

(2012) 08 MAD CK 0091

In the Madras High Court

Case No : C.R.P. (PD) No. 2009 and 2833 of 2012 and M.P. No's. 1 and 1 of 2012

K. Saravanan and S. Thilagavathy

APPELLANT

Vs

M/s. Cosmopolis Properties Pvt. Ltd. and others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Companies Act, 1956 — Section 10, 10(2), 107, 10GB, 111
Industrial Disputes Act, 1947 — Section 2(k), 2A
Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 —
Section 9A
Specific Relief Act, 1963 — Section 6

Citation : (2013) 113 CLA 199 : (2012) 175 CompCas 210 : (2013) 1 CompLJ
343 : (2012) 5 LW 278

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M. Venkatachalapathy, for Mr. S. Xavier Felix in C.R.P PD No. 2009 of 2012 and Mr. M.V. Venkateshan for Mr. S. Xavier Felix in C.R.P. PD No. 2833 of 2012, for the Appellant; T.V. Ramanujan, for Mr. R. Venkatavaradhan for R2 in C.R.P (PD) No. 2009 of 2012 and C.R.P (PD) No. 2833 of 2012, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—Defendants 1 and 2 in O.S.No. 410 of 2011 on the file of the I Additional District Munsif, Salem are the revision petitioners in C.R.P. PD No. 2009 of 2012. Defendants 2 and 3 in O.S.No. 862 of 2010 on the file of the I Additional District Munsif, Salem are the revision petitioners in C.R.P. PD No. 2833 of 2012. C.R.P. PD No. 2009 of 2012 is filed to strike off the plaint in O.S.Nos. 410 of 2011 and C.R.P. PD No. 2833 of 2012 is filed to set aside the order dated 28.1.2011 passed in I.A.No. 1876 of 2010 in O.S.No. 862 of 2010 on the file of the I Additional District Munsif, Salem. Respondents 1 and 2 in both the revisions filed the suit in O.S.No. 410 of 2011 to declare the notice dated 19.4.2011 calling for the Board Meeting as sham and nominal as the notice is

illegal and against the terms of the memorandum of understanding dated 17.4.2010 and for permanent injunction restraining the defendants in the suit from conducting any Board Meeting in respect of any subject covered under the memorandum of understanding dated 17.4.2010. Respondents 1 and 2 in C.R.P. PD No. 2833 of 2012 filed the suit in O.S.No. 862 of 2010 for declaration that the acts of defendants 1 to 3 in going back upon and violating the memorandum of understanding is illegal and arbitrary and for permanent injunction restraining defendants 1 to 3 from selling or transferring their shares in the first plaintiff company to any other person and for mandatory injunction to direct defendants 1 to 3 to comply with their commitment as per the memorandum of understanding.

2. Mr. M. Venkatachalapathy, learned Senior Counsel appearing for the revision petitioners in C.R.P.PD No. 2009 of 2012 submitted that as per the provisions of section 2(11) and 10 of the Companies Act, 1956, in respect of Company matters, the court is the High Court when the cause of action arose within the jurisdiction of the city of Madras and in any other place, the District Court and therefore, the suits filed before the Munsif Court is not maintainable and the Munsif Court has no jurisdiction to entertain the matters relating to Company and therefore, the suits are liable to be struck off. The learned Senior Counsel further submitted that having regard to the provisions of section 10GB of the Companies Act, the civil courts have no jurisdiction to entertain any suits or proceedings in respect of any matters which the Tribunal or the appellate authority is empowered to determine by or under the Companies Act or any other law for the time being in force and no injunction shall be granted by any court and therefore, submitted that the Munsif Court has no jurisdiction to entertain these two suits. The learned Senior Counsel further elaborated the arguments by submitting that in the suit in O.S.No. 410 of 2011, respondents 1 and 2/plaintiffs seek for declaration that the notice dated 19.4.2011 calling for the Board Meeting is sham and nominal and it is against the terms of memorandum of understanding and also seek for injunction from conducting any Board Meeting and the Companies Act provides for convening of the Board Meetings and as per the Companies Act, Board Meetings are to be convened as per the provisions of sections 295 and 296 of the Companies Act and the Board Meeting has to be convened to obtain sanction for approval of certain contracts in which the Directors are interested and therefore, if the convening of the Board Meetings are restrained by an order of injunction, that would affect the administration of the Company and under the Companies Act, the Tribunal and the Company Law Board are the authorities to deal with all matters relating to Company and in the absence of any Tribunal, the court has to be approached and as far as the Companies Act is concerned, the court is "the court" as defined u/s 2(11) and 10 of the Companies Act which is the High Court or District Court and therefore, the suit filed by respondents 1 and 2 before the Munsif Court is not maintainable. In support of his contention, the learned Senior Counsel relied upon the following judgments:-

1. Santosh Poddar and Another Vs. Kamalkumar Poddar and Others,
2. M/S. Ammonia Supplies Corporation (P) Ltd. Vs. M/S. Modern Plastic Containers Pvt. Ltd. and Others,
3. Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others,
4. K. Venkat Rao Vs. Rockwool (India) Ltd. and Others,
5. Reliance Industries Limited (Petroleum Division) and The Commercial Head Reliance Industries Limited Vs. Usha Devi

3. Mr. Venkataseshan, learned counsel appearing for the petitioners in C.R.P. PD No. 2833 of 2012, supplementing the arguments of the learned Senior Counsel Mr. Venkatachalapathy, submitted that under the provisions of the Companies Act, in respect of any matters relating to Company, only the Company Court has got jurisdiction to entertain any suits or petitions and the Munsif Court has no right to entertain any application relating to Company in respect of matters arising under the Companies Act and therefore, the suit is not maintainable. He further submitted that in C.R.P.D No. 2833 of 2012, the revision petitioners seek to set aside the order passed in I.A.No. 1876 of 210 in O.S.No. 862 of 2010 and in O.S.No. 862 of 2010, respondents 1 and 2/plaintiffs prayed for permanent injunction restraining defendants 1 to 3 from selling or transferring their shares in the first plaintiff company and as per section 111 of the Companies Act, any person affected by any transfer of shares, may appeal to the Tribunal against such sale or transfer of share and therefore, u/s 2(11) and 10 of the Companies Act, the Company courts are given exclusive power in the matter of transfer of shares and therefore, a suit praying for permanent injunction restraining the revision petitioners and any other from selling or transferring their share in the first plaintiff Company comes within the scope of section 111 of the Companies Act and therefore, such a relief can be prayed for only before the Company Court and not before the ordinary civil court and hence, the District Munsif Court has no jurisdiction to entertain the suit. He also relied upon the judgment in Suguna Poultry Farm Limited, S.C.M. Creations and NEG Micon (India) Pvt. Ltd. Vs. Arul Mariamman Textiles Limited, in support of his contention.

4. Mr. T.V. Ramanujan, learned Senior Counsel appearing for the respondent submitted that the District Munsif Court has got powers to entertain the suit and in the two suits, the plaintiffs viz., respondents 1 and 2 have not prayed for any reliefs in respect of matters which are within the exclusive jurisdiction of the Company Court and in O.S.No. 862 of 2010, respondents 1 and 2 seek for implementation of commitment undertaken by the revision petitioners and another as per the memorandum of understanding dated 17.4.2010 and for further declaration that they should not go back from the terms of the memorandum of understanding or should not do any act which amounts to violating the terms of the memorandum of understanding and in O.S.Nos. 410 of 2011, they also seek for declaration that the notice calling for the Board Meeting which is against the memorandum of understanding is illegal and in respect of

the prayers sought for in the above two suits, those reliefs cannot be said to be coming within the exclusive jurisdiction of the Company Court and therefore, the suits are maintainable. He further submitted that section 10GB of the Companies Act, though states that no civil court has jurisdiction to entertain any suit or proceedings, the said section does not exclude the jurisdiction of a civil court in its entirety and the jurisdiction of the civil court is excluded only in respect of any matter which the Tribunal or the appellate authority constituted by the Act is empowered to determine by or under the Companies Act and or in law for time being in force and therefore, in respect of any matter which does not fall within the exclusive domain of the Company Court, the same can be filed before an ordinary civil court. He further submitted that though section 10GB was passed by the Parliament and has been brought into effect, the same has not been notified and as per the judgment of the Honourable Supreme Court reported in Madras Bar Association Vs. Union of India (UOI), the Constitution of Tribunal as per the Act has been stayed by the Honourable Supreme Court and unless the members are appointed as per the guidelines given in that judgment, the Tribunal cannot function and therefore, section 10GB could not be invoked in support of the contention of the learned counsel for the revision petitioners. He also submitted that in respect of reliefs which are available under the common law, the civil court has got jurisdiction and is also made clear in various judgments having regard to the scope of section 9 of the CPC and unless the relief sought for falls exclusively within the powers of the Company Court or Tribunal, the civil court has got jurisdiction to entertain a suit and also relied upon the following judgments in support of his contention:-

- 1) Mrs. Kavita Trehan and another Vs. Balsara Hygiene Products Ltd.,
- 2) Rajendra Menon (No. 2) v. Cochin Stock Exchange Ltd. (Vol. 69 Company Cases 256 (Kerala))
- 3) Dr. T.M. Paul Vs. City Hospital (Pvt.) Ltd. and Others,
- 4) South Eastern Coalfields Ltd. Vs. State of M.P. and Others,

5. Therefore, we will have to see whether the District Munsif Court has got jurisdiction to entertain the suit having regard to the allegations in the plaint and the prayer prayed for in those two suits. Section 9 of the CPC gives powers to the civil courts to try all suits of civil nature except the suits of which their cognizance is either expressly or impliedly barred. Section 9 reads as follows:-

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

6. The scope of section 9 has been elaborately discussed in the judgment in Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa,) and in that judgment, the Honourable Supreme Court relied upon the judgment of the Foreign Court laid down in Wolverhampton New Waterworks Co.

v. Hawkesford ((1859) 6 CB (NS) 336) wherein it is held as under:-

There are three classes of cases in which a liability may be established by statute. There is that class where there is a liability existing at common law, and which is only re-enacted by the statute with a special form of remedy; there, unless the statute contains words necessarily excluding the common law remedy, the plaintiff has his election of proceeding either under the statute or at common law. Then there is a second class, which consists of those cases in which a statute has created a liability, but has given no special remedy for it; there the party may adopt an action of debt or other remedy at common law to enforce it. The third class is where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it.... With respect to that class it has always been held, that the party must adopt the form of remedy given by the statute.

7. Further, in the judgment rendered in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, various guidelines are given by the Supreme Court in respect of matters which can be tried by the civil court, and the guidelines are as follows:-

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by

the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

8. In the judgment in *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*,), the following principles are laid down by the Supreme Court:-

35. We may now summarise the principles following from the above discussion:

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 -- which can be called "sister enactments" to Industrial Disputes Act -- and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex

facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly -- i.e., without the requirement of a reference by the Government -- in case of industrial disputes covered by Section 2A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

9. After analysing all those judgments, in the decision reported in Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, , the Honourable Supreme Court held as follows:-

An assumption on the part of this Court that all such cases would fall only under the Industrial Disputes Act or sister laws and thus, the jurisdiction of the civil court would be barred, in our opinion, may not be the correct interpretation of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others,) which being a three-Judge Bench judgment and having followed Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , which is a Constitution Bench judgment, is binding on us.

10. Therefore, from the reading of the above judgment, it is clear that whenever a person has got grievance of a civil nature, he has got a right to institute a civil suit in a competent civil court and the civil court can entertain such suits unless the suit is expressly or impliedly barred by any statute. Further, it is well settled that there is a presumption that the civil court has jurisdiction and the ouster of civil court's jurisdiction is not be readily inferred and a person may taking a plea contra must establish the same and even in a case where the jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of similar matters particularly when the statutory Tribunal

acts without jurisdiction. (para 12 to 14 in the aforesaid judgment).

11. In the judgment in Dwarka Prasad Agarwal (D) by Lrs. and Another Vs. Ramesh Chandra Agarwala and Others, while interpreting sections 9 and 10 of the Companies Act, the Honourable Supreme Court held as follows:-

A bare perusal of the aforementioned provisions leaves no manner of doubt that thereby the jurisdiction of the civil Court has not been ousted. The civil Court, in the instant case, was concerned with the rival claims of the parties as to whether one party has illegally been dispossessed by the ouster or not. Such a suit, apart from the general law, would also be maintainable in terms of Section 6 of the Specific Relief Act, 1963. In such matters the Court would not be concerned even with the question as to title/ownership of the property.

12. In that judgment, the Honourable Supreme Court relied upon the judgment of the Supreme Court in Lallu Yeshwant Singh (Dead) by his Legal Representative Vs. Rao Jagdish Singh and others and Maharaja Exports and Another Vs. Apparels Export Promotion Council, in paragraphs 20 and 24. Further the judgment in R. Prakasam Vs. Sree Narayana Dharma Paripalana Yogam, was also relied upon wherein it has been held as follows:-

... The purpose of Section 2(11) read with Section 10 is only to enable the shareholders to decide as to which court they should approach for remedy, in respect of that particular matter. It is difficult to construe the definition clause as one conferring jurisdiction, exclusive or otherwise; and even Section 10 refers only to "the court having jurisdiction under this Act", i.e., where such jurisdiction is conferred by the Act, as under Sections 107, 155, 163(2), 237, 397, 425, etc. In other words, the conferment of jurisdiction on "the court" is not u/s 10, but by other provisions of the Act like those enumerated above. If, on the other hand, Sections 2(11) and 10 are construed as not only nominating the courts, but also conferring exclusive jurisdiction on them, the specific provisions in the other sections conferring jurisdiction on the court to deal with the matters covered by them will become redundant. It may be that where the Act specifies the company court as the forum for complaint in respect of a particular matter, the jurisdiction of the civil court would stand ousted to that extent. This depends, as already noticed, on the language of the particular provisions (like Sections 107, 155, 397 and others) and not on Sections 2(11) and 10...

13. Therefore, we will have to see whether the civil courts have got jurisdiction to entertain the plaint having regard to the allegations in the plaint and also the prayers prayed for in those two suits.

14. As stated supra, the allegations in both the suits are in respect of enforcement of memorandum of understanding entered into between the parties on 17.4.2010 and in O.S.No. 410 of 2011, the prayer is to declare the notice dated 19.4.2011 as illegal on the ground that it is against the terms of memorandum of understanding and for permanent injunction from convening any Board Meeting in respect of any subject matter under the memorandum of

understanding till all the disputes are resolved as per the memorandum of understanding. In O.S.No. 862 of 2010, the prayer is to declare that the acts of defendants 1 to 3 in going back upon and in violating the terms of the memorandum of understanding is illegal and arbitrary and for mandatory injunction directing defendants 1 to 3 to comply with the commitment as per the memorandum of understanding and for injunction restraining defendants 1 to 3 from selling or transferring their shares in the first plaintiff company to any other person. Further, a reading of the plaints would also make it clear that the parties have entered into a memorandum of understanding by which certain commitments were agreed by the parties and according to the plaintiffs, the defendants are acting against the terms of the Memorandum of Understanding and therefore, the suits are filed for the reliefs as stated above. Therefore, we will have to see whether the relief sought for in those two suits are coming within the exclusive jurisdiction of the Company Court.

15. Before going into that aspect, I want to make it clear that having regard to the judgments referred to above viz., Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, and Dwarka Prasad Agarwal (D) by Lrs. and Another Vs. Ramesh Chandra Agarwala and Others, the civil courts have got jurisdiction to entertain suits of civil nature unless the same is expressly or impliedly barred by statute. Further, a reading of section 2(11) of the Companies Act makes it clear that the court having jurisdiction under the Companies Act with respect to that matter relating to that Act, is the court as provided in Section 10 namely High Court or District Court. Section 10 of the Companies Act deals with the jurisdiction of the court and therefore, the Company Court has got jurisdiction to decide all matters which are to be dealt with under the provisions of the Companies Act in respect of those matters the civil courts have no jurisdiction and in respect of other matters which are not coming within the exclusive jurisdiction of the Company Court, the civil court has got jurisdiction.

16. With this background, let me consider the judgments relied by the revision petitioners. In Maharaja Exports v. Apparels Export Promotion Council (CDJ 1985 Delhi High Court 189), it is held that the civil court has got jurisdiction in respect of matters which are not coming within the exclusive jurisdiction of the court and in the said judgment it is held as follows:-

Section 10 of the Companies Act defines the jurisdiction "of the court to entertain the suits in such like matters. The definition of the "court" in clause (II) of Section 2 and Section 10 of the Companies Act, 1956, dealing with jurisdiction of courts, read together enables the shareholders to decide as to which court they should approach for remedy in respect of a particular matter. This provision does not purport to invest the Company Court with the jurisdiction over every matter arising under the Act. In view of the elaborate provisions contained in the 1956 Act in regard to management and conduct of a company's affairs, including even important internal matters of administration, the scope for interference by

the civil court may have become more limited, but the power has not at all been taken" away. It has been rightly observed in a case reported as R. Prakasam v. Sree Narayana Dharma Paripalanayogem; 1980 Company cases page 611(2) that except in cases where the Companies Act 1956 confers jurisdiction on the Company Court or some other authority like the Central Government or the Company Law Board, either expressly or by implication, all other disputes pertaining to a company are to be resolved through a forum of Civil Court when the dispute are kept on being resolved by them. Where wrong is done to an individual member, he can insist by recourse to a civil suit, on "strict observance of the legal rules, statutory provisions and provisions in; the memorandum and articles of association which cannot be waived by a bare majority of share holders". Similar view was taken in a judgment reported as Panipat Woollen and General Mills Company Ltd. and another v. P.L. Kaushik and others; 1969 Company Cases 349(3). While interpreting the provisions of Section 9 of the CPC viz.-a-viz the Companies Act, during the course of the Judgment it was observed as under : "under Section 9 of the CPC 1908, Civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is expressly or impliedly barred. Unlike some statutes, the Companies Act does not contain any express provision barring the jurisdiction of the ordinary civil courts in matters covered by the provisions of the Act. In certain cases like winding up of companies the jurisdiction of Civil Courts is impliedly barred. Where a person objects to the election of Director and claims a decree for declaration that he was one of the directors, there is no provision which bars the Civil Courts either expressly or by implication from trying such a suit." In the present suit also besides other reliefs the plaintiff has sought the declaration that all the 27 members of the existing executive committee are not entitled to hold the respective offices in view of the judgment of this court and further that the 18 members of the executive committee which have retired by rotation are not entitled to continue in office as members of the executive committee. The judgment referred to above fairly and squarely applies to the facts of the present case and there is no reason to cast the jurisdiction of this court to entertain the present suit.

17. In the judgment reported in Santosh Poddar and Another Vs. Kamalkumar Poddar and Others, after quoting sections 2(11) and 10 of the Companies Act, it has been held as follows:-

When both these sections are read together it is apparent that whenever in the Companies Act the term "the Court" is used, the Court which is referred to is the Court as set out in section 10. When under the Companies Act a section refers to an application to a Court on any matter relating to a Company other than an offence under the Companies Act, section 10 provides that the Court having jurisdiction under the Act shall be the High Court, except to the extent to which such jurisdiction is conferred on any District Court by a Notification issued by the Central Government u/s 10(2). So that whenever there is any reference under the Companies Act to any proceedings before a Court under that Act, (other than

proceedings relating to an offence under the Act) the Court which will have jurisdiction shall be the High Court or, if there is the requisite Notification, the District Court.

12. There are number of sections under the Companies Act where such mention is made of proceedings before a Court. For example, u/s 391 of the Companies Act, where a compromise or arrangement is proposed between a Company and its creditors or its members, the Court may, on the application of the company or a creditor or a member of the company, order a meeting of the creditors or members to be called, held and conducted in such manners as the Court directs. The meaning of the word "Court" here is as provided in section 2(11) read with section 10 of the Companies Act. It will therefore be the High Court, in the absence of any Notification u/s 10(2). Similarly u/s 397 of the Companies Act, as it originally stood, where any members of the Company complain that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members, an application can be made to the Court for an order under this section. Once again, the Court would be the High Court in view of section 2(11) read with section 10 of the Companies Act. Therefore, whenever there are proceedings required to be undertaken under the Companies Act before any Court, as prescribed by the Companies Act, these proceedings will have to be taken before the concerned High Court or the District Court if there is any Notification relevant to that application and/or proceedings.

13. It is however, quite clear from a reading of these two sections that there is no ouster of the jurisdiction of a Civil Court in all cases where the provisions of the Companies Act may be attracted. It is only in respect of these proceedings which are expressly contemplated under the Companies Act under any specific provision that the Court which is referred to in that section would be the special Court, namely the High Court or the Notified District Court. In all other cases ordinarily Civil Courts would continue to have jurisdiction. This has been so held by a learned Single Judge of our High Court in the case of *Rao Saheb Manilal Gangaram Sindore v. Messrs Western India Theatres Ltd.*) 2, reported in LXIV Bom.L.R. at page 532.

18. In the decision reported in *M/S. Ammonia Supplies Corporation (P) Ltd. Vs. M/S. Modern Plastic Containers Pvt. Ltd. and Others*, the Honourable Supreme Court dealt with the provisions of sections 155 and 446 of the Companies Act and held that unless the jurisdiction is expressly or impliedly barred under a statute, for violation or redress of any such right, the civil court would have jurisdiction and there is nothing under the Companies Act expressly barring the jurisdiction of the civil court and only in cases where certain powers are conferred on the Company Court, the jurisdiction of the civil court is impliedly barred.

19. In the judgment reported in *K. Venkat Rao Vs. Rockwool (India) Ltd. and Others*, it is also held that the jurisdiction of the High Court u/s 10 is a wide one. But, the High Court, however, does not have a general or residuary jurisdiction to

deal with all the questions arising within the Companies Act and in that judgment the High Court was dealing with the provisions of section 283 of the Companies Act and in that context, it was held in that judgment that section 283(1)(f) creates a statutory liability under the Companies Act which is not contemplated under the common law and in respect of such matters, the application would lie only before the Company Court and ordinary civil court has no jurisdiction.

20. In the judgment reported in Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others, the Honourable Supreme Court was considering the scope of section 9A of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and having regard to the provisions of that section, it was held that ordinary civil court has no jurisdiction to entertain the matters and as per the provisions of section 9A of the said Act, the Special Court has to exercise the jurisdiction and powers and such power cannot be exercised by a civil court and therefore, the civil court has no jurisdiction.

21. Therefore, having regard to the above judgments, it is made clear that the Company Court has the exclusive jurisdiction to deal with matters which are exclusively falling within the domain of the Company Court or Tribunal constituted by the Companies Act and in respect of other matters, the civil court has got jurisdiction. As a matter of fact, u/s 111 of the Companies Act, in cases of refusal by a Company to register the transfer or the transmission of shares by operation of law, the transferor or transferee may appeal to the court against any refusal to register the transfer or transmission and in respect of that power, the civil court has no jurisdiction and the Company Court alone has got jurisdiction.

22. Similarly, u/s 186 of the Companies Act, the Tribunal may be approached by the Director or any member of the Company who is entitled to vote at the meeting for calling upon a meeting to be held if, for any reason, it is impracticable for the Company to call for the meeting other than a general meeting and such relief can be obtained only from the Tribunal or Company Court.

23. u/s 237 of the Companies Act, an investigation into the affairs of the Company can be ordered by the court u/s 388B having regard to the circumstances elaborated in that section, when the Central Government forms an opinion for stating a case against the person regarding the conduct and management of the affairs of the Company, and may refer the same to the Tribunal or court requesting the Tribunal or court to enquire into the case and record a decision.

24. Similarly, u/s 391, 392, 397 and 398, in the case of entering into a compromise or arrangement with creditors and members as per section 391, oppression of money by shareholders, the Company Court or the Tribunal alone has got the power and in such cases, the Company Court alone has got jurisdiction. Similarly, the Company Court has got the exclusive jurisdiction in respect of winding up matters. Therefore, in respect of those matters, which are

within the exclusive jurisdiction of the Company Court as referred to above, the Company Court alone has got jurisdiction and the ordinary civil court has no jurisdiction and in respect of other matters, the ordinary civil court's jurisdiction is not excluded.

25. Further, u/s 122 of the Companies Act, a contract with the Company to take up and pay debentures of the Company, may be enforced by a decree of specific performance and specific performance suit can be filed only before the civil court and therefore, it cannot be contended that in respect of all matters relating to Companies, only the Company Court has got jurisdiction and civil courts have no jurisdiction.

26. As stated supra, in the decision reported in Madras Bar Association Vs. Union of India (UOI), the Honourable Supreme Court dealt with the scope of section 10GB of the Companies Act, and declared that Parts I-B and I-C of the Act viz., section 10FD to 10GF as presently structured are unconstitutional and they can be made operational by making suitable amendments, in that judgment. Admittedly, the amendments or suggestions laid down in that judgment are not carried out as on date and therefore, as per the judgment of the Honourable Supreme Court, section 10GB of the Companies Act, as on date is unconstitutional and therefore, the contention of the learned Senior Counsel for the petitioners that the civil court has no jurisdiction as per the provisions of section 10GB cannot be accepted.

27. Further, having regard to the allegations made in the plaint, the plaintiffs are seeking the relief on the basis of the Memorandum of Understanding entered into between the parties and that cannot be brought within the exclusive jurisdiction of the Company Court and the rights under the Memorandum of Understanding are common law rights and therefore, such rights can be enforced in the ordinary civil courts. Though in the plaint in O.S.Nos. 410 of 2011, the main prayer is to declare that the notice dated 19.4.2011 calling for the Board Meeting as illegal, that is also based on the Memorandum of Understanding and in short, the plaintiffs want to enforce the Memorandum of Understanding and filed the suits restraining the defendants and their men from acting contrary to the Memorandum of Understanding and therefore, having regard to the judgments of the Honourable Supreme Court rendered in Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, and Dwarka Prasad Agarwal (D) by Lrs. and Another Vs. Ramesh Chandra Agarwala and Others, and the decision in R. Prakasam Vs. Sree Narayana Dharma Paripalana Yogam, I am of the opinion that the reliefs sought for do not come within the exclusive jurisdiction of the Company Court and the plaintiffs want to enforce their civil rights on the basis of the Memorandum of Understanding and hence, the ordinary civil courts have got jurisdiction. In the result, the civil revision petitions are dismissed. No costs. The connected miscellaneous petitions are also dismissed.