concluded at Re. 1. Interestingly, it was further incorporated, "that the conditions of sale as agreed upon shall be signed by the parties tomorrow."

43. At page 20, it was held that the receipt of Re. 1, i.e. Ext. DW-2/1, cannot, by any stretch of imagination, be taken to be a concluded contract for the purpose of transfer of shares of all the share-holders. It was found that the matter was at the negotiation stage and terms and conditions of the sale were to be settled later on September 12, 1990.

44. At page 21 it was further observed that Mr. Bhagat was well aware of the financial position of the Company and the works which were being carried out by Defendant No. 1 at different places as the complete information had been supplied to him by the staff of the Company, i.e. PW 7 Uma Datt Pathak, PW 8 H S. Bhalla. In addition to this, the balance sheets of the Company were also available to him. At the end of page 21, it has been specifically held that B. K. Malhan had no authority either express or implied on behalf of Surjeet Malhan to transfer her shares and merely because blank transfer deeds coupled with share-certificates, were handed over to R. D. Bhagat, is of no consequence. It was further found that sanction of the Board of Directors was necessary and, admittedly, no sanction was ever accorded permitting the transfer of shares. At page 23, it is said that there is nothing on record to show that the share transfer forms were lodged by the transferee R. D. Bhagat with Defendant No. 1-Company. Admittedly, he was the Managing Director and incharge of the affairs of the Company. In case the transfer forms were ever lodged, these would have

found mention in its record.

45. At page 24 of the judgment, the back-ground wherein the parties were placed when the negotiation between them took place, was examined Defendant No. 2 was interested in taking on rent the premises and he had advertised for it. The premises are situated at a prime location in New Delhi. Shri Bhagat having full information about the financial affairs of the Company, got interested and entered into business venture with the Plaintiffs although his Solicitor had advised him against such exercise. It is further observed that it is not understandable as to without settling the terms and conditions of the sale between the parties and without signing the terms and conditions of sale, as agreed upon between the parties why would B. K. Malhan have parted with everything

46. Towards the end of page 25, it was held that as there was no transfer of shares, how could Defendant No. 3 continue on the Board of, Directors after the expiry of two months.

47. While decreeing both the suits, it was declared towards the concluding part of the judgment:

Smt. Surjeet Malhan in Civil Suit No. 1 of 1973 is the owner of 1,500 ordinary shares and ten preferential shares of Defendant No. 1. Defendants No. 2 and 3 are commanded by a decree of mandatory injunction to hand over the share scripts of these shares to this Plaintiff. In case those have been transferred in the name of Defendant No. 2 or any of his nominees, Defendant No. 1 is directed to rectify the register by substituting the name of the Plaintiff by amending the register of its share-holders and showing this Plaintiff to be the holder of these shares. Similarly, Civil Suit No. 2 of 1993 of Shri B.K. Malhan is also decreed and it is declared that he is the owner of 2230 ordinary shares sixty four preferential shares of Defendant No. 1-Company and Defendants No 2 and 3 are directed to hand over all the share certificates in relation to these shares to this Plaintiff In case, the name of Defendants No. 2 and 3 or any other person has been substituted in respect of these shares, then Defendant No, 1 is commanded by a decree of mandatory injunction to amend its register of share-holders and showing the name of the Plaintiff to be the rightful owner of these shares In both the Civil Suit No. 1 and 2 of 1973, Defendants No 2 and 3 are restrained from transferring and/or alienating as well as encumbering any of the property of Defendant No. 1-Company in any manner Costs on the parties.

It is these observations in the concluding part of the judgment which have been reproduced above, forms the decree.

48. Notice may also be taken of the order passed by the Hon''ble Supreme Court in the two appeals filed by these judgment debtors. At page 2 of the order it has been observed that the principal contention raised by Mr. P N Lekhi, learned senior Counsel for the Appellants, is that the Mrs Malhan had admitted in her evidence that her husband had delivered her shares to Bhagat and that she

never objected to the transfer and that, therefore, there was an implied consent for the transfer of her shares in favour of Bhagat. Equally, it is contended that when B. K. Malhan had transferred the shares, though they were not registered with the previous consent of the Board of Directors and they were not duly registered in the register maintained by the Registrar in that behalf, there was a complete transaction; the Division Bench, therefore, is not right in reversing the judgment of the single Judge. We find no force in the contentions.

49. After analysing the contentions, their lordships have held like this:

There should be consensus ad idem for a concluded contract and it is seen that Section 25(1) of the Contract Act contemplates that when a transfer is without consideration, it is a void contract. It is an admitted position that there is no concluded contract between Smt. Surjeet Malhan expressly authorised her husband to transfer here shares. The transfer as contemplated in this case is only for a sum of Re. 1. As a consequence, in the eye of law, there is no consideration and, therefore, the transfer agreement is void. The question then is: whether the wife had consented to the transfer? It is an admitted position that she had not given authority by any letter in writing or otherwise to her husband to transfer her shares in favour of Mr. Bhagat.

50. The Hon"ble Supreme Court, after examining the case of B.K. Malhan as well as Mrs. Malhan, has held in unequivocal terms that transfer of shares in favour of the appellant is invalid in law. While making these observations, notice was also taken of the Article of Association of the Company.

51. Towards end of the order, it has been held that the Division Bench of the High Court, therefore, was right in granting the decree as prayed for. It is in the light of these observations that the arguments raised by Mr. Lekhi are to be weighed.

52. As I look at the decree, the contention being raised, shall certainly, if permitted, re-open the entire matter and would amount to nothing but absolutely going behind the terms of the decree which is not permissible under the law. In respect of 600 shares, as is being objected, it is too late in the day to raise such a contention.

53. It is painful to observe that the litigation in this case started in the year 1973 and it has taken to the plaintiff's more than two-and-a-half decades to see its finality and now, again, a fresh round appears to have been envisaged by the judgment debtors by moving these objections which, on the face of it, appears to be wholly without any merit.

54. Mr. Lekhi contends that some of these objections require evidence. With respect, I am unable to agree with the contention raised by the learned Counsel. The entire effort on the side of the judgment debtors appears to be to deprive the decree holders of the fruits of the long drawn legal battle and it would be wholly unjust and inappropriate for this Court to permit to the objectors to lead evidence on these objections.

55. Notice may also be taken- of the replies which the other Respondents have filed to O. M.P. No. 94 of 1997 in Execution Petition No. 7 of 1997. Some of the Respondents, particularly Respondent No. 3, have stated to have taken the premises on rent having been inducted by M/s John Tinson and Co. in the year 1970. It is claimed that possession of the second floor of the premises is with them. Strangely, neither any rent note has been appended with the reply nor even any date from which the tenancy started, had been given.

56. The Plaintiffs continued to be in effective control and management of the Company till the shares were obtained from them by the judgment debtors in a clandestine manner. The premises could be rented out only by a resolution of the Board. I, thus, do not find any truth in the allegations and the case set up in the reply, and the same is rejected.

57. Some of the Respondents are sister concerns of the judgment debtors No. 1 and 2. The other Respondents have stated that they have nothing to do with the premises. It is only for the purpose of correspondence that the address is so given by them.

58. In O. M. P. No. 94 of 1997, it has been said that the Respondents were served with a notice on November 23, 1996 (Annexure PA) to refrain from exercising any control on the Company in the light of the judgment passed by this Court dated November 14, 1996. The decree holders further called a meeting of the shares-holders of the Company on March 12, 1997 at 10.00 a.m. after due notice. After the meeting, a letter was addressed to the Manager of the Company i. e. M/s. John Tinson and Co and the minutes of the extraordinary general meeting were enclosed. These were sought to be delivered at 12.00 noon to R. D. Bhagat, judgment debtor who was present in the office of the Company. One Gursharan Singh Abrol, Notary Public, was also accompanying. R. D. Bhagat is said to have refused to take the same and further refused to hand over the books and other record of the Company except through execution orders of the Court. These documents have been annexed to the petition.

59. Interestingly, letter dated March 22, 1997 written by judgment debtor R. D. Bhagat has been placed on record as Annexure PD wherein he addresses himself as Chairman of John Tinson and Co and this letter is in reference to the letter sent by the decree holders dated March 12, 1997. He has refused to recognize the legality of the proceedings of the general body meeting. The resolution appointing the decree holders as full time Directors is said to be a fraud that has been played. It further goes on to say that the decree has not yet been satisfied and so long as it is not satisfied, both the decree holders are not the members of the Company. In the end it has been said that they refused to recognize as lawful and legal the demand made in the resolution. The decree holders have further been threatened that in case the old stationery of the Company is used by them, civil and criminal proceedings shall be instituted against them.

60. What has been said by the other side in their respective replies, has already

been taken notice earlier in the judgment.

61. On analysis, the objections filed by the judgment debtors are hereby dismissed. The judgment debtors are directed to place on record of this Court the share-scripts and all other books of the Company along-with upto date record for delivery to the decree holders and are further directed to restore to the Company its registered office. The judgment debtors are further directed to show cause why they be not suitably dealt with and detained in civil prison for not complying with the directions handed down by this Court forming the decree.

62. Both the execution petitions shall proceed in accordance with law and O. M. P. No. 94 of 1997 in Execution Petition No 7 of 1997 shall proceed further after the reply is received from judgment debtors in respect of the show cause above.

63. In view of what has been said above, the objections filed by the judgment debtors are dismissed with costs which are assessed at Rs. 10,000.