

(2009) 11 DEL CK 0047

In the Delhi High Court

Case No : FAO (OS) No's. 337 and 423 of 2009

Capital Land Building and Others

APPELLANT

Vs

Shaheed Memorial Society (Regd.) and Others

Shaheed Memorial Society (Regd.) and Others Vs Capital
Land Builders Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 1(1), Order 23 Rule 1(4), Order 39 Rule 1, Order 39 Rule 2
Companies Act, 1956 — Section 100, 108, 111, 111(4), 155
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 164 DLT 444 : (2010) 7 RCR(Civil) 1749

Hon'ble Judges : Sanjay Kishan Kaul, J;Ajit Bharihoke, J

Bench : Division Bench

Advocate : Rajive Sawhney, Viraj R. Datar and Vineet Jhanji, in FAO OS No. 337 of 2009 and Subodh K. Pathak and S.P.M. Tripathi, in FAO OS No. 423 of 200, for the Appellant; Subodh K. Pathak and S.P.M. Tripathi for R-1 to 8 in FAO (OS) No. 337 of 2009, K.P.S. Kohli, Proxy counsel for Maneesha Dhir, for R-9 and 10 in FAO (OS) No. 337 of 2009 and for R-6 and 7 in FAO (OS) No. 423 of 2009 and Rajive Sawhney Viraj R. Datar and Vineet Jhanji for R-1 to 4 in FAO (OS) No. 423 of 2009, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—A dispute between two family groups to control M/s. Capital Land Builders Private Limited, appellant No. 1 in FAO (OS) No. 337/2009 (for short "the said Company"), and consequently deal with valuable land owned by the said Company has given rise to a spate of litigation. The present appeals arise from one branch of that litigation. The said Company is stated to have been incorporated in the year 1959 with the object of acquisition of properties, promotion and development of land & building, and other objectives as specified in the Articles & Memorandum of Association. The original authorized capital of the said Company is stated to have been Rs. 1.00 lakh divided into one thousand equity shares of Rs. 100.00 each and a paid up capital of Rs. 56,000.00. There

were only two original subscribers - Shrimati Satya Chowdhry, wife of late Chowdhry Brahm Prakash, the first Chief Minister of Delhi holding ten shares of Rs. 100.00 each and Mr. Kishor Lal Sachdeva holding five shares. Chowdhry Brahm Prakash is stated to have acquired 500 shares of the Company out of the total share capital of 560 shares in the year 1962 for which three share certificates were issued. In the year 1963 he formed a Society by the name of M/s. Shaheed Memorial Society (Regd.), respondent No. 1 herein, of which he became the President. The 500 shares held by him in the said Company were transferred to the Society of which he continued to be the President till his death. It is the claim of appellants 1 to 4 that in the year 1983 the Society was allotted 150 additional shares by the said Company but during the period 1968-1989 these shares were transferred to different parties leaving the Society with no share holding in the Company by the end of the year 1989 and the name of the Society was removed from the register of shareholder of the said Company. In a nutshell the claim of the appellants is that the family of appellants 2 to 4 got the control of the Company and the Company was managed by Shri Kishor Lal Sachdeva and his family members. plaintiffs 3 & 4 claim to have acquired 20 shares each of the Company from the Society in the year 1974 vide share certificate No. 3A(1)(A) & 3A(1)(B) of the Company.

2. It is post the demise of Chowdhry Brahm Prakash in the year 1989 that disputes are stated to have arisen between two family groups and representations were made by the representatives of Chowdhry Brahm Prakash to Registrar of Company claiming interest in the said Company through the Society.

3. It is in the year 1997 that a Company Petition was filed by respondent No. 1 Society u/s 100 & 111 of the Companies Act, 1956 (hereinafter referred to as the said Act), being Company Petition No. 15/111/1997. The Society filed this petition through one Shri Sidharth Chowdhry, respondent No. 7, claiming to be the Secretary of the Society. In that Company petition it was averred that the Society had been formed amongst other objectives for promoting social welfare of the community in the field of health, education, sciences, etc. as also for promoting national integration, socialism, democracy and diffusion of political knowledge. The said Company (respondent No. 1 in those proceedings) was stated to be a private limited Company whose registered office earlier was at Pataudi House, Darya Ganj, Delhi, which was shifted to B-49, Connaught Circus, New Delhi and Society had learnt that the said Company had shifted its registered office at No. 5- A, Doctors Lane, Gole Market, New Delhi. Shri Janardhan Rai, respondent No. 2 in those proceedings, was stated to be the Director of the said Company. In para 11 of the petition, the Society averred that a copy of the share certificate in favour of the Society issued by the Company was being annexed as Annexure "C" and that "the original will be shown to the court at the time of hearing". We may note at this stage itself that this original share certificate has not seen the light of the day till the conclusion of the hearing of the present appeal. The application goes on to state that the Society

wanted to be better informed about the affairs of the Company and on an inquiry found that no annual returns had been filed for a number of years nor any notice or information had been sent about the holding of a general or special meeting. The Society alleged that it had learnt that the Company had without any cause omitted the name of the Society from the register of members of the Company and the Directors of the Company had transferred the shares belonging to the Society to themselves or their nominees or friends. No proper instrument of transfer duly stamped and executed by or on behalf of the Society is stated to have been delivered to the Company along with the certificate relating to the shares. This transfer is alleged to be irregular surprisingly on the ground that as per Rule 6 of the Articles & Memorandum of Association vested in the governing body of the Society though it is really a matter of running of the Society and not of the Company. No Board resolution is stated to have been passed by the Society for transfer of its shares. The claim was made that the name of the Society should be recorded in the register of the members of the Company for 61 to 560 shares.

4. This petition filed before the Company Law Board by the Society was resisted on behalf of appellant No. 1 herein by filing a reply alleging that the Society was no more a shareholder of the said Company. The share scrip was stated to have been split into lesser denomination and fresh share certificate is stated to have been issued to make transfer of shares more convenient and practicable. A subsequent affidavit filed by the said Company has given a history of the transfer of the shares. It was averred in the affidavit that in the year 1975 there was a fire accident at the registered office of the Company in which the minutes books and other record maintained by the Company had been destroyed and this fact forms a part of the record in a civil case pending in the High Court of Delhi. The information was compiled from other records including of annual returns filed with the Registrar of Companies, New Delhi as mandated by Section 159 of the said Act. The 500 shares bearing No. 61-560 are stated to have been originally allotted to late Chowdhry Brahm Prakash on 20.5.1962 and his name continued to appear in the annual returns filed up to 31.12.1962. The 500 shares were transferred on 24.7.1963 to the Society and the name of the Society continued in the annual returns filed up to 31.12.1963. In the year 1968 the three share certificates with distinctive numbers 61-560 was split into 100 scrips of 5 shares each. A number of transactions are stated to have been done in respect of shares including re-transfer of shares to Chowdhry Brahm Prakash and transfer of shares by him. It would be useful to reproduce the relevant portion in this behalf, which is as under:

S.No.	Share No.	Date of Transfer	Name of the Transferee along with Address	Scrip Nos.	Shares	Transfer with
1.	061-210	150	26.2.68 Sh. Chowdhry Brahm Prakash, 15, Curzon Lane New Delhi			
2.	211-310	100	26.2.68 Sh. G.D. Sehgal Vidhya Mandir Dharmshala, Himachal Pradesh			

-----	3.	311-315
005 10.7.72 Smt. Satya Chowdhry 15, Curzon Lane New Delhi	-----	
-----	4.	316-320
005 10.7.72 Shri Ajai Chowdhry 15, Curzon Lane New Delhi	-----	
-----	5.	321-325
005 10.7.72 Shri Sidharth Chowdhry 15, Curzon Lane New Delhi	-----	
-----	6.	326-335
010 29.1.74 Sh. Madan Singh Village Chattarpur New Delhi	-----	
-----	7.	336-365
030 29.1.74 Ms. Usha Kiran Outram Lines Kingsway Camp Delhi-110009	-----	
-----	8.	366-395
030 29.1.74 Sh. Susheel Khera G/68, Bali Nagar New Delhi	-----	
-----	9.	396-425
030 29.1.74 Sh. Rakesh Kumar G/68, Bali Nagar New Delhi	-----	
-----	10.	426-455
030 29.1.74 Sh. H.S. Gulat 23, Mohan Park Delhi-110009.	-----	
-----	11.	456-475
020 29.1.74 Sh. Om Prakash 313-F, Outram Lines Kingsway Camp Delhi-110009	-----	
12. 476-505 030 29.1.74 Smt. Sharda Devi C-2, Bali Nagar New Delhi.	-----	
-----	13.	506-535
030 29.1.74 Smt. Vidya Khera G/68, Bali Nagar New Delhi	-----	
-----	14.	536-555
020 29.1.74 Smt. Promila Kishore 309-F, Outram Lines Kingsway Camp Delhi	-----	
-----	15.	556-560
005 1989 Sh. Chowdhry Brahm Prakash New Delhi	-----	

5. A perusal of the aforesaid shows that these transfers have occurred from 1968 to 1974 except five shares in 1989.

6. It is important to note that in the affidavit it has been alleged that in the year 1986 the Society had filed a case in the city civil court alleging that the land sold by the Company does not actually belong to it and the land in question actually belonged to the Society which suit had been dismissed. The relevance of this averment will be discussed later as in the course of hearing of the appeal the details were made available and the record of that suit was summoned and put to the respondents including the Society.

7. The Company has also alleged in the affidavit that the Society was, thus, fully aware of the three share scrips representing 500 shares split into 100 scrips of 5 shares each as late Chowdhry Brahm Prakash himself purchased 150 shares in his own name on 26.2.1968 by making payment to the Society of which he was the President, which was also included in the income tax returns of the Society.

8. The aforesaid petition remained pending when a new development arose in the year 2006. On a letterhead of the Company, Mr. Ajay Yadav, respondent No.

4, addressed a letter to Ajay Chowdhry, respondent No. 2, in the capacity of the President of the Society with regard to the 500 equity shares. The letter refers to a meeting of the Board of Directors of the Company and a Board Resolution being passed on 25.5.2006 where the failure of the past management about transfer of shares not being supplied was noted and the decision was taken to take on record shares of the Society in the register of members of the Company after adhering to the provisions and procedure of the said Act along with applicable rules and regulations. Mr. Ajay Yadav is the brother-in-law of Mr. Ajay Chowdhry. Mr. Ajay Yadav was not originally a Director. The petition u/s 111 of the said Act was pending. The letter has been issued from the address of Mr. Ajay Yadav being shown as that of the Company. This letter was placed before the Company Law Board on 29.5.2006 and the Society sought to withdraw the petition which permission was granted and the petition was dismissed accordingly.

9. It appears that inter se the Society there were also some disputes for an application came to be filed on behalf of the Society by Mr. Sidharth Chowdhry, who had filed the original petition, seeking recall of the order dated 29.5.2006 permitting the petition to be withdrawn. It was averred in the application that Shri Ajay Chowdhry had fraudulently changed the constitution of the Society and has shown himself as President of the governing body for the year 2004-2005. Some persons were inducted as shareholders of the Company and Mr. Ajay Chowdhry had an ulterior motive of disposing of the assets of the Society. The petition having been filed originally by the applicant, it was alleged that Mr. Ajay Chowdhry had no right to extinguish the cause of action of Company petition. There was no opposition to the restoration of the petition by the Company and on 29.6.2006 the Company Law Board passed an order restoring the petition and directed it to be listed for final arguments on 23.8.2006.

10. The Society and Mr. Ajay Chowdhry thereafter filed a writ petition under Articles 226 & 227 of the Constitution of India on 27.4.2007 seeking to challenge the order of the Company Law Board dated 29.6.2006 restoring the Company Petition to its original number. In the mean time subsequent orders had also been passed by the Company Law Board numbering six on the later dates which were also sought to be challenged in this writ petition. The writ petition, however, was directed to be registered as a Company Appeal and assigned a Company Appeal number, being Co.A. (SB) No. 9/2007. In the Company appeal Co. Appl. No. 723/2008 was filed. The said application in the appeal came up for consideration before the learned Company Judge on 30.4.2009. In the said proceedings it is recorded that on the previous date of hearing the Counsel for the Society urged that it was not concerned with inter se disputes between the Directors of the Company and that irrespective of the status of Shri Ajay Yadav as to whether or not he was or is a Director of the Company and whether the letter dated 26.5.2006 was issued under the authority of the Company or not, the Society was not interested in prosecution of the case filed before the Company Law Board and it cannot be compelled to do so. The Counsel representing the Company submitted that Mr. Ajay Yadav was never a Director of

the Company nor he had any lawful authority to represent the Company at any point of time which position was disputed by Mr. Ajay Yadav. However, in view of the stand of the Counsel for the Society that it did not want to prosecute the petition before the Company Law Board filed u/s 111 of the said Act for rectification of register irrespective of the authority of Shri Ajay Yadav to have issued the letter dated 26.5.2006, learned Counsel for the Company gave no objection to withdrawal of the appeal. The result was that the learned Company Judge taking note of the statement made by the Counsel for the Society that the Society cannot be compelled to prosecute the petition before the Company Law Board directed that Company Petition No. 15/111/97 would stand dismissed as withdrawn and as a consequence thereof nothing survived for adjudication in the appeal. The upshot of this was that the Society withdrew the proceedings before the Company Law Board in which it could have got adjudicated the right of the Society to get its name recorded in the register of members of the Company.

11. The matter, however, did not rest at this since the learned Company Judge took a serious view of the conduct of Mr. Ajay Yadav. This conduct was a consequence of an order passed on 6.10.2006 in an interlocutory application filed in CS (OS) No. 1906/2006 by the Company in terms whereof the Society, Mr. Ajay Chowdhry and other members of that group who were defendants in the suit (respondents herein) had been restrained from representing themselves as shareholders/representatives of the Company till further orders. This order is stated to have been breached and applications under Order 39 Rule 2A of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code) were filed in the suit proceedings which culminated in an order dated 20.4.2009 being passed holding that respondent Nos. 3 to 6 herein had violated the injunction order and their act amounted to civil contempt. The learned Company Judge came to the conclusion that in the light of the prohibition it was not open to Shri Ajay Yadav to represent the Company and this fact had not been informed to the court by the Counsel representing Mr. Ajay Yadav. The vakalatnama filed by the Counsel on behalf of Shri Ajay Yadav as if he was representing the Company was found to be in teeth of the order of injunction and the action of Shri Ajay Yadav in signing the vakalatnama was observed to be a blatant attempt to lower the authority of the court in violation of the order dated 6.10.2006 passed in CS (OS) No. 1906/2006. The conduct of Shri Ajay Yadav was held to be an effort to prejudice due course of judicial proceedings and would fall within the definition of criminal contempt and the matter was thereafter directed to be placed before the appropriate Bench after registering the petition as such.

12. The aforesaid detailed history was necessary to appreciate the circumstances in which CS (OS) No. 1906/2006 came to be filed in the present court, the present appeals arising from the decision on the interlocutory applications in that suit. The suit has been filed for injunction and damages. The plaint alleges that the present authorized capital of the Company is Rs. 25.00 lakh divided into 25,000 equity shares of Rs. 100.00 each while the issued and paid up capital is Rs. 24,92,000.00 divided into 24,920 equity shares of Rs. 100.00 each. The

initial share capital of the Company is stated to be Rs. 1,500.00 comprising of 15 equity shares of Rs. 100 each but this capital continued to increase from time to time. As on 1985 the share capital was 1,550 shares while in 1998 it was increased to 22,405 shares for which Form-2 dated 1.2.1998 was duly filed with the Registrar of Companies on 22.12.1998 incorporating all the information. The share certificates earlier issued to shareholders on incorporation of the Company are stated to have been cancelled, withdrawn and replaced with the new share certificates pursuant to the decision taken by the Board of Directors of the Company at its meeting dated 28.9.1983 and again on 20.1.1998. The Company is stated to have been maintaining its statutory record and filing annual returns with the Registrar of Companies. The balance sheets and annual returns for the various years filed from time to time were placed on record. The registered office is stated to have been shifted to Doctors Lane and Form-18 filed with the Registrar of Companies on 7.1.2000. The present share holders of the Company were stated to be as under:

-----					a. Janardhan
Rai	135	shares	No	transfer	records
-----					b. H.C.
Sachdeva			55		shares
-----					c. M/s. Runwell
India	Pvt.		Ltd.	430	shares
-----					d. Smt.
Promila		Kishor		2480	shares
-----					e. S.S. Sobti
20	-----				f. O.P.
Sachdeva					3800
-----					g. Smt. Annu
Sabharwal					2500
-----					h. Smt. Alka
Sahni	2500	-----			i.
Sh.		Ankur		Sachdeva	2500
-----					j. Sh. Ashish
Kishor	4500	-----			k.
Sh.		Kishor		Lal	3000
-----					l. Smt. Prema
Sachdeva					2000
-----					m. Smt.
Ashima			Arora		1000

13. The list of Directors as per Form-32 filed is stated to be as under:

-----		Director	Appt.	On
-----	Mrs.	Promila Kishor	21.7.1995	
-----	Mr.	Ankur Sachdeva	2.9.1996	

-----	Mr. Om Prakash Sachdeva	8.8.1982
-----	Mr. Harichand Sachdeva	31.12.1968
-----	Mr. Ashish Kishor	30.9.1999
-----	Mr. Gaurav Sachdeva	23.2.2005

14. The plaint thereafter sets out the setting up of the Society and how the shares came to be transferred and from whom the present shareholders purchased share holding the details are as under:

Shares	Seller				Year	No. of Buyer
					1968	150
Shaheed	Mem.	Society	Ch.	Brahm		Prakash
					1968	100 -Do-
Sh.		G.D.				Sehgal
					1972	5 -Do-
Smt. Satya Ch						
1972	5	-Do-	Sh.	Ajay		Ch
					1972	5 -Do-
Sh Sidharth Ch						
1974	10	-Do-	Sh.	Madan		Singh
					1974	30 -Do-
Smt.		Usha				Kiran
					1974	30 -Do-
Sh. Sushil Kh.						
1974	30	-Do-	Sh.	Rakesh		Sach.
					1974	20 -Do-
Smt.		Promila				Kish.
					1974	20 -Do-
Sh.		Om				Prakash
					1974	30 -Do-
Sh. H.S. Gulati						
1974	30	-Do-	Smt.	Sharda		Rai
					1974	30 -Do-
Smt. Vidya Kh.						
1983	150	New	Allotment	Shaeed		Mem.
					1989	55
Shaheed	Mem.		Sh.	J.		Rai
					1989	100 -Do-
Sh. G.D. Sehgal						

The aforesaid, thus, shows that all the share transfers are stated to have occurred from 1968 to 1989. The Society was stated to have been defunct without any activity for 20 years and no returns had been filed till 2005. Thereafter the filing of the Company Petition under Sections 108 & 111(4) of the

said Act have been referred to and the factum of the Company contesting the same as also the proceedings which transpired thereafter. The letter dated 26.5.2006 is naturally stated to have been forged and fabricated. The Company goes on to state that it received a letter dated 3.2.2006 from the Office of the Assistant Registrar of Companies about complaints from one of the shareholders, i.e. the Society. There were subsequent exchanges and correspondence in this behalf.

15. The plaint states that in April 2006 the Company received information from the market that some persons are holding out themselves as Directors of the Company and negotiating for sale of the properties of the Company. The Company, thus, issued public notices on 11.4.2006. The Company also came to know that a Form-32 had been filed with the Registrar of Companies on 18.3.2006 showing change of Directorship. This Form-32 gave the registered office of Doctors Lane and the date of appointment of Mr. Arjun Chowdhry, Mr. Ajay Yadav and others as 10.3.2006. Further a Form-18 was filed for change of registered office w.e.f. 18.3.2006 from Doctors Lane to A-3, Indian Express Apartments, Mayur Vihar, Delhi, the address of Mr. Ajay Yadav. A Form-2 about return of allotment was also filed in respect of issue of additional shares in pursuance to a Resolution of the Board on 18.3.2006 and the Form-5 for notice of consolidation, division, etc. or increase in share capital or increase in members was filed purportedly and in pursuance to a meeting held on 6.6.2006 increasing the share capital from Rs. 25.00 lakh to Rs. 75.00 lakh as per a Board Resolution dated 15.5.2006. It may be interesting to note as pointed out by learned senior Counsel for the appellants that Form-18 has been signed by Mr. Ajay Chowdhry on behalf of the Society (member) even though such a form could have been filed only by a Director of the Company and not by a member which was the claim of the Society. The claim, thus, was that the forms were filed by a stranger and no meeting as required u/s 169 of the said Act in respect of calling for an extraordinary general meeting had been held and thus no change was possible. It is filing of these forms and the action of the respondents herein which is stated to have compelled the appellants to file the suit seeking an injunction against the respondents from representing or holding themselves out as shareholders, writing on letter heads of the appellant Company, removing any records, disclosure of any transaction, dealing with assets of the Company and claiming damages. This plaint dated 4.10.2006 was listed before the learned single Judge on the original side on 18.10.2006 along with the interlocutory application filed under Order 39 Rules 1 & 2 of the said Code seeking interim relief. The respondents herein were restrained from representing themselves as shareholders/representatives of the appellant Company till further orders.

16. The suit was resisted by the respondents. The story set up by the respondents is in the same manner as their claim set out above. In reply to paragraphs of the plaint dealing with the registered office and the increase of authorized capital all that has been stated is that it warrants no reply. It is material to once again note that para 1.5 of the plaint deals with the increase of

issued capital and the respondents in response to the same have once again reiterated the aspect of their holding the share of the Company which is in possession of the Society. Similarly while dealing with para 1.7 of filing the balance sheet it has again been stated that the same is a matter of record. Para 1.10 deals with existing Directors as per Form-32 and the defendants state that the same warrants no reply.

17. The hearing on the interlocutory applications under Order 39 Rules 1 & 2 of the said Code, Order 39 Rule 4 of the said Code and also under Order 39 Rule 2A of the said Code were concluded on 9.5.2008. The judgement on the applications for contempt pronounced on 20.4.2009 and on the said date when the concerned respondents were found guilty of contempt, further directions were passed pending pronouncement of judgement on the interim injunction applications that appellants 2 to 4 should also be restrained from disposing of any property which should be standing in the name of appellant No. 1 Company. The impugned judgement was thereafter pronounced on 6.8.2009 whereby the ex parte injunction order was vacated. The learned single Judge has, however, observed while vacating the said order that in the facts and circumstances of the case both the groups may be able to squander the assets of the Company without waiting for final adjudication and thus during the pendency of the suit neither the original plaintiffs nor the defendants should be permitted to dispose of the assets standing in the name of the Company in any manner.

18. FAO (OS) No. 337/2009 was filed by the appellants (original plaintiffs). The arguments were concluded on 20.8.2009 but learned Counsels for the parties requested the matter to be placed for directions. In view of the nature of submissions advanced on 4.9.2009 we considered it appropriate to summon the file of Suit No. 141/1986 titled Shaheed Memorial Society v. Capital Land Builders Pvt. Ltd. which was pending before the Sub-Judge, 1st Class and decided on 17.11.1986 and a reference to which case had been made by the appellants though copies of the order had not been filed. The record being summoned was placed before us and was perused by us and it was put to the learned Counsel for the respondents as to why this suit file inter se parties earlier cannot be looked into in view of the provisions of Order 41 Rule 27 read with Order 43 Rule 2 of the said Code especially as it has been referred to in the pleadings. The counsels for the respondents sought time to inspect the records and make submissions as recorded in the proceedings of 18.9.2009. Further submissions in this behalf were heard on 14.10.2009 when judgement was reserved in the appeals.

19. The respondents filed an appeal being FAO (OS) No. 423/2009 on 16.9.2009 by which time arguments had been heard in FAO (OS) No. 337/2009. This appeal was listed on 18.9.2009 and we noted that at the stage when the hearing was going on in FAO (OS) No. 337/2009 the respondents had not expressed any intention of filing an appeal against the impugned order and that the then senior Counsel appearing had defended the order. The new senior Counsel appearing in

FAO (OS) No. 423/2009 stated that the appellants were only concerned with the operative portion of the directions in the impugned order since despite vacating the order of ex parte injunction the learned Judge in the operative portion of the order had passed interim injunction against both the parties. The parties were heard on this aspect also on 14.10.2009 when judgement was reserved.

20. A reading of the impugned judgement shows that after discussing the factual matrix the learned Judge found that this was really a fight between two groups. The appellants were stated to be fighting to get the declaration that they are the persons who alone can represent the Company but they were yet to establish as to how and when they entered into the Company. It is noticed that the question whether the Society had sold its entire share holding to the Company was a controversy already pending decision before the Company Law Board and thus there was no need to initiate an independent new suit. The purchase of shares by plaintiffs 3 & 4 are stated not to have been explained and the relevant documents not brought on record. The learned single Judge has noticed the fact that the original share certificates were not produced by the respondents despite claiming to be in possession of the same. No doubt the plea of the appellants was that new share certificate had been issued which had been transferred. The learned single Judge found that it was for the plaintiff to establish the prima facie case.

21. The impugned judgement is sought to be challenged by learned senior Counsel for the appellants by pointing out that in terms of Section 164 of the said Act the register of members is prima facie evidence of any matters directed or authorized to be inserted therein by the Act. The said provision reads as under:

164. Registers, etc., to be Evidence.

The register of members, the register of debenture holders, and the annual returns, certificates and statements referred to in Section 159, 160 and 161 shall be prima facie evidence of any matters directed or authorised to be inserted therein by this Act.

22. Learned Counsel submits that the entry of the names of the existing shareholders and Directors and the absence of the name of the Society is, thus, prima facie proof of who is the shareholder and Director of the Company.

23. The respondents had a grievance of non-inclusion of their name in the register of members and that is what caused them to file the petition before the Company Law Board seeking relief u/s 111 of the said Act. The claim of the respondents, however, never came to be adjudicated finally by the Company Law Board as the proceedings were prematurely terminated on account of the disputed letter dated 26.5.2006 which was purportedly written on behalf of the Company by Mr. Ajay Yadav to Mr. Ajay Chowdhry, his brother-in-law, stated to be the President of the Society. The address of the Company was shown to be that of Mr. Ajay Yadav. Learned Counsel, thus, emphasized, and in our considered view, rightly so, that it is only when the Society would have succeeded in its

petition u/s 111 of the said Act would the question of entering the name of the Society on the register of members arise. It is the own case of the Society and the group of late Chowdhry Brahm Prakash that their names had been wrongly excluded from the register of members. The termination of the proceedings were, however, re-activated on an application filed by the Society itself through Mr. Sidharth Chowdhry who had filed the original application and the Company petition was restored to its original number. A grievance in that behalf was raised by other group representing the Society who are the respondents herein and who tried to close the proceedings that there should be no re-activation of the proceedings before the Company Law Board. The Company Appeal came to be decided by the learned Judge of this Court on a categorical plea of their Counsel that he was not interested in prosecuting the Company Petition before the Company Law Board irrespective of the fact whether the rights were recognized or not under the letter dated 26.5.2006. It is on that condition that the petition before the Company Law Board was directed to be treated as dismissed as withdrawn and so also the Company Appeal before the learned Company Judge. The result of these proceedings is that the avenue which was open to the Society and the group representing it to get the question of inclusion of their names in the register of members adjudicated remained unadjudicated and closed.

24. In order to appreciate the scope of Section 111 of the said Act dealing with the provisions for rectification of register of members, learned senior Counsel for the appellants referred to the judgement in *Ammonia Supplies Corporation (P.) Ltd. v. Modern Plastic Containers Pvt. Ltd. and Ors.* (1998) 94 CC 310. The Supreme Court was seized with the question of the power of the court to rectify the register of members which was then contained in Section 155 (now Section 111) of the said Act. The power was held to be summary in nature. The Supreme Court observed that if it truly is a case of rectification all matters raised in that connection should be decided by the court u/s 155 (now Section 111) and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by the civil court and the civil court would have jurisdiction unless the jurisdiction is expressly or impliedly barred under a statute. It was observed that the jurisdiction of the civil court was impliedly barred in case of matters of rectification.

25. The plea of the learned senior Counsel, thus, is that it was for the Company Law Board to decide this question arising from the claim of the respondent seeking rectification and only the Company Law Board would have been competent to relegate the parties to a civil suit in case of appropriate parameters. The respondents are, thus, stated to have abandoned their relief in this behalf by withdrawing the proceedings. Learned Counsel also drew the attention of this Court to Order 23 Rule 1 Sub-rules 1 & 4 of the said Code to contend that where a party abandons its suit or part of the claim, such party shall be precluded from instituting any fresh proceedings in respect of the subject matter or part of the claim. Learned Counsel submits that the same position would apply to the actions of the respondents in abandoning their claim

before the Company Law Board and sought support from the observations of the Supreme Court in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, where a petition under Article 226 of the Constitution of India had been withdrawn without permission to institute a fresh petition and it was observed that a fresh petition would not be maintainable in the absence of such permission as the rule of public policy as contained in Order 23 Rule 1 of the said Code would apply in such cases and the exception is a habeas corpus petition.

26. We find force in the contention of the learned Counsel for the appellants in this behalf. It was the own case of the respondents that their name had been wrongly excluded from the register of members and thus they had filed the appropriate proceedings u/s 111 of the said Act to get the claim adjudicated. It has obviously been a folly on their behalf not to have taken the matter to its logical conclusion where either they would have been able to establish their claim or the same would have been rejected. The claim stands withdrawn by them. The respondents seem to have proceeded on the premise that the letter dated 26.5.2006 would serve their purpose. Prima facie the manner and origination of the said letter itself is not free from doubt. The claim of the respondents was yet to be adjudicated and as to how they could have held a Board meeting of the Company ostensibly claiming to be the Directors is a moot point. It was of course for the respondents to establish that they have been wrongly excluded. It was during the pendency of the proceedings before the Company Law Board that unilaterally Form-32, Form-18, Form-2 & Form-5 were filed in surreptitious manner by the respondents to achieve their objective even when the petition was still pending before the Company Law Board. It has already been noticed that Form-32 is signed by Ajay Chowdhry for the Society alone. The Society was a stranger as per the own admission of the respondents since it had been wrongly excluded. No details of how the meeting could have been called contrary to the provisions of the said Act has been explained.

27. There is no material on record to show either a proper requisition being made for extraordinary meeting of the Company nor any notice was given u/s 284 of the said Act to plaintiffs 2 to 4 in respect of a proposal for their removal. The act of filing different forms and trying to change the composition of the Board, the share holding and the registered office were clearly only a prelude for issuing the letter dated 26.5.2006 by falsely creating evidence in their favour by the respondents.

28. The Company Law Board by restoring the petition sought to examine the validity and consequences of the letter dated 26.5.2006. In the Company Appeal the Counsel for the respondents sought to withdraw the Company Petition irrespective of the claim under the letter dated 26.5.2006. The result is that it is as if having approached the Company Law Board with a claim for rectification of register the same stands unilaterally withdrawn by the respondents without recognition of any rights in the Company.

29. In the course of proceedings in the suit and while hearing interim applications on 20.9.2007 the Company was directed to produce the complete records including transfer deeds signed on behalf of the Society. In pursuance to this direction original documents have been filed in a sealed cover/trunk while the respondents have not filed any documents. Even photocopies were not filed except of one share. It appears that these plethora of documents filed in original have escaped the attention of the learned single Judge while considering the aspect of the documents filed in support of the case of the plaintiff.

30. The original documents filed by the appellant and which were on record before the learned single Judge have been perused by us. The register of shareholders is available reflecting the transfer of shares. Similarly, the share certificates with transfer deeds have also been filed. Annual returns for some of the relevant years have also been placed on record. The position as existed in 1989 is reflective from these original documents by which time the Society had no share holding left in the Company. The claim of the respondents is predicated on the Society owning a part of share holding which is not borne out of the records. This claim is also falsified by the own stand of the Society in the proceedings initiated u/s 111 of the said Act whereby they wanted their names to be inserted in the register of members of the Company. The shares have been transferred in pursuance to the transfer deeds filed. No doubt learned Counsel for the respondents contended that when these documents were sought for before the Company Law Board, they were not available and were stated to have been destroyed in fire and only some of the returns were filed but the fact remains that in the suit these documents have been filed after locating and on a perusal of the same appear to be prima facie authentic. The absence of scrutiny of these documents by the learned single Judge has resulted in a finding that the appellant had not supported their case with documents and thus finding is contrary to record. We may also note that the original share certificate relied upon by the respondent has not seen the light of the day.

31. We find that there is also merit in the plea of the learned senior Counsel for the appellant that the last bit of shares held by the group of the respondents was transferred as far back as 1989. The matter was sought to be raked up by the respondents for the first time in 1997 after eight years before the Company Law Board and those proceedings also dragged on and now stands withdrawn. The respondents have no explanation for their silence over this long period of time.

32. The details of the manner of transfer of shares right up to 1989 has been fully explained by the appellants along with documents. Learned Counsel for the respondents did seek to plead that when a direction was passed by the Company Law Board these documents were not produced and it was claimed that there had been a fire in the office. Be that as it may even at that stage it was pleaded by the appellants that the records were old and whatever they had been able to lay hands on had been produced. Whatever further documents have been located have been produced which substantiate the case of the appellants.

33. The appellants had further pleaded the factum of the Society having filed a suit before the trial court. The relevant certified copy in this behalf had been filed and we have noticed above that we had already called for the records and deemed it appropriate to examine the same especially it is the suit filed inter se the parties. We gave time to the Society to make submissions in this behalf. The Civil Suit No. 141/1986 was filed by the Society through its then Secretary against Capital Land Builders Pvt. Ltd. and others. This was during the lifetime of Chowdhry Brahm Prakash. The subject matter of this suit for declaration and permanent injunction was once again the allegation of properties being transferred of the Company. The Society claimed ownership of a plot and sought cancellation of a sale deed dated 18.11.1985 which had been effected in respect of a plot No. B/45, Satyawati Colony, Ashok Vihar, Phase-III measuring 300 sq. yds. Summons in the suit and the application were issued and the Company entered appearance. The suit was, however, dismissed for non- prosecution on 17.11.1986. This suit is material for the purpose that disputes between the persons managing the Society and the Company had even arisen during the lifetime of Chowdhry Brahm Prakash and those claims were abandoned when the suit was dismissed for non- prosecution.

34. The appellants, in our considered view, have undoubtedly been able to establish a prima facie case that they are In-charge of the Company having share holding and the Society does not figure in the list of shareholders. Once the Company is controlled by the appellants group, its functioning cannot be brought to a standstill by the nature of the impugned order passed whereby both the parties have been restrained from dealing with the assets of the Company. This would amount to throttling the Company and would cause irreparable prejudice and harm to the functioning of the Company which is primarily dealing with the landed estate. The balance of convenience has to be in favour of the appellants as they have been running the show for decades and the respondents kept silent from 1989 to 1996 when for the first time they instituted the petition before the Company Law Board claiming the exclusion of their shareholding from the register of members. The original documents filed by the appellants clearly show that after 1989 there is no shareholding reflected of the group of the respondents. Without first getting their rights to be entered into the shareholders register established the respondents cannot have a say in the running of the Company.

35. It is trite to say that the said Act is comprehensive enough to look after the aspects of management of the affairs of a Company. In case of an allegation of mismanagement the minority group, if has sufficient members, can always move the Company Law Board. The Company is a separate legal entity and it is not as if any shareholder irrespective of its percentage of shareholding can interfere with the affairs of the Company. They would, of course, have a right to speak in a shareholders meeting. The very pre-requisite of being a shareholder was absent in the case of the Society and thus as a recourse to their grievance they rightly preferred the Company Petition u/s 111 of the said Act before the

Company Law Board. For the reasons best known to them they abandoned that remedy. During the pendency of that Petition they surreptitiously tried to steal a march by manipulating documents and having failed in the same appeared to have backtracked. Despite their failure to establish a status in the Company, they sought to deal with the properties of the Company and in fact, dealt with the properties and that too contrary to an injunction order of the court which has given rise to their conviction for contempt. Even before the Company Court they sought to represent themselves on behalf of the Company resulting in a reference of criminal contempt.

36. We are, of course, in agreement with the submission of the learned Counsel for the respondents that there can be no injunctive relief in such a suit unless triple test of prima facie case, balance of convenience and irreparable loss and injury is satisfied. This position is not even disputed by learned senior Counsel for the appellant. The present proceedings are not in the nature of Sections 397 & 398 of the said Act where the Company Law Board is enshrined with the responsibility of protecting the assets of the Company. The lis is between two groups in the civil suit. The aforesaid would, thus, imply that once the triple test is satisfied in the case of the appellants, the appellants would be entitled to interim relief. The appellants cannot be restrained during the pendency of the suit in view of the discussion aforesaid and the respondents cannot seek protection of the assets of the Company once prima facie they are found to have no status in the Company.

37. We are, thus, of the considered view that the impugned judgement cannot be sustained and we hold that the appellants have made out a case for interim relief having satisfied the triple test for grant of interim injunction and no order can operate against them or in favour of the respondents. The respondents, their agents and employees are, thus, restrained from representing themselves as shareholders or Directors of the said Company and consequent thereto are restrained from acting on behalf of the Company by using any letterhead, bank accounts or dealing with the assets of the Company in any manners whatsoever and cannot be permitted to file any statutory forms or returns on behalf of the Company. This injunction would operate during the pendency of the suit.

38. FAO (OS) No. 337/2009 is accordingly allowed with costs of Rs. 25,000.00 while FAO (OS) No. 423/2009 is dismissed leaving the parties to bear their own costs.

39. Needless to say that any observations made in this order is only prima facie in nature and would not prejudice the final trial in the suit.