
(2016) 01 MEG CK 0008
In the Meghalaya High Court
Case No : CR (P) Nos. 56 and 59 of 2013

Kailash Varma

APPELLANT

Vs

Dushyant Varma

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2016) 4 GauLT 735 : (2016) 3 NEJ 97

Hon'ble Judges : Mr. T. Nandakumar Singh, J.

Bench : Single Bench

Advocate : Mr. K. Paul and Ms. R. Dutta, Advocates, for the Petitioner; Mr. H.S. Thangkhiew, Senior Advocate and Mr. N. Mozika, Advocate, for the Respondents; Mr. H.S. Thangkhiew, Senior Advocate and Mr. N. Mozika, Advocate, for the Petitioners; Mr. K. Paul and Ms.

Final Decision : Disposed Off

Judgement

Mr. T. Nandakumar Singh, J.—These three revision petitions between the same parties for the same subject matter of disputes i.e. Hotel Pegasus Crown (a company incorporated under the Companies Act, 1956) and Delhi Mistan Bhandar (a restaurant as well as a sweet shop) were jointly heard for being disposed of by a common judgment and order.

2. Heard learned counsel for the petitioner and learned counsel appearing for the respondents.

3. The present case is the clearest example of continuous and unending disputes between the husband on one side and wife and son on the other side. We may remember what, Chanakya, great political thinker of the Medieval India, said in his "Arthashastra":-

"This very earth is heaven for one whose; son is obedient, the wife is faithful and whose own heart is content with what money he has got."

"The true son is one who is obedient to his father, a true father is one who looks after his sons, similarly true friend is one who is trustworthy and true wife is one who makes her husband happy."

"It is a living death to stay in a house where there is; an evil natured, badmouthing woman of low morals, or a cunning and deceitful friend, or an impolite talkative servant, or a possibility of the presence of a snake."

Factual Matrix:

4. Hotel Pegasus Crown runs under the aegis of Pegasus Hotels Private Limited, which is a company incorporated under the Companies Act, 1956. The total paid up share capital of the company as on 31.03.2012 was Rs. 15,43,600/- (Rupees fifteen lakhs forty three thousand and six hundred only) as was reflected in the Annual Return filed by the said company with the Registrar of Companies. The shareholding pattern as per the share register of the Company, Pegasus Hotels Private Limited is as follows:-

Name

No. of Shares

Value of Shares

Percent of total paid up capital

Shri. Dushyant Varma

4360

436000

28.25%

Smti. Kamla Varma

2860

286000

18.53%

Shri. Kailash Varma

7216

721600

46.75%

Others

1000

100000

6.47%

TOTAL

15436

1543600

100.00%

5. Article/or Para 5 of the Article of Association of Pegasus Hotels Private Limited provides the share capital as well as variation of right. Under Article 21 of the Article of Association transfer of shares have to be approved by the Board of Directors. Transfer has to be done in compliance with Articles 19 and 20 of the Article of Association. Articles 72, 73 and 74 of the Article of Association provide the manner as to how the Managing Director of the company is to be appointed and also what are the powers and functions of the Managing Director. Article 79 of the Article of Association provides as to how the Manager or Secretary is to be appoint. In the Article of Association of Pegasus Hotels Private Limited, there is no post of so called "Honorary Chairman". The relevant portions of the Article of Association of Pegasus Hotels Private Limited are quoted hereunder:-

Article of Association

Of

Pegasus Hotels Private Limited

(A Private Company Limited by Shares)

"I. Preliminary

1. Subject to the provision as hereinafter provided, regulations contained in Table A of Schedule 1 of the companies Act, 1956 (hereinafter referred to as Table A) shall apply to the companies so far as the same are applicable to a private company.

2. (a) In these articles, unless there be something in the subject context inconsistent therewith:

(i) "The Act" means the companies Act, 1956 or any statutory amendment or re-enactment thereof for the time being in force.

(ii) "The company" means "PEGASUS HOTELS PRIVATE LIMITED".

(iii) "Board of Directors or Board" means the Directors of the company duly assembled at a meeting of the Directors.

(iv) "Director" means the Director of the company.

(v) "Section" means the relevant section of the Act.

(vi) "Seal" means the common seal of the company.

(vii) "These present" means the Memorandum of Association and the Articles of Association and the Regulations of the company.

(viii) "Words" imparting singular number includes the plural number and vice versa.

(ix) Words imparting masculine gender includes feminine gender.

2. (b) Unless the context otherwise requires or expression contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the time at which these regulations become binding on the company.

3. The provision of section 171 to 186 of the Act shall not be applicable to the company.

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III. Share Capital And Variation Of Right

5. (a) The authorised share capital of the company is Rs. 15,00,000/- (Rupees fifteen lakhs) divided into 15,000/- (Rupees fifteen thousand) Equity shares of Rs. 100/- (Rupees One hundred) each with power to increase and reduce the authorised share capital of the company and to divide the share capital for the time being into several classes and to attach thereto respectively such preferential, deferred qualified or special rights, privileges or conditions as may be determined by or in accordance with the regulation of the company and to vary, modify and such rights, privileges or conditions in such manner as may for the time being be provided by the regulation of the company.

(b) The shares shall be under the control of the Board of Directors, who may allot or otherwise dispose of the same to such persons at such terms and conditions as they may think fit and proper.

(c) The Directors may issue at par or at a premium the whole or any portion of the share capital of the company for subscriptions at any time and may reserve any portion thereof for issuing in future as they may think fit.

(d) The Directors may also allot and issue shares in the capital of the company as full payment or part payment for any property sold or transferred, goods or machinery supplied or for services rendered to the company and shares which may be so allotted may be issued as fully or partly paid up shares as the case may be.

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IV. Transfer And Transmission Of Shares

19. Without prejudice to the provision contained in article 20 thereof no share shall be transferred to a person who is not a member of the company so long any person selected by Directors as one whom it is desirable in the interest of the company to admit to membership is willing to purchase the same at a price agreed upon by a transferor and the Board of Directors or at the value fixed by the Auditors of the Company.

20. Any share may transferred:

(a) By a member or other persons entitled to transfer to any member.

(b) by a member to any child or lineal descendant, son-in-law, father, mother, brother, sister, nephew, niece, wife or husband of such member and

(c) in case of death member by his heir, executor, administrator or by the holder of the succession certificate to any child or lineal descendant, son-in-law, father, mother, brother, sister, nephew, niece, widower of such deceased member.

21. The directors may also without assigning any reason thereof, refuse the registration of any transfer of shares to a person not previously approved by them. But these provisions shall not apply to a transfer made in pursuance of clause (a), (b) and (c) of Article 20 thereof.

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66. The quorum necessary for the transaction of the business of the directors shall be two or one third of the total strength whichever is higher.

67. At the first meeting of the Board, the directors present shall choose one of themselves to be Chairman and the Director so chosen shall continue as chairman until otherwise determined by the Board. If at any meeting the Chairman is not present within fifteen minutes after the time appoint for holding the meeting, the other directors present may choose one of their member to be the Chairman of the meeting.

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XII. Managing Director

72. The Board may from time to time, appoint one of their member to the Managing Director of the company and may from time to time (subject to the provisions of any contract between him and the company, remove and dismiss him from office and appoint another in his place.

73. The Managing Director shall not while he continues to hold office be subject to retirement by rotation and he shall not be reckoned as a director for the purpose of determining the rotation of retirement of directors or in fixing the number of director to retire, but shall be subject to the same provisions as to resignation and removal as other directors of the company and he shall ipso facto and immediately cease to be the Managing Director if he ceases to hold the office of the director for any cause.

74. The Managing Director shall:

(a) Generally look after and manage the affairs of the company:

(b) Subject to the provisions of section 292 of the Act and subject to the supervision of the other directors, have the power for engagement and dismissal of Managers, Assistants, Employees, Clerks, servants and other staff including labourers and shall have the power for the general direction and management of the business of the company with full power to do all acts and things deemed necessary, proper or expedient for carrying on the business and concern of the company including the power to make such investments of the company's funds as he shall think fit and to make and sign all contracts and to draw, accept, endorse cheques, drafts, Government securities and instruments. The Managing Director shall have power to institute suits both civil and criminal against any person and to take necessary steps in all legal cases for and against the company and to grant to any person power of attorney as he may deem expedient and such power at pleasure to revoke;

(c) Exercise such other powers and perform such other duties as may be delegated from time to time by the board of director and

(d) Receive such remuneration from time to time as directed by the Board of Directors.

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XIV. Manager And Secretary

79. Subject to the provisions of the Act:

(a) A Manager or secretary may be appoint by the Board for such terms, at such conditions as it may think fit; and any manager or secretary appoint may be removed by the Board.

(b) A director may be as manager or secretary."

6. From the Article of Association of Pegasus Hotels Private Limited, it is clear that the Chairman is to be appointed by the Directors at the first meeting of the Board and shall continue as a Chairman until otherwise determined by the Board. The Board may from time to time appoint one of their members to be the Managing Director of the Company. The Managing Director shall look after and manage the affairs of the company; subject to the provisions of Section 292 of the Companies Act, 1956 and subject to the supervision of the other directors, and shall have the power of engagement and dismissal of Managers, Assistants, Employees, Clerks, servants and other staff including labourers and also shall have the power for the general direction and management of the business of the company with full power to do all acts and things deemed necessary, proper and expedient for carrying on the business and concern of the company including the power to make such investments of the company's funds as he shall think fit and to make and sign all contracts and to draw, accept, endorse cheques and drafts, Government securities and instruments.

7. With the view to ensure smooth functioning of the business of the Hotel Pegasus Crown and Delhi Mistan Bhandar, [according to the Smti. Kamla Varma (wife) and Shri. Dushyant Varma (son)] and also to promote peace and harmony as well as goodwill in the family and for effective management and to ensure that the respective parties will earn benefits of their own hard work without any chance of misunderstanding or conflict, there was a series of communication between the Smti. Kamla Varma (wife) and Shri. Dushyant Varma (son) on one side and Shri. Kailash Varma (husband) on the other side. Ultimately, according to Smti. Kamla Varma (wife) and Shri. Dushyant Varma (son), Shri. Kailash Varma (husband), Smti. Kamla Varma (wife) and Shri. Dushyant Varma (son) had executed a Memorandum Recording Family Settlement dated 22.11.2012. The said Memorandum Recording Family Settlement, inter-alia, stipulates as follows:-

a. That Shri. Kailash Varma would transfer his share to Dushyant Varma to the effect that Shri. Kailash Varma shall now only hold 44% stake in Pegasus Hotel Pvt. Ltd. Smti. Kamla Varma would also transfer her share to the effect that her share becomes 5%. Thereby ensuring that Shri. Dushyant Varma shall hold 51% majority stake and he will also be the new Managing Director of Pegasus Hotel Pvt. Ltd.

b. That the income of Delhi Mistan Bhandar would be divided within the Shri. Dushyant Varma and Shri. Kailash Varma on the basis that Shri. Dushyant Varma shall share 49% of all the income generated in Delhi Mistan Bhandar and the remaining income shall belong to Shri. Kailash Varma.

c. That salaries shall be withdrawn from Delhi Mistan Bhandar in the following manner:

(i) Shri. Kailash Varma shall draw a salary of Rs. 70,000/-

(ii) Smti.Kamla Varma shall draw a salary of Rs. 20,000/- and she will also be in-charge and quality manager for the food and beverages services provided by Delhi Mistan Bhadhar.

(iii) Shri. Dushyant Varma shall draw a salary of Rs. 50,000/-

(d) That on the date of execution of the family arrangement, Shri. Dushyant Varma shall be the Managing Director and Smti. Kamla Varma and Shri. Kailash Varma shall transfer their shares accordingly and in expeditious manner as discussed above.

(e) That after the day of the execution of the family arrangement Shri. Kailash Varma shall not intervene in any manner in the management of Hotel Pegasus Crown and Shri. Dushyant Varma shall have full and total control on the management and day to day running, modification and repair of the hotel as well as execution and signing of all cheques.

(f) That the salaries of Shri. Dushyant Varma, Smti.Kamla Varma and Shri. Kailash Varma from Pegasus Hotels Pvt. Ltd. shall be as follows:-

(i) Shri. Dushyant Varma and Shri. Kailash Varma shall draw a salary of Rs. 1,00,000/- each.

(ii) Smti. Kamla Varma shall draw a salary of Rs. 70,000/- and shall be in charge of food, beverage and housekeeping services of the said hotel.

(g) That the bakery situated in the Hotel Pegasus Crown being a part of the said hotel, all income under it shall be under the control of Shri. Dushyant Varma.

(h) That after the day of execution of the family settlement, Shri. Kailash Varma shall only be the director and shall not be empowered to sign any cheques or manipulate or transfer the company's fund and incomes of Pegasus Hotels Pvt. Ltd.

(i) That Shri. Kailash Varma shall now only take the honorary post of "chairman" and that the post of Chairman shall only be an honorary post and there shall be no interference of any sort in the day to day running and management. Further there shall be no manipulation of Company's fund of Pegasus Hotels Pvt. Ltd. by Shri. Kailash Varma.

(j) That the parties expressly agreed and declared that they have arrived at the family arrangement with regard to the said two businesses in order to put and end to existing and future disputes between the parties and with a view to bring about amity and goodwill among them and with a view to maintaining peace and harmony in the family. The parties further agreed and declared that the terms of the said family settlement arrived at between them and recorded in the said family settlement are fair and bona fide and in the interest of all the parties and the same has been arrived at voluntarily without any coercion, inducement or threat.

(k) That the parties shall sign and execute or cause to be signed or executed all such documents, deeds, writings or instructions as may be necessary to give effect to the said family arrangement."

8. Shri. Dushyant Varma (son) and Smti. Kamla Varma (wife) filed Title Suit i.e. T.S. No. 2(H) 2013 for specific performance of Memorandum of Family Settlement dated 22.11.2012 and permanent injunction in the court of Munsiff, Shillong. The relief sought for in the said T.S. No. 2(H) 2013 read as follows:-

"In the circumstances stated above it is prayed your Honour may be pleased to pass judgment and decree in favour of the plaintiff and against the above named defendant as follows:-

1. For specific performance of the various covenants and stipulations contained in the Memorandum Recording Family Settlement dated 22.11.2012.
2. For a permanent injunction restraining the defendant No. 1 from interfering in the day-to-day affairs and management of business and finance of Pegasus Hotels Pvt. Ltd.
3. For full cost of the suit.
4. For other relief/reliefs as the Court may deem fit and proper for which the plaintiff is entitled.

And for which act of kindness humble plaintiff as in duty bound shall ever pray."

9. The said suit for specific performance was also accompanied with an application under Order 39 Rules 1 and 2 read with Section 151 of the CPC for granting an ad interim injunction order restraining Shri. Kailash Varma (husband) from committing breach of the terms and stipulations contained in the said Memorandum Recording Family Settlement dated 22.11.2012 in the court of Munsiff, Shillong and it was registered as Misc. Case No. 5(H) 2013.

CR (P) No. 56/2013

10. In the said Misc. Case No. 5(H) 2013 (Reference T.S. No. 2 (H) 2013), the learned Munsiff passed an ad interim injunction order dated 16.05.2013 in favour of Shri. Dushyant Varma (son) and Smti. Kamla Varma (wife) restraining Shri. Kailash Varma (husband) from committing breach of the terms and stipulations contained in the Memorandum Recording Family Settlement dated 22.11.2012. Shri. Kailash Varma (husband) preferred an appeal being FAO No. 2 (H) 2013 and the learned Additional District Judge, Shillong passed an order dated 30.05.2013 for maintaining status-quo. The said appeal was finally heard on 12.09.2013 by the learned Additional District Judge, Shillong and reserved for judgment. While the matter rested at that and as the issue in dispute before the trial court was with regard to the company Pegasus Hotels Private Limited and also as already 6 (six) months were elapsing from the close of the financial year and also considering the statutory requirement under Section 166 of the Companies Act, 1956 for holding the Annual General Meeting (for short "AGM")

within six months from the close of the last financial year, Shri. Kailash Varma (husband) as the Managing Director on 20.09.2013 [according to Shri. Kailash Varma (husband)], called for the AGM of the Pegasus Hotels Private Limited on 30.09.2013 at 10:00 am (last day as per Section 166 of the Companies Act, 1956). It is the statutory requirement of Pegasus Hotels Private Limited to hold AGM of the members of the company under Sections 165 and 166 of the Companies Act, 1956. Sections 165 and 166 read as follows:-

"165. Statutory meeting and statutory report of company-

(1) Every company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".

(2) The Board of directors shall, at least twenty one days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company:

Provided that if the statutory report is forwarded later than is required above, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall set out-

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up, the extent to which they are so paid up, and in either case, the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(c) an abstract of the receipts of the company and of the payments made there out, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made there out, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company, showing separately any commission or discount paid or to be paid on the issue or sale of shares or debentures;

(d) the names, addresses and occupations of the directors of the company and of its auditors; and also, if there be any, of its [***] manager, and secretary; and the changes, if any which have occurred in such names, addresses and occupations since the date of the incorporation of the company;

(e) the particulars of any contract which, or the modification or the proposed modification of which, is to be submitted to the meeting for its approval, together in the latter case with the particulars of the modification or proposed

modification;

(f) the extent, if any, to which each under writing contract, if any, has not been carried out, and the reasons therefor;

(g) the arrears, if any, due on calls from every director and from the manager; and]

[(h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager.]

(4) The statutory report shall be certified as correct by not less than two directors of the company one of whom shall be a managing director, where there is one.

After the statutory report has been certified as aforesaid, the auditors of the company shall, in so far as the report relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company [***] certify it as correct.

(5) The Board shall cause a copy of the statutory report certified as is required by this section to be delivered to the Registrar for registration forthwith, after copies thereof have been sent to the members of the company.

(6) The Board shall cause a list showing the names, addresses and occupations of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the statutory meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not; but no resolution may be passed of which notice has not been given in accordance with the provisions of this Act.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the provisions of this Act, whether before or after the former meeting, may be passed; and the adjourned meeting shall have the same powers as an original meeting.

(9) If default is made in complying with the provisions of this section, every director or other officer of the company who is in default shall be punishable with fine which may extend to [five hundred rupees].

(10) This section shall not apply to a private company.

166. Annual general meeting.- [(1) Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than

fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year on its incorporation or in the following year:

Provided further that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months.]

(2) Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate [***]:

[Provided that the Central Government may exempt any class of companies from the provisions of this sub-section subject to such conditions as it may impose:

Provided further that-

(a) a public company or a private company which is a subsidiary of a public company, may by its articles fix the time for its annual general meetings and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings; and

(b) a private company which is not a subsidiary of a public company, may in like manner and also by a resolution agreed to by all the members thereof, fix the times as well at the place for its annual general meeting.]"

Penalty for default in complying with Sections 166 and 167 of the Companies Act, 1856 is provided under Section 168 of the Companies Act, 1956.

11. For statutory compliance of holding AGM of Pegasus Hotels Private Limited under Section 166 of the Companies Act, 1956, Shri. Kailash Varma (husband) issued notice dated 20.09.2013 to Shri. Dushyant Varma (son) and Smti. Kamla Varma (wife) requesting them to be present in the meeting to be held on 30.09.2013. On 26.09.2013, Shri. Dushyant Varma (son) and Smti. Kamla Varma (wife) in spite of being fully aware of the pendency of the appeal [according to Shri. Kailash Varma (husband)] before the first appellate court and that the records of T.S. No. 2(H)2013 and Misc. Case No. 5(H)2013 had already been called for in the connected appeal, filed Misc. Case No. 21(H)2013 before the learned Munsiff, Shillong assailing the said notice dated 20.09.2013 for holding the AGM and sought for an injunction order restraining Shri. Kailash Varma and his agents from holding the AGM on 30.09.2013. The learned Munsiff, Shillong passed an order dated 27.09.2013 in Misc. Case No. 21 (H) 2013, in spite of serious objections raised by Shri. Kailash Varma (husband), for interim injunction

restraining Shri. Kailash Varma (husband) from holding the AGM on 30.09.2013 till the next date i.e. 21.10.2013 and fixed the case on 21.10.2013 for show cause and hearing. On 21.10.2013, the learned trial court i.e. Munsiff, according to Shri. Kailash Varma (husband), re-fixed Misc. Case No. 21 (H) 2013 on 08.07.2013 for show cause and hearing. The learned Munsiff pre-poned the next date of Misc. Case No. 21(H)2013 fixed on 08.11.2013 to 07.11.2013. Shri. Kailash Varma (husband) counsel was shocked and surprised to find that the Misc. Case No. 21(H)2013 had been disposed of on 07.11.2013 on an off date without even allowing filing of show cause or hearing as directed by the learned Munsiff vide order dated 27.09.2013.

12. It is the further case of Shri. Kailash Varma (husband) that the learned Munsiff had passed the said order dated 07.11.2013 on an off date for disposing of Misc. Case No. 21(H)2013 as per the observations in the earlier order dated 27.09.2013. Shri. Kailash Varma (husband) being aggrieved by the said orders of the Munsiff dated 27.09.2013 and 07.11.2013 filed CR(P) No. 56/2013 before this Court. The revision petition i.e. CR(P) No. 56/2013 was filed on the inter-alia grounds:

"I. For that the learned trial court has acted in complete non application of judicious mind inasmuch as the learned trial court at the first place ought not to have passed the impugned order dated 27.09.2013 when the appellate court was already seized of the matter and especially when the related title suit records were before the appellate court and having done so, the learned trial court has acted beyond jurisdiction not vested in it by law. As such, the impugned order dated 7.11.2013 being illegal and bad in law is liable to be quashed and set aside.

II. For that the learned trial court completely failed to appreciate that the revision petition against the order dated 27.09.2013 passed by the learned trial court was pending adjudication before the appellate court and that by passing the impugned order dated 7.11.2013, the learned trial court has rendered the Civil Revision No. 3(H)2013 pending before the appellate court infructuous even before the Revision could be decided by the higher court. As such, the order dated 7.11.2013 passed by the learned trial court being perverse is liable to be set aside and quashed.

III. For that the learned trial court acted in highly irregular and illegal manner and against all established norms of judicial propriety by passing the impugned orders dated 27.09.2013 and 7.11.2013 and that too on an off date without hearing or filing show cause by the petitioner only on the basis of the submissions advanced by the respondents and in doing so the learned trial court has occasioned serious miscarriage of justice. As such the impugned order dated 7.11.2013 being illegal and not sustainable in law is liable to be quashed and set aside.

IV. For that the learned trial court acted illegally with material irregularity and thereby occasioned serious miscarriage of justice inasmuch as even though the

learned trial court inherently lacked jurisdiction to adjudicate upon the dispute, it usurped jurisdiction not vested in it by law especially in view of the fact that the question of the learned trial court to entertain the T.S. No. 2 (H)2013 and pass any orders therein or in connected cases was under challenge and seized upon by a superior court. In such premise not only are the impugned orders dated 27.09.2013 and 7.11.2013 illegal, perfunctory and against all established norms of judicial propriety, the same are also an abuse of the process of law and as such cannot withstand the test of judicial scrutiny and are liable to be quashed and set aside.

V. For that the learned trial court have occasioned serious miscarriage of justice in passing the impugned orders dated 27.09.2013 and 7.11.2013 and entertaining the application filed by the respondents herein, inasmuch as it is apparent that the subject matter of the application essentially involved the management, control and administration of a particular company called Pegasus Hotels Pvt. Ltd (A company incorporated under the Companies Act, 1956) and as such the learned trial court inherently lacked jurisdiction to entertain any matter wherein the management, control and administration of the Company is in dispute. The Companies Act, 1956 clearly provided in Section 10GB as:

Civil Court not to have jurisdiction- "No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force."

As such by entertaining the application in the first place and by passing the orders dated 27.09.2013 and 7.11.2013, the learned trial court has displayed complete lack of application of judicious mind and as such the impugned orders dated 27.09.2013 and 7.11.2013 passed by the learned trial court being non-est in law are liable to be quashed and set aside.

VI. For that the learned trial court completely overlooked the fact that the connected matter i.e. CR(P) No. 3 (H) 2013 seized upon by a superior court, no application for relief could be filed before it by the respondents. As such, the impugned order dated 7.11.2013 being illegal and against judicial propriety the same is also abuse of the process of law as such liable to be quashed and set aside."

13. In CR (P) No. 56/2013, Shri. Kailash Varma (husband) filed an application being MC (CRP) No. 26/2014 before this Court praying for an order allowing Shri. Kailash Varma (husband) to comply with the provisions of the Companies Act, 1956 by holding the AGM of Pegasus Hotels Private Limited under the aegis and supervision of a representative of the Registrar of Companies, putting up the audited accounts for approval in the AGM, beside payment of Service Tax, VAT,

Luxury Tax, Employee State Insurance (ESI), Employees Provident Fund (EPF) etc. which are pending since the year 2012. In MC (CRP) No. 26/2014, Shri. Dushyant Varma (son) on behalf of his mother (Smti. Kamla Varma) and himself, filed an affidavit i.e. show cause statement. In para 3 of the affidavit Shri. Dushyant Varma (son) stated that he and his mother (Smti. Kamla Varma) are fully capable of making statutory compliance and it is only because of the non-adherence of the terms and conditions of the family settlement by Shri. Kailash Varma (husband), there has been some delay in making the statutory compliance.

Therefore, Shri. Dushyant Varma (son) and his mother (Smti. Kamla Varma) are also fully aware that the Pegasus Hotels Private Limited is to hold the AGM in statutory compliance of the provisions of the Companies Act. Para 3 of the affidavit filed by Shri. Dushyant Varma (son) in MC (CRP) No. 26/2014 reads as follows:-

"3. That the deponent states that as per the terms of the family settlement, the petitioner is to have only minority share holdership and the rest of the shares (majority shares are to be with the respondents. As such, the statutory compliance of the company are the responsibility of the majority shareholders. The respondents are fully capable of making statutory compliances and it is only because of the non-adherence of the terms and conditions of the family settlement by the petitioner, there has been some delay in making the statutory compliances."

CR (P) No. 59/2013

14. Shri. Kailash Varma (husband) filed Misc. Case No. 21(H)2013 (Reference T.S. No. 2(H)2013) in the court of Munsiff, Shillong for keeping the proceedings of T.S. No. 2(H)2013 in abeyance pending disposal of the connected appeal before the appellate court and CR(P)No.56/2013 before the High Court on amongst other reasons that he (Shri. Kailash Varma, husband) had filed revision petition i.e. CR(P)No.56/2013 before this Court against the orders dated 27.09.2013 and 07.11.2013 passed by the learned Munsiff in Misc. Case No. 21(H)2013 arising out of T.S.No.2(H)2013 wherein, one of the grounds of challenge raised by Shri. Kailash Varma (husband) in the said revision petition was that the learned Munsiff had no jurisdiction to entertain and pass order in any petition especially when the records of the connected title suit are before the higher court and also that in the said revision petition, Shri. Kailash Varma (husband) had challenged the jurisdiction of the learned Munsiff to entertain any proceeding during pendency of appeal and in the absence of related records i.e. T.S.No.2(H)2013. The learned Munsiff vide order dated 28.11.2013 declined to stay the further proceedings of T.S. No. 2(H)2013 and directed Shri. Dushyant Varma (son) and Smti. Kamla Varma (wife) who are plaintiffs of T.S. No. 2(H)2013 to file show cause on the next date fixed i.e. on 21.12.2013. Being aggrieved by the said order of the learned Munsiff dated 28.11.2013 filed CR(P) No. 59/2013 before this Court.

15. Shri. Kailash Varma (husband) and Pegasus Hotels Private Limited filed Title Suit i.e. T.S. No. 10(H)2014 against Kamla Varma (wife) and Dushyant Varma (son) in the court of Munsiff, Shillong for declaration and permanent injunction. In the plaint of T.S. No. 10(H)2014, Shri. Kailash Varma had categorically pleaded that as the AGM of the company was due for the prevailing year, notice was issued to all the shareholders including Smti.Kamla Varma (wife) and Dushyant Varma (son) that the meeting was to be held on 30.09.2013. However, to stall the same, Smti.Kamla Varma (wife) and Dushyant Varma (son) filed a Misc. Case in T.S. No. 2(H)2013 before the Court of Munsiff and it was registered as Misc. Case No. 21(H)2013. The learned Munsiff vide order dated 27.09.2013 in spite of serious objections raised by Shri. Kailash Varma (husband) stayed the proposed AGM till the next date i.e. 21.10.2013. As stated above, the learned Munsiff vide order dated 07.11.2013 on an off date merged the order dated 27.09.2013 with the order dated 07.11.2013. Smti.Kamla Varma (wife) and Dushyant Varma (son) started illegally interfering with the management of the hotel and also locked the office of the Managing Director of the Company, and some old trusted employees engaged by the company were summarily removed and the persons of their choice were put in key positions like accounts section, bakery etc. It was also pleaded that Shri. Kailash Varma (husband) was made to execute the Memorandum Recording Family Settlement dated 22.11.2012 fraudulently by misrepresenting the facts and the same was not binding to Shri. Kailash Varma (husband). Smti.Kamla Varma (wife) and Shri. Dushyant Varma (son) had been illegally siphoning off money from the income/sale proceeds of the units of company viz. hotel/bakery/banquet hall etc. and illegally using it for their own personal gains without depositing the money of the company into the bank account of the company and also further alleged that Smti.Kamla Varma (wife) and Dushyant Varma (son) did not even enter the sales proceeds of bakery and banquet hall in the account of the company. Smti.Kamla Varma (wife) and Dushyant Varma (son) did not allow Shri. Kailash Varma (husband) to take steps for compliance with the provisions of the Income Tax Act and the Companies Act, 1956.

16. The said civil suit i.e. T.S. No. 10(H)2014 was also accompanied with an application under Order 39 Rules 1 and 2 of the CPC, which was registered as Misc. Case No. 13(H)2014, for passing an ex-parte ad interim injunction order restraining Smti. Kamla Varma (wife) and Dushyant Varma (son) from taking away cash generated out of the company's business and also for a direction to deposit the same into the company's account. The learned Munsiff vide order dated 21.07.2014 passed in Misc. Case No. 13(H)2014 (Reference T.S. No. 10(H)2014) declined to pass ex-parte ad-interim injunction and issued notice to the opposite parties i.e. Smti.Kamla Varma (wife) and Dushyant Varma (son). Being aggrieved by the said order of the learned Munsiff dated 21.07.2014, Shri. Kailash Varma (husband) filed an appeal being FAO No. 4(H)2014 in the court of the Additional District and Sessions Judge, Shillong. The lower appellate court

i.e. Additional District Judge, Shillong in FAO No. 4(H)2014 passed an order dated 30.07.2014 that

"the appellant also submitted that being highly aggrieved and dissatisfied with the order dated 21.07.2014 passed by the Ld. court of Munsiff, Shillong in Misc. C/No. 13(H)2014 arising out of T.S. No. 10(H)2014 has preferred this instant appeal on the following grounds amongst other:

That the Ld trial court while refusing to grant ad interim failed to appreciate that the cause of action for that suit was arising on a day to day basis, in as much as on every occasion that money was siphoned off, a fresh cause of action was arising warranting grant of ad interim injunction. That by observing that the money misappropriated since 2012 the Ld trial court had completely failed to appreciate the principle under lying cause of action and urgency and as such that the impugned order dated 21.07.2014 being illegal and perverse liable to be quashed and set aside. That by simply issue notice the very purpose of ad interim injunction would be defeated as money would continue to be siphoned off thereby giving rise to fresh cause of action. That the Ld trial court overlooked the fact projected by the appellant/plaintiff that the respondents/defendants illegally were taking away money generated by the company by not entering the proceeds from the banquet and bakery sales into the books of account nor depositing the same into the bank accounts maintained by the company with various banks which is a clear act of embezzlement of the company money. Hence by not granting ad interim injunction the Ld trial court has acted most illegally and with material irregularity as because with its failure to appreciate the defalcation of the company money by the opp parties was essentially paving the way for prosecution of the plaintiff by various authorities like E.P.F., E.S.I., R.O.C., service tax, income tax, VAT etc hence that the suit was filed to forthwith stop further embezzlement/misappropriation of money, but by refusing to grant ad interim injunction that the Ld trial court has essentially allowed illegal actions of the respondents. Hence prayed for the end of justice to admit this appeal, call for records, issue notice, call upon the respondents to show cause as to why the impugned order dated 21.07.2014 passed by the Ld court of Munsiff, Shillong in Misc. Case No. 13(H)2014 arising out of T.S. Case No. 10(H)2014 be not quashed and set aside. Meanwhile the appellant prayed to stay the aforesaid impugned order pending disposal of this instant appeal and after hearing the respondents to restrain/forbear from illegally taking away any cash generated out of the company's sales and further more verbally prayed that even the appellant No. 2 may also be restrained together with the respondents from taking away the company's money and further to direct the respondents to forthwith deposit the same into the company's bank account during pendency of the instant appeal or to pass any order/orders by his verbal submission has prayed to direct the respondents to deposit the proceeds of the sales from the different units of the company into the custodian of the court or the Ld trial court to prevent misuse of the company's money." Being aggrieved by the said order of the Additional District Judge, Shillong dated 30.07.2014 passed in Misc. Case No. 11(H)2014

(FAO No. 4(H)2014), Smti. Kamla Varma (wife) and Dushyant Varma (son) filed CR(P)No.20/2014 before this Court.

17. This Court was of the considered view, after hearing the submissions advanced by the learned counsel appearing for the parties, that this case was a fit case where the matter would be referred to the mediation committee to settle the disputes between the parties amicably since the subject matter of disputes was between the father, son and mother. Accordingly, this Court passed an order dated 30.01.2014 in CR (P) No. 59/2013, which reads as follows:-

"30.01.2014

Heard Mr. H.S. Thangkhiew, learned Sr. counsel assisted by Mr. N. Mozika, learned counsel appearing for and on behalf of the respondents as well as Mr. K. Paul, learned counsel appearing for and on behalf of the petitioner.

After hearing the submissions advanced by the learned counsel, I am of the considered view that this is a fit case where the matter needs to be referred to a mediator to settle the dispute between the parties amicably, since the subject matter of the dispute involved here between the father, son and mother.

The learned counsel for both the parties suggested the names of Mr. T. Blah (Retd. IAS) and Mr. H.W.T. Syiem (Retd. Chief Secretary, Government of Meghalaya). Considering the suggestions advanced by the learned counsel, accordingly, Mr. T. Blah and Mr. H.W.T. Syiem are hereby appointed as mediators. They are requested to make their best effort to reduce the differences between the parties and to save a family.

In the meantime, it is also directed that all court proceedings be kept in abeyance till a mediator arrives in their decision. Parties to bear expenses for mediation including honorarium to the mediators in consultation with their respective lawyers. Place of mediation will be the Office of the Meghalaya Legal Aid Services Authority, Addl. Secretariat, Shillong or any other place choose by the parties concerned in consultation with the mediators.

Registry is directed to communicate this order to all concerned including Member Secretary, Meghalaya Legal Aid Services Authority, Addl. Secretariat, Shillong.

Mediation process to complete within 2(two) months."

18. This Court, in order to facilitate the mediation proceeding for coming to an amicable settlement between the parties, passed an order dated 15.10.2014 in CR (P) No. 56/2013, paras 6 and 7 of which read as follows:-

"6. Thereafter, the matter is being listed before this bench. On 3-9-2014, the Court passed the first order as.

"CRP No. 20 of 2014

Before

The Hon''ble Mr Justice Uma Nath Singh

Chief Justice (Acting)

03.09.2014

On the request of learned counsel for the parties, list this Civil Revision Petition with CRP. No. 56/2013 and CRP. 59/2013 on 19-9-2014. It would be open for them to settle the family dispute if they so decide.

Learned counsel for the parties also state that the parties who are present in Court, want to remain present along with their counsel for settlement of dispute in the Court.

Sd/-

Chief Justice (Acting)"

7. From the aforesaid proceedings, interalia, it appears that there has been protracted litigation between the husband on one side, and the wife and son on the other. It is not a case where one can say for definite that the family has disintegrated or there is a complete breakdown of relationship. Despite reluctance on the part of the parties to accept the recommendations of mediators appointed by the Court, they still seem to be willing to stay under one roof. However, there is crises of confidence because the husband apprehends that his wife may falsely implicate him in cases of domestic violence and other offences if she is to stay with him under one roof, whereas, the wife and son fear that the husband may indulge in violence and may torture them with the help of his muscle men. But still, they want to come closer and stay together, interalia, also for the reason that the marriage of son has been settled. Thus, they agree, during the course of the proceedings, that after burying their differences, temporary, they may stay together for 15 days in the premises of the husband subject to the condition that for the security of the parties and to protect against any untoward incident, they may be given police protection with close circuit camera to be installed and monitored by Police in the premises during the stay of the parties to record their activities and movements so as to give complete pictures in case of happening of any untoward incident during the period. Husband, Shri Kailash Verma, agrees to bear the expenses for posting of police personnel and installation of close circuit camera. He also agrees and states that he will give an advance of Rs. 50,000/- to his wife and son for their personal expenses during their stay with him for 15 days. He also states that as per family tradition, he will provide diwali gifts to his wife and son. Thus, in terms of consensus and in the light of past proceedings, just in order to instil a sense of confidence in the family members towards each other, it is directed that the Superintendent of Police, Shillong, shall post on duty a lady police Sub-Inspector and a lady Constable in the premises where Shri Kailash Verma will stay with his wife, Smti Kamla Verma and son, Shri Dushyant Verma, in terms of this order, so as to avoid trading of false allegations against each other and to prevent them

from indulging in any kind of domestic violence. The police department may also install their close circuit camera in order to record the movements and activities of the parties, to get a complete picture in the case of any untoward incident. Shri Kailash Verma shall deposit the expenses for posting of police personnel as well as installation of police close circuit camera on temporary basis.

List this matter again on 31-10-2014 with the report of lady police Sub-Inspector, who shall be posted in the premises for 15 days, as directed herein above from the date of issuance of a copy of this order."

19. On 03.11.2014, this Court in CR(P) No. 56/2013 passed an order dated 03.11.2014 that

"learned counsel for the private parties as well as the State tendered unconditional apology for lapses on the part of the parties in complying with the directions of the Court in letter and spirit. Thus, they pray for and are granted time till tomorrow to file unconditional apology on affidavits".

20. Mediators/conciliators namely Mr.T. Blah (Retd. IAS) and Mr. H.W.T. Syiem (Retd. Chief Secretary Government of Meghalaya) who were appointed vide order of this Court dated 30.01.2014 passed in CR(P)No.59/2013, after making an attempt to settle the matter between father, son and mother amicably, had submitted their report vide letter dated 19.05.2014 to the Registrar General of this Court. The mediators/conciliators also had submitted the recommendations. The said recommendations made by them read as follows:-

"Recommendations of the Mediators in CRP No. 59 of 2013

The case in brief is that Shri. Kailash Varma is the owner of two concerns, viz. Hotel Pegasus Crown (the Hotel for short) and Delhi Mistan Bhandar (henceforth referred to as DMB), located in Police Bazar, Shillong. A family arrangement was made involving Shri. Kailash Varma, his son, Shri. Dushyant Varma and Smt. Kamla Varma, wife of Shri. Kailsah Varma. In furtherance of this family arrangement a Memorandum Recording Family Settlement was executed on the 22nd November, 2012, in the presence of witnesses. According to this Memorandum, Shri. Kailash Varma holds the major share in Hotel Pegasus Crown, and is the Managing Director of the Hotel. Smt. Kamla Varma and Shri. Dushyant Varma are minor shareholders. The Memorandum was made at the initiative of Shri. Kailash Varma with the intention of promoting peace and harmony within the family and to prevent disputes and conflicting claims in the future.

The main features of the Memorandum are as under:

1. Shri. Dushyant Varma will acquire a majority stake of 51% in respect of the Hotel from his parents, Shri. Kailash Varma and Smt. Kamla Varma.
2. The income from DMB which is HUF property will be shared between Shri. Kailash Varma and Shri. Dushyant Varma in the ratio of 51% to 49% respectively.

3. That the three family members shall receive salaries from DMB as follows:

(i) Shri. Kailash Varma - Rs. 70,000.00

(ii) Smt. Kamla Varma - Rs. 20,000.00. She will also be in charge and Quality Manager for the food and beverage services in the shop.

(iii) Shri. Dushyant Varma - Rs. 50,000.00.

4. That from the day of execution of the Memorandum Shri. Dushyant Varma shall be de facto Managing Director of the Hotel. Shares shall be transferred by Shri. Kailash Varma and Smt. Kamla Varma to Shri. Dushyant Varma so that he may acquire 51% holding in the Hotel in terms of condition 1 above.

5. Salaries from the Hotel shall be paid as under:

(i) Shri. Kailash Varma - Rs. 1,00,000.00

(ii) Shri. Dushyant Varma - Rs. 1,00,000.00

(iii) Smt. Kamla Vsarma - Rs. 70,000.00. She will be in charge of Food, Beverage and House Keeping services in the Hotel.

6. That from the day of execution of the Memorandum, Shri. Kailash Varma shall only be Honorary Chairman of the Hotel, and he will not be empowered to sign any cheques pertaining to the affairs of the Hotel.

Shri. Kailash Varma did not take any steps to implement the Memorandum. He rather called an Extraordinary General Meeting on the 19th February, 2013, and the 6th March, 2013, in which two members, Shri. Veera Chauhan and Shri. Surjit Singh were inducted as members of the Board of Directors of the Hotel. Another Extraordinary General Meeting was called on the 20th May, 2013 to remove Shri. Dushyant Varma and Smt. Kamla Varma from the Board of Directors. This meeting was stayed by a Court order.

The resultant family dispute led to a number of cases being filed by Shri. Dushyant Varma and Smt. Kamla Varma on the one hand, and Shri. Kailash Varma on the other. The matter finally came up before the Hon'ble High Court of Meghalaya vide CRP No. 59 of 2013. By its order dated 30.01.2014 the learned Court directed that two mediators, viz., Shri. T.Blah and Shri. H.W.T. Syiem be appoint as mediators to reduce the differences between the two parties, who were all members of the same family.

The first sitting of the Mediators was held on 25.2.14 four additional sitting were held between 14.3.14 and 1.4.14 to try to help resolve the differences. Both parties submitted 12 (twelve) exhibits in addition to copies of complaints filed before the various courts.

Exhibit 1 is a copy of the Memorandum Recording the Family Settlement. Exhibits 2 and 3 are synopses filed by the two parties. Exhibit 4 is a petition filed by Smt. Kamla Varma before the Mediators alleging that Shri. Kailash Varma was trying

to dispose of movable and immovable properties. This is not within the purview of the Mediators. Similarly Exhibit 5 is a copy of an application made by Smt. Kamla Varma before the CJM, Shillong, and is not within the purview of this mediation.

Exhibit 6 is a copy of the Articles of Association of the Hotel, and some other documents were attached pertaining to complaints/FIRs lodged by Shri. Kailash Varma, and a notice from the Registrar of Companies. Hence forth any reference to Exhibit 6 will relate only to the Articles of Association.

Exhibit 7 is a copy of certain financial transactions of the Hotel allegedly made by Shri. Kailash Varma. Exhibit 8 is a copy of the notice calling an Extraordinary General Meeting on the 20th May, 2013 to remove Smt. Kamla Verma and Shri. Dushyant Varma as Directors. Exhibit 9 is a copy of a document signed by Shri. Sanjay Kumar Bald, Company Secretary, certifying that the Extraordinary General Meeting held on 19th February, 2013, and the Board Meeting held on the 6th March, 2013, were in order.

Exhibits 10, 11 are proposals submitted by Shri. Dushyant Varma and Shri. Kailash Varma respectively to resolve the differences at the request of the Mediators, and Exhibit 12 contains some clarifications submitted by Shri. Kailash Varma on the proposal of Shri. Dushyant Varma at Ex 10.

In making their recommendations as directed by the Hon''ble High Court, the Mediators have tried to keep in mind the legal aspects of the relevant documents and the enforcement of the same while, at the same time, making an attempt to maintain sound management principles to ensure the health and continuity of the two business undertakings.

The central issue to the whole disputes arises from the Memorandum of Family Settlement at Ex 1. This document has been signed by both the parties in the presence of witnesses. Shri. Kailash Varma claimed before the Mediators that this document was obtained by fraudulent means. On being queried he admitted that he had signed the document at all the pages, but had done so without reading it. This does not constitute a fraud. In absence of any court order to the contrary, we consider Ex 1 to be a valid document, and Shri. Kailash Varma is bound to implement it within the ambit of the Companies Act and the Articles of Association of the Hotel.

The Mediators had requested for suggestions from the two parties to enable them to make the recommendations. Shri. Dushyant Varma submitted his suggestions at Exhibit 11. These are more or less the same as per his original demand based on the Memorandum at Exhibit 1. Shri. Kailash Varma gave his suggestion at Exhibit 12. The financial proposals he suggests in respect of the two establishments are different from Ex 1. These shall be discussed in the following paragraphs. We now examine the contents of Ex.1. Being a valid document it should normally be given effect to as soon as was reasonably possible. It is not more than one year since execution of the document which

means that there has been an avoidable delay. Instead there may have been activity which is contrary to the spirit of the document and this may have possibly aggravated the family relations.

We first take up the matters pertaining to DMB. It has been mentioned in para 2 of Ex.1 under Terms and Conditions that the property is classified as Hindu United Family (HUF). Since there is a family arrangement signed by the concerned parties, we see no reason to interfere with the settlement in paras 2 and 3 of the Terms and Conditions relating to division of income between Shri. Kailash Varma and Shri. Dushyant Varma (para 2) and payment of salaries to Shri. Kailash Varma, Smt. Kamla Varma and Shri. Dushyant Varma (para 3).

With regard to matters relating to the Hotel, it must first be borne in mind that there are laws and the Articles of Association of the Hotel. Implementation of the Memorandum (Ex.1) has to be within the ambit of these laws. In addition the Hotel is a firm that has to be run under sound management principles if it is to thrive and prosper. Peter Drucker, the Management Guru, has stated that a firm exists to make profits. This statement implies that a firm has to run at a profit because it meets all its expenses (Fixed and Variable Costs) from its earnings. In addition it has to have reserves for future expansion and other expenses in accordance with commercial accounting principles. The net surplus after providing for these requirements is given to the shareholders at a rate to be fixed by the Board of Directors (Earnings per Share or EPS). It goes without saying that a loss making firm cannot exist for long.

Taking these considerations into account we make the following recommendations:

1. Under the Articles of Association (Ex.6) there is no provision for an Honorary Chairman. The Chairman can only be appoint as per para 67 of Ex.6, and his functions are given in Paras 41 and 44. There cannot be any deviation from this.
2. There is provision for a Managing Director who is appoint under para 72 of Ex.6, and his functions are specified in para 74.
3. Shri. Dushyant Varma is still a very young man. He has not had the necessary experience to take over as Managing Director. Being the only son of Shri. Kailash Varma, it is normally expected that he will succeed and inherit all the assets and properties of Shri. Kailash Varma. He should exercise patience and "learn the ropes" at this stage. Therefore we agree that the part of taking over as Managing Director at this stage is premature. He should rather get himself acquainted with all the complexities in the various sections of the Hotel as this will stand him in good stead. At this stage he is advised to work as a Manager as suggested by Shri. Kailash Varma. This means that he will be under the tutelage of his father. He can take advantage of this to learn and to prepare himself for the time when he will take over as full owner of the Hotel. A suitable arrangement to appoint him is available under para 74 (b). We leave this to the Board of Directors and the Chairman/Managing Director to work out.

4. Para 6 of Ex.1 provides for salaries as under:

(i) Shri. Kailash Varma

Rs. 1,00,000.00

(ii) Shri. Dushyant Varma

Rs. 1,00,000.00

(iii) Smt. Kamla Varma

Rs. 70,00,000

We would like to observe that engagement of various categories of staff in the Hotel are specified in para 74 (b) of Ex.6. Appointment of a Manager and Secretary is specifically mentioned in para 79. We note that Shri. Kailash Varma has suggested Ex.11) that Shri. Dushyant Varma could be paid Rs. 70,000.00 per month. We tend to agree with this. Payment for Smt. Kamla Varma may be made as above provided she performs the duties of a Manager in the Bakery as she was doing. In case she is given other assignments she may receive payment in accordance with the relevant rules. Shri. Kailash Varma may receive the payments as suggested above or as he is receiving at present. However, the remunerations have to be subject to compliance with either para 74(b) or para 79 as the case may be.

5. With regard to the transfer of shares as mentioned in para 1 of Ex.1, we observe that Transfer of shares have to be approved by the Board of Directors under para 21 of Ex.6. Transfer has to be done in compliance with paras 19 and 20 of Ex.6. The parties who executed the agreement under Ex.1 may take note of these provisions and act accordingly.

6. Para 7 of Ex.1 refers to the Bakery being part of the Hotel. Such being the case it shall be under the control of the Hotel authorities under the leadership of the Managing Director appointed in accordance with the rules as per Ex.6.

7. Para 8 of Ex.1 is contradictory to para 10. In any case there are specific rules provided in Ex.6 which must be complied with.

8. With regard to para 9 of Ex.1 it is mentioned earlier that DMB comes under HUF. This para can be implemented accordingly.

We have discussed the operative parts of Ex.1 and have made our recommendations after due consideration. The remaining paragraphs of Ex.1 are statements of intent which need not be discussed here. They can be resorted to if there is a need.

These recommendations are made with the hope that they will lead to an amicable resolution of the disputes in the family and help promote a more healthy and desirable atmosphere within the members of the family who are the litigants in this and other cases in various courts. We urge that they take the

suggestions in that spirit and make a genuine effort to achieve that expectation for which they can achieve the goal of a happy and prosperous family.

Sd/-

Sd/-

(T. Blah)

(H.W.T. Syiem)"

21. The said mediators/conciliators in their recommendations made the observations that the engagement of various categories of staff in the hotel should be under para 74 (b) of the Article of Association of the Company. The appointment of Manager and Secretary are to be made under para 79 of the Article of Association. The mediators/conciliators further observed that the transfer of shares had to be approved by the Board of Directors under para 21 of the Article of Association. Transfer has to be done in compliance with paras 20 and 21 of the Article of Association. The bakery being the part of the hotel, it should be under the control of the hotel authority under the leadership of the Managing Director appointed in accordance with the Article of Association. The mediators/conciliators also further observed in their recommendations that in the Article of Association of the company, there is no provision for Honorary Chairman. The Chairman can only be appointed as per para 67 of the Article of Association and his functions are provided in paras 41 and 44 of the Article of Association. The transfer of shares under the Memorandum Recording Family Settlement dated 22.11.2012 had to be approved by the Board of Directors under para 21 of the Article of Association of the Company and bakery being the part of the hotel shall be under the control of the hotel authority.

22. The parties were invited to submit their comments/objections by filing affidavit. The relevant portion of the comments in the form of affidavit filed by Shri. Kailash Varma (husband) to the said recommendations of the mediators/conciliators reads as follows:-

"3. That the recommendations made by the mediators in so far as they relate to Delhi Mistan Bhandar, are not agreeable to the petitioner as Delhi Mishtan Bhandar is a sole proprietorship concern and not a Hindu Undivided Family property as claimed by the respondents. However to buy peace and settle the family dispute the petitioner is willing to make payment of Rs. 30,000/- (Rupees thirty thousand) only per month to the respondent No. 2 Shri. Dushyant Varma so long as he does not work against the interest of the Delhi Mishtan Bhandar and promotes it."

23. The relevant portion of the comments in the form of affidavit filed by Shri. Dushyant Varma (son) on his behalf and his mother reads as follows:-

"2. That in terms of the recommendations of the mediators, the respondent herein give suggestions for enabling settlement of the dispute in terms of the

order dated 23.6.2014 as follows:-

(a) That in the said recommendations it is clearly stated that as recorded in the family settlement, Delhi Mistan Bhandar is an HUF property and not a sole proprietorship as sought to be made out by the petitioner. As such in any event the signatory to the family settlement are entitled to respective shares as set forth in the family settlement. This fact has been acknowledged and accepted in the recommendation of the mediators in terms of paragraphs 2 and 3 of the terms and conditions of the Family Settlement relating to division of incomes and control thereof.

(b) That with regard to the matters relating to the Hotel, the mediators have put forth certain suggestions based on the suggestions of the petitioner which have totally negated the role of the deponent (Shri. Dushyant Varma) in spite of the fact that he has attained an age of responsibility and is the sole heir to the entire assets of the petitioner.

(c) That, however, in the interest of peace and harmony and to work towards attaining a cordial and workable atmosphere and to remove any points of friction which have arisen in the management of the two businesses, the respondents are willing therefore, to:

(i) Forfeit and relinquish claims to income and control of 49% of Delhi Mistan Bhandar which is a larger and thriving business concern to be under the sole management of the petitioner and to derive and enjoy the incomes arising therefrom to the exclusion of others during his life time ; and

(ii) The respondents be allowed to control and manage Hotel Pegasus Crown with Shri. Dushyant Varma as the Managing Director to run the hotel and the bakery with the help and assistance of his mother Smti. Kamla Varma, the respondent herein and that as relinquished by them the shares of Delhi Mistan Bhandar, they be given 100% control and stake in Pegasus Hotel Pvt. Ltd.

(d) That the respondents pray that these suggestions may be kindly accepted and incorporated in the family settlement."

24. On perusal of the said comments filed by the parties to the said recommendations made by the mediators/conciliators, it appears that there is still hope for resolution of the disputes between the parties i.e. father, son and wife amicably. However, it is left to the parties to make an endeavour for resolution of the disputes themselves amicably. On conjoint reading of the Article of Association of the Company, Memorandum Recording Family Settlement dated 22.11.2012 and the said recommendations made by the mediators/conciliators, it appears that some of the terms of the Memorandum Recording Family Settlement dated 22.11.2012 are contradictory and violative of the Article of Association of the Company. It is also very clear that Pegasus Hotels Private Limited is not performing statutory functions and duties such as holding of AGM under Section 166 of the Companies Act, 1956, submission of audited accounts

of the company to the Registrar of Companies as well as filing of Income tax return of the company to the concerned authority. As stated above, there were subsequent events after the filing of the revision petitions such as, attempt made by the mediators/conciliators appointed by this Court vide order dated 30.01.2014 for resolution of the disputes between the parties i.e. father, wife and son amicably, the said recommendations made by the said mediators/conciliators for settlement of the disputes between the parties and also comments in the form of affidavit filed by the parties to the said recommendations made by the said mediators/conciliators. The question is whether or not this Court can look into the subsequent developments for just decision of the present revision petitions.

25. The Apex Court in *Pasupuleti Venkateswarlu v. The Motor & General Traders*: (1975) 1 SCC 770 held that "for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed". Para 4 of the SCC in *Pasupuleti Venkateswarlu*'s case (Supra) reads as follows:-

"4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being Subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict in view of the inhibition written into Section 10(3) (iii) itself. We are not disposed to disturb this approach in law or finding of fact."

26. The Apex Court in *M/s Laxmi & Co. v. Dr. Anant R. Deshpande & Anr*: (1973) 1 SCC 37 held that:

"27. It is true that the Court can take notice of subsequent events. These cases are where the court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes. If the court finds that the judgment of the Court cannot be carried into effect because of change of circumstances the Court takes notice of the same. If the Court finds that the matter is no longer in controversy the court also takes notice of such event. If the property which is the subject matter of suit is no longer available the Court will take notice of such event. The court takes notice of subsequent events to shorten litigation, to preserve rights of both the parties and to subserve the ends of justice. Judged by these principles it is manifest that in the present case suits are pending. On the one hand the appellant has challenged the decree obtained by Ashar and others as also the warrant of execution. On the other hand, the suit instituted by Ashar and others against inter alia the appellant in 1965 for possession is pending. This Court cannot say with exactitude that any final decision has been reached on the respective and rival rights and claims of the appellant and the respondent. It is, therefore, neither desirable nor practicable to take notice of any fact on the rival versions of the parties as to subsequent events."

Keeping in view of the ratio decidendis of the cases (i) *Pasupuleti Venkateswarlu*'s case (Supra) and (ii) *M/S Laxmi & Co.* case (Supra), this Court is of the considered view that the subsequent events mentioned above can be looked into for coming to the just decision of the present revision petitions.

27. The Apex Court in *V.B. Rangaraj v. V.B. Gopalkrishnan & Ors*: (1992) 1 SCC 160 held that "any agreement among the shareholders placing restriction on the right of transfer which is contrary to or inconsistent with the provisions of the Article of Association of the company would not be binding on the shareholders or on the company. Shareholder's right of transfer is only subject to restriction, if any, contained in the Article of Association of the company." Para 7 of the SCC in *V.B. Rangaraj* case (Supra) reads as follows:-

"7. These provisions of the Act make it clear that the Articles of Association are the regulations of the company binding on the company and its shareholders and that the shares are a movable property and their transfer is regulated by the Articles of Association of the company."

28. The Apex Court in *Life Insurance Corporation of India v. Escorts Ltd. & Ors*: (1986) 1 SCC 264 held that:

"95. A company is, in some respects, an institution like a State functioning under its "basic Constitution" consisting of the Companies Act and the Memorandum of Association. Carrying the analogy of constitutional law a little further, Gower describes "the members in general meeting" and the directorate as the two

primary organs of a company and compares them with the legislative and executive organs of a Parliamentary democracy where legislative sovereignty rests with Parliament, while administration is left to the Executive Government, subject to a measure of control by Parliament through its power to force a change of government. Like the government, the Directors will be answerable to the "Parliament" constituted by the general meeting. But in practise (again like the government), they will exercise as much control over the Parliament as that exercise over them. Although it would be constitutionally possible for the company in general meeting to exercise all the powers of the company, it clearly would not be practicable (except in the case of one or two-man companies) for day-to-day administration to be undertaken by such a cumbersome piece of machinery. So the modern practise is to confer on the Directors the right to exercise all the company's power except such as the general law expressly provides must be exercised in general meeting...."

29. The Apex Court in *Claude-Lila Parulekar (Smt) v. Sakal Papers (P) Ltd & Ors*: (2005) 11 SCC 73 held that:

"25. Section 36 of the Companies Act, 1956 makes the Memorandum and Articles of Company, when registered, binding not only on the company but also the members inter-se to the same extent as if they had been signed by the company and by each member and covenanted to by the company and each shareholder to observe all the provisions of the Memorandum and of the Articles. The Articles of Association constitute a contract not merely between the shareholders and the company but between the individual shareholders also. The Articles are a source of powers of the Directors who can as a result exercise only those powers conferred by the Articles in accordance therewith. Any action referable to the Articles and contrary thereto would be ultra vires.

26. Thus in *Hunter v. Hunter*, 1936 AC 222 : 154 LT 513 (HL) the shareholders in a private company challenged the transfer of shares by another shareholder to 3rd parties without compliance with the provisions of Articles of Association. In terms of the articles a member could not transfer his shares until he had given notice to the Secretary offering to sell the shares at a price to be fixed by the auditor and until the Secretary had offered them to the other members. It was found that in violation of this article, one of the shareholders had sold the shares to nominees of a bank from which that shareholder had obtained loans. The application for rectification of the share register was resisted by the purchaser in whose favour the shares had already been registered with the company. The House of Lords came to the conclusion that the purchase was not in terms of the Article and that the transfer in violation of the Articles was inoperative.

27. A similar situation arose in the case *Lyle and Scott Ltd. v. Scott's Trustee*, (1959) 2 All ER 661: 1959 AC 763: (1959) 3 WLR 133 (HL). There was a similar article which provided for inter alia the pre-emptive right in the existing shareholders to purchase shares. There was no dispute that the article had been violated: (All ER p.667 I)

"The purpose of the Article is plain: to prevent sales of shares to strangers so long as other members of the appellant company are willing to buy them at a price prescribed by the Article. and this is a perfectly legitimate restriction in a private company".

The House of Lords was of the view that the Article would have to be complied with in order to effect a valid transfer. (See: Naresh Chandra Sanyal v. Calcutta Stock Exchange Assn. Ltd., (1971) 1 SCC 50, SCC at p.107 and H.P. Gupta v. Heera Lal, (1970) 1 SCC 437, 1970 SCC (Cri) 190 at pp.440 and 441). With this prefatory statement of the relevant law we may now look at the facts."

30. The Article of Association of Pegasus Hotels Private Limited is binding not only on the company but also the members i.e. shareholders. Pegasus Hotels Private Limited is required to convey AGM of the company in compliance with Sections 165 and 166 of the Companies Act, 1956. For default in complying with Sections 166 and 167 of the Companies Act, 1956, the company is subjected to penalty as provided under Section 168 of the Companies Act, 1956. Over and above, Pegasus Hotels Private Limited is bound to submit audited statements of the company and also income tax return to the concerned authority. As stated above, two civil suits i.e. T.S. No. 2(H)2013 and T.S. No. 10(H)2014 between the parties are pending. The parties, by taking undue advantage of the pendency of the said two title suits, cannot take the plea that because of the pendency of the said two title suits, Pegasus Hotel Private Limited cannot discharge statutory functions and duties as provided under the Companies Act, 1956 and other statutes.

31. For the aforesaid reasons,

(i) there shall be AGM of the company in compliance with Sections 165, 166 and 167 of the Companies Act, 1956 by issuing notice for holding AGM within two weeks from the date of passing this common judgment and order. Only the shareholders of Pegasus Hotels Private Limited recorded in the register of the Registrar of Companies, shall be allowed to participate in the AGM of Pegasus Hotels Private Limited which is going to be held as per the directions of this Court;

(ii) accounts of the company should be audited;

(iii) the Managing Director, as per ROC with the Registrar of Companies, must be allowed to function and carry out his duty and comply with the statutory requirements and;

(iv) cash generated from various units of Pegasus Hotels Private Limited should be deposited in the account of the company from the date of passing this common judgment and order.

32. The aforesaid directions shall continue to be complied with till T.S.No.2(H)2013 and T.S.No.10(H)2014 are finally decided by the trial court. In order to enable the parties to comply with the aforesaid directions, (i) the

impugned order dated 30.07.2014 passed by the learned Additional District Judge in Misc. Case No. 11(H)2014 (FAO No. 4(H)2014) and (ii) impugned orders dated 27.09.2013 and 07.11.2013 passed by the learned Munsiff, Shillong in Misc. Case No. 21(H)2013 are hereby set aside and quashed.

33. With the above directions and observations, these revision petitions are disposed of.