

(1951) 08 BOM CK 0011
In the Bombay High Court
Case No : O.C.J. Suit No. 2348 of 1948

Mansukhlal Dhanji Vora and Others	Vs	APPELLANT
The Jupiter Airways Ltd. and Others		RESPONDENT

Date of Decision : 28-08-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 8
Companies Act, 1913 — Section 101, 102, 23, 240, 30(2)

Citation : AIR 1953 Bom 112 : (1952) 54 BOMLR 777

Hon'ble Judges : Coyajee, J

Bench : Single Bench

Advocate : P.A. Khambatta and S.S. Rangnekar, for the Appellant; M.S. Vakil and M.L. Maneksha, for the Respondent

Judgement

(1) This suit is filed by 16 plaintiffs as shareholders of the 1st defendant company on their own behalf as well as on behalf of all other shareholders of the 1st defendant company, except defendants 2 to 12. According to the plaint, the 1st defendant company was incorporated on July 13, 1946, for carrying on business of aerial transport, & by the company's memorandum dated July 12, 1946, the capital of the 1st defendant company was two crores of rupees divided into twenty lacs ordinary shares of Rs. 10 each.

(2) In para. 2 of the plaint, it is stated that on June 15, 1946, the 1st defendant company issued forms of applications for shares of the 1st defendant company to certain share-brokers named in the paragraph "with the intention that the forms may be used by members of the public for applying for shares." It is then stated that the same were issued without any prospectus and that the 1st company had not at that time even filed a statement in lieu of prospectus with the Registrar of Joint Stock Companies. The applicants for the shares forwarded Rs. 2-8-0 per share with their applications as application moneys in respect of the shares.

(3) It is stated thereafter that on July 20, 1946, the capital structure of the company was altered from two crores of rupees consisting of twenty lacs

ordinary shares of Rs. 10 each to two crores of rupees divided into four lacs preference shares and sixteen lacs ordinary shares of Rs. 10 each; that a general meeting of the share-holders was purported to be held on July 20, 1946, where a special resolution was passed which altered the capital structure as stated above.

(4) It is thereafter averred that on September 3, 1946, the 1st defendant company filed with the Registrar of Joint Stock Companies a statement in lieu of prospectus dated September 3, 1946, and the same was registered on or about September 7, 1946, and that the 1st defendant company thereafter filed with the Registrar another statement in lieu of prospectus dated September 14, 1946, and that the said statements in lieu of prospectus "have not been properly filled up". In connection with this it may be pointed out straightway that these statements made are inaccurate as evidenced from the evidence of the Registrar who was examined on behalf of the plaintiffs, who deposed that as a matter of fact the first statement was filed on September 2 and in fact the office raised an objection which office objection was overruled by him on September 7, 1946, so that the statement in lieu of prospectus was in fact presented on September 3, 1946, as appearing on the face thereof, and the second statement in lieu of prospectus had to be filed, inasmuch as there was an omission in the first statement as regards the minimum subscription.

(5) Thereafter the plaint states that between September 3 and September 5, 1946, the 1st defendant company made allotment of its shares to the applicants including the plaintiffs and intimations thereof were sent out from September 10 to September 12, 1946, calling upon the applicants to pay a further sum of Rs. 2-8-0 per share as allotment moneys.

(6) Thereafter in para. 7 it is stated that one M. H. Gandhi presented a liquidation petition on March 27, 1948, in this Court, being I. C. No. 36/1948 praying for the winding up of the 1st defendant company on the ground set out in that paragraph. Thereafter in paras. 9 and 10 they set out certain circumstances under which there was a change in the board of directors and allegations were made that the shareholders were defrauded as regards certain meetings held of the shareholders of the company, that, therefore, the directors named therein were not properly appointed. This allegation is made for the purpose of obtaining an injunction restraining the company from making any further call through the directors who had issued the notice dated August 18, 1948, to its shareholders who had not paid the allotment moneys on the first call, calling upon them to pay the amounts with interest and threatened to forfeit the shares, if the amounts were not paid in. In paragraph 13 the plaintiffs say that they have filed this suit on behalf of the shareholders, excepting defendants 2 to 12 and applied and obtained an "ex parte" order under Order 1, Rule 8, and turned this into a representative suit. Thereafter in para. 14 they submit that the five directors appointed on May 24, 1943, were appointed under an invalid resolution, and inasmuch as they were not validly appointed, they had no right to issue the notice calling upon the shareholders to pay up the moneys on the first

call, and they further submit that the making of the second call pending the liquidation proceedings was not bona fide, and therefore, asked for an injunction. The injunction was granted.

(7) Defendants 2 to 12 have not appeared and defended this action, but the action is defended by the Official Liquidator who was appointed under the petition referred to in the plaint.

(8) Before I proceed to draw attention to the issues in the suit, a short narration of dates and events which are not disputed is necessary. As stated by me above, this company was incorporated on July 13, 1946, and applications from the plaintiffs and other intending shareholders were received between July 16, 1946, & August 22, 1946. On July 20, 1946, a special resolution for increasing the capital and altering the capital structure was duly passed and the same was filed with the Registrar of Joint Stock Companies on July 30, 1946. As appearing from exh. Q, the company obtained the consent of the Examiner of Capital Issues on August 30, 1946. On September 3, 1946, a statement in lieu of prospectus was filed. An amended statement in lieu of prospectus was filed on September 13, 1946, as appearing from exh. C. The return of allotments was filed on October 3, 1946, (exh. D.). In the month of October 1946, most of the plaintiffs paid allotment monies, as indicated by exh. H, and share certificates were duly issued on December 3, 1946. The company made the first call on February C, 1947, and the statutory meeting of the company was held on March 12, 1947. It appears that thereafter on March 27, 1943, a petition for the winding up of the company was duly filed, and almost five months thereafter, on August 16, 1948, the plaintiffs filed the present suit. The order for winding up of the first defendant company was made by the Court on February 9, 1949, and in law, the company is deemed to have been taken into liquidation as on March 27, 1948, i.e. before the suit was filed. Although the order for winding up was made on February 9, 1949, the plaintiffs in this suit took no further steps at all, and inasmuch as they had already obtained an "ex parte" order restraining the first defendant company from making demands on them, and it was not until the liquidator sent repeated reminders to the Prothonotary, that on October 10, 1949, the plaintiffs were compelled to ask for and obtain leave of the Court to continue the suit against the liquidator.

(9) Reverting shortly again to the plaint, it is necessary to draw attention to the allegations in the plaint and the reliefs asked for. The first is, that on July 15 the first defendant company issued forms for applications to certain share-brokers with the intention that the said forms may be used by the members of the public for applying, and that at that time the first defendant company had not filed the statement in lieu of prospectus with the Registrar of Companies. The second allegation is that the said statement in lieu of prospectus was altered and the statement in lieu of prospectus has not been properly filled up. The allegations against the directors as regards their misconduct subsequently are not germane to the issues raised before me, inasmuch as they bear on the question of

injunction which was obtained by the plaintiffs. Then the prayers are as follows: First, that it may be declared that the said allotment of shares of the first defendant company to the plaintiffs and the said class of shareholders represented by them is invalid, or in the alternative, the said class of shareholders are entitled to avoid the same. Then prayer (b) asks that the names of the plaintiffs and the class of shareholders may be removed from the register of members of the first defendant Company, and asks for a consequential rectification of the share register of the first defendant company. Prayer (c) asks that the first defendant company be ordered and decreed to refund to the plaintiffs and to the said class of shareholders all the amounts respectively paid by them to the first defendant company.

(10) In the light of these allegations, a written statement was filed by the liquidator inasmuch as leave was obtained to continue the suit against him. The contentions raised by the official liquidator are that the suit is bad for misjoinder of plaintiffs and causes of action. Alternatively, he contends that the plaintiffs are not entitled to file a representative suit.

(11) The official liquidator of the company admits that the capital structure of the company was altered as mentioned in the plaint. Thereafter he states that the statement in lieu of prospectus was duly sent to the Registrar on September 3, but inasmuch as the amount of minimum subscription was not mentioned in that statement, a new statement was filed on September 5, 1946. Paragraphs 13, 14 and 15 of the plaint are traversed, and it is further contended that inasmuch as the winding up petition was filed on March 27 and the final order was made on February 9, 1949, the plaintiffs have no cause of action against the Official Liquidator and are not entitled to maintain this suit. As regards the allotment of shares, it is said the plaintiffs are estopped by laches and acquiescence from avoiding the contracts.

(12) Numerous issues were raised, namely, 16 issues, but the main issues are, issue No. 1 -- whether the suit is bad for misjoinder of the plaintiffs and causes of action, issue No. 2 - whether the plaintiffs are entitled to file a representative suit as alleged in para. 13 of the plaint, and issue No. 9 which runs as follows :

"Whether the plaintiffs and the class of shareholders are entitled to have their names removed from the register of members of the first defendant company, as alleged in para. 13 of the plaint?

(13) During the course of arguments, and as arguments shaped, it became necessary to raise a further issue, which I have done, and which I will nominate as 8 (A), as follows:

"Whether the contravention of Section 96(2) and Section 98 of the Indian Companies Act by the first defendant company makes the contracts void in the eye of the law?"

(14) The evidence led in this suit consists mainly of documents exhibited, over

which there is no controversy at all, and the plaintiffs have led the evidence of certain shareholders amongst the plaintiffs and certain brokers for the purpose of establishing their case.

(15) Before I deal with the issues as set out by me above, it is necessary in the light of the arguments advanced and the constructions placed on certain sections of the Indian Companies Act that I should refer to the relevant sections that are necessary for the purpose of dealing with the issues and the arguments advanced. Section 38 of the Indian Companies Act refers to the rectification of the register of a joint stock company, namely, where the name of any person is fraudulently or without sufficient cause entered in or omitted from the register, or where default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, then, in either of these cases, parties may apply to the Court for rectification of the register. u/s 83, it is mandatory for every company to maintain minutes of general meetings and of its directors and the same to be entered in the books kept for the purpose. Under Sub-section (2) every such minute shall be evidence of the proceedings, and under Sub-section (3) until the contrary is proved, every general meeting shall be deemed to have been duly called and held and all proceedings had thereat to have been duly had and the proceedings deemed to be valid. In this connection, one must remember that u/s 240 of the same Act, where any company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded. These sections indicate that certain presumptions have to be made that the documents are duly and properly entered, unless the contrary is shown, in other words, unless the plaintiffs prove to the contrary. The reason for that will be found in the following two sections, namely, Section 30(2) whereunder every shareholder whose name is entered in the register of members shall be a member of the company. That is, he is a member until he proves otherwise. u/s 40 of the Indian Companies Act, the register of members shall be prima facie evidence of any matters by this Act directed or authorised to be inserted therein.

(16) The other sections that bear directly on the issues involved in these proceedings are as follows:-- Section 93 prescribes the specific requirements as regards the particulars of a prospectus where a prospectus is filed. Then comes the section which is most discussed in these proceedings, and that is, Section 96(2) of the Indian Companies Act, and it runs as follows :--

"It shall not be lawful to issue any form of application for the shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of Section 93."

Then comes Section 98 which deals with the obligations of a company where no prospectus is issued, and it says that where no prospectus is issued, it shall not allot any of the shares, unless before the first allotment there has been filed with the Registrar a statement in lieu of prospectus signed by every person who is

named therein as a director, or by his agent authorised in writing to do so containing the particulars. Section 101 refers to restrictions as to allotment, and it says that no allotment shall be made of any share capital of a company offered to the public, unless the minimum, amount which is stated has been raised by the issue of share capital in order to provide the sums specified under Sub-section (2) has been subscribed, and the sum of at least 5 per cent, thereof has been paid to or received in cash by the company.

(17) Then comes Section 102, which talks of the fact that an allotment made by a company to an applicant in contravention of the provisions-of Sections 98 and 101 shall be voidable at the instance of the applicant within one month alter the holding of the statutory meeting of the company. It may be noted here that at one time Section 102 only contained Section 101 as the section when non-compliance with which would make the contract voidable, and it was only in 1936 that Section 98 was included. So that prior to 1936 the contravention of the provisions of Section 98 was not dealt with u/s 102.

(18) Before dealing with the issues in the suit, I may clear the ground by making certain observations which will shorten the discussion on the different issues. It is apparent that it is nowhere alleged in the plaint that this contract, which is a voidable, contract, has been avoided by the plaintiffs or any other members of the class of shareholders they represent by a due notice. As regards the invalidity of the allotment, no clear submissions appear, except that a reference is made in paragraph 5, that the statements in lieu of prospectus have not been properly filled up, and in paragraph 6 that the company made allotments between September 3 and September 5. It is further contended that the first defendant company after the date of the said applications, materially altered its capital structure, and therefore, the statements in lieu of prospectus are-materially incorrect. Thereafter, it is alleged, that the plaintiffs and the class of shareholders are therefore entitled to avoid the allotments-and have their names removed, but it is nowhere pleaded that there has been any notice of rescission of the contracts, which the plaintiffs are entitled to. In the prayers it is said that the allotment is invalid, or in the alternative, the shareholders are entitled to avoid the same.

(19) I may dispose, of this first point by referring to the case of -- "Blair Open Hearth-Furnace Co. Ltd., In re", (1914) 1 Ch. 390 where it was laid down that where if a statement in lieu of prospectus has been filed and the Registrar has been given a certificate, the company can proceed to allotment notwithstanding that the statement contains misstatements and omissions. The meaning of Section 82 of the English Act is that where no prospectus is issued an applicant for shares shall be able to inspect some document having a similar object; and any applicant who applies for shares on the faith of a filed statement has the same individual right of rescission in the case of misstatement or omission which he would have had if he had relied on a prospectus. The requirements of Section 82 about proceeding to an allotment are satisfied by the mere filing of the

statement, whether the particulars are or are not sufficiently supplied and the allotment is not vitiated by their want of accuracy. I may say that in this case before me, all the allotments have been between September 3 & 9, and thereafter, and the statement was filed on September 3. Lord Cozens-Hardy M. R. in delivering the judgment of the Court of Appeal, in construing the statute, remarked (p. 403) :

".....I think that when once a statement is left with the registrar and has been filed by him, a statement not illusory, but a statement which in form, so far as the official can see, is complete or reasonably complete -- because I do not mean to say that every "i" should be dotted and "t" crossed, but substantially complete -- when that has been done, the registrar has no means of testing or examining or questioning the truth of the answers to those questions, and there is an end of the matter; the condition has been fulfilled which entitles the company to carry on the business, to exercise borrowing powers, and to allot shares."

He came to that conclusion, although dealing with the facts of the case, he remarked (P. 405) :

"...I will not go through the inaccuracy, to say the least, of the amount paid or intended to be paid to the promoters, because in my view that does not really affect the decision in this case, but I cannot part with it without saying that I think this statement is as inaccurate and lacking in frankness and fullness as any such statement could very well be. But as a matter of form it is satisfactory; it purports to be an answer to the various questions; it is signed by the proper people who were to sign it according to the Legislature; and that having been done, I cannot bring myself to believe that the effect of the Act of Parliament, in the absence of any provision similar to that which is found in prospectus cases, is that the whole thing, the allotment of shares and everything done by the company, perhaps for years afterwards, should be absolutely null and void. I think that is not the effect of the statute,"

He agreed with the view of Warrington J. and added (p. 406):

"...However wrong the answers in the statement may be, however careless, to use no stronger word, the directors may have been, that did not of itself and in the absence of any false representation made to any individual applicant render all the allotments mere waste-paper of such a nature that no liability could be imposed upon the allottee."

(20) The above reasoning is supported by the observations of Jessel M. R. in the -- "Bures's case", (1880) 15 Ch. D. 507, where it has been held that a shareholder in a company, who has been induced to apply for shares by fraudulent misrepresentations contained in the promoters' prospectus, is not entitled after the winding up to rescind his contract to take the shares, even if the assets in the hands of the liquidators are sufficient to pay in the full the whole liabilities of the company together with the costs of the winding up. The observations of

Jessel M, E. during the arguments of counsel are pertinent, where he remarked (P. 509):

"The doctrine is that after the company is wound up it ceases to exist, and rescission is impossible. There are then only creditors and co-contributories and no company, and that is the meaning of Lord Cairns' observations in -- "Houldsworth v. City of Glasgow Bank", (1880) 5 A. C. 317."

This case adopted this proposition by relying upon the conclusion of Lord Cairns in the case of -- "Tennent v. City of Glasgow Bank", (1879) 4 A. C. 615, where Lord Cairns observed (p. 621) :

"...it is too late, after winding-up has commenced, to rescind a contract for shares on the ground of fraud. This, no doubt, is on the grounds stated by the Lord President, that innocent third parties have acquired rights which would be defeated by rescission."

(21) In these circumstances, Mr. Khambatta on behalf of the plaintiffs was unable to press the question that there was any avoidance of the contract, or that this was a voidable contract avoided by the plaintiffs at any stage, and not having pressed that, he proceeded to base his arguments mainly on the construction of Section 96(2) of the Indian Companies Act. This is the issue round which the main controversy between the two parties has revolved and I shall come to it directly, but before doing so, I may point out certain facts on which the plaintiffs rely. First of all, they rely on this, that in reading this section one must remember that according to the plaintiffs these forms were issued by the company prior to the filing of the statement in lieu of prospectus, and contrary to the provisions of Section 96, for which they rely on this, that the statement in lieu of prospectus is delivered on September 3 and taken on file on September 7. I have already indicated the inaccuracy of this statement in the light of the evidence of the Registrar, but it is, however, contended that the forms of applications were issued on July 15, 1946, and they were issued to the "public" by the company, and that on one of the statements in lieu of prospectus, instead of there being the signature of Sir Allagappa Chettiar, there is the rubber stamp of Sir Allagappa Chettiar's signature. This latter point would fall u/s 98, and would infringe only Section 98, which would in turn make the contract voidable u/s 102. But as I have indicated above, there are no grounds for showing that any of the plaintiffs, or any member of the class of share-holders represented by them, has in fact rescinded the contract within a month after the statutory meeting of the company was held, so that the only point now before me is whether these application forms were issued by the Company prior to the filing of the statement in lieu of prospectus, and contrary to the provisions of Section 96 of the Indian Companies Act. It is on this point that a considerable body of oral evidence was led by the plaintiffs.

Before referring to the evidence, one must turn to the averments in this connection. To my mind, there is no averment to the effect that these application

forms were issued by the company or by any authority vested for that purpose by the company in any officer under any particular resolution. The plaint itself says as follows:--On or about July 15, 1946, the first defendant company issued printed forms of application for shares to certain brokers X Y Z with the intention that the said forms may be used by the members of the public for applying for shares, and that these application forms were issued before the statement in lieu of prospectus was filed. There is no clear allegation that these were issued by the company to the public. For this purpose, several witnesses were examined, and I shall very shortly deal with their evidence. (After discussion of the evidence the judgment proceeds:)

(22) Now, taking this evidence at its highest, what does it come to? Does it come, to this that the company had in fact issued application forms to the public? The highest is that Sir Allagappa Chettiar distributed these forms to certain brokers for obtaining subscription "from their clients"". There is no evidence before me that the company had issued any circular in this connection to the public, and no resolution has been produced to show that such forms were issued by the company. Nor is there any advertisement produced before me showing any invitation for applications from the public, as it would be normal for a company to do. The fact that the brokers were keen and some of the clients were keen in purchasing these shares as soon as they could, and the fact that the brokers come into possession of the application forms does not lead to the inference that there was a public invitation by the issuing of these application forms by the company. The burden is heavily on the plaintiffs, and to my mind, they have failed to discharge this burden. On the facts themselves, therefore, it cannot be said that the company had issued any invitation to the public.

(23) Now, taking issue No. 8 (A) first, it has been argued by Mr. Khambatta that inasmuch as Section 96(2) says that it is not lawful to issue any form of application for shares unless it is issued with the prospectus complying with the requirements of Section 93, and any person acts in contravention of the provisions of this subsection, is liable to a fine. Therefore, the issuing of these forms makes the contract void, inasmuch as Section 96 contemplates a counterpart of what follows, namely, allotment & that, if the first part, namely, the order itself is illegal or not lawful, it is in essence absent, and the sequel to it cannot follow, namely, any allotment or acceptance of the offer, namely the offer being unlawful, it must not be divorced from what follows, namely, a contract by allotment, and, therefore, there is no contract, and, in other words, the contract is void. The answer to that depends on the construction of this section together with a reading of the other relevant sections. Section 96, as it stands, makes the issuing of such a form prior to the issuing of a prospectus, and in compliance with the requirements of Section 93, not lawful. Then it imposes a certain penalty on a person who acts in contravention of the provisions. It must be remembered that this section is headed "Management and Administration", Part IV of the Act, and it is a provision for the regulation of the procedure of issuing shares by a company. It has no bearing on an act of an outsider or a third party,

and the only consequence this section contemplates is a penalty of the offending official. In this connection one may look at Section s 98 and 101. Section 93 contemplates obligations of companies where no prospectus is issued at all, and Section 101 refers to restrictions as to allotment. Now, in connection with this section, Section 93 clearly contemplates a position where the company allots shares or debentures without issuing a prospectus, and Section 101 also lays down that there shall be no allotment of any share capital of the company offered to the public, unless certain, conditions are complied with. Nonetheless, u/s 102 of the Indian Companies Act, it is said, when an allotment is made by the company to an applicant in contravention of this provision, that contract shall be voidable at the instance of the applicant within one month after the statutory meeting of the company is held and not later. A contract is concluded between the applicant and the company by the tender of the application and allotment of the shares. Therefore, it is clear that a contract can be made although the company has not issued a prospectus and in contravention of the express provisions of Section 98. The fact that the Legislature talks of a voidable contract clearly shows there is a contract that can be completed despite the provisions of Ss. 98 and 101. The Legislature has not included Section 96 in Section 102, and it is argued by Mr. Khambatta on this basis that it is not included, because the contract is deemed to be void, in other words, no contract between the parties. I cannot accept this reasoning, because Section 96 itself has no application whatever to the formation of a contract. The application forms may be issued before any prospectus is out, or before any statement in lieu of prospectus is filed, and they may not be used at all by any party, and yet the offence would be committed within the provisions of Section 96. On the other hand no application forms may be issued by the company, and yet the offer may be made by a party on a piece of paper or a note paper. I see nothing in the provisions of the Act which would prevent a contract being formed by such an application being made before the issue of a prospectus, or the filing of the statement, and acceptance thereof after the filing of the statement. Therefore, to my mind, Section 96 is only a provision for the due compliance with certain conditions to be observed by the management in floating a public limited company, and has no bearing on the contractual relationship between the intending share-holder and the company. The offer is accompanied by allotment moneys which is the consideration, and u/s 23, every agreement of which the object or consideration is unlawful is void, but there is no question here of the object or consideration "per se" being unlawful at all, and unless the Legislature in express terms restricts the freedom of contract a contract which is valid and complies with the provisions of the Indian Contract Act is a completed and a legal contract. In these circumstances, I am unable to accept the contention of Mr. Khambatta that Section 96(2), if infringed, makes the contract between a shareholder and a company unlawful. In fact such a construction would lead to an absurd position, because if this were held to be so, and if the company had issued application forms contrary to Section 96, and subsequently the promoters came to realise that they had issued these forms prior to the filing of the statement in lieu of prospectus, and the

contract was void, they would also be entitled to rest their rights on this, and if they found that the coal mine they were dealing with became a gold mine, they could contend that there is no contract in existence and the share-holders had no rights. This is an instance at one extreme. On the other hand, if the company" was a successful company and this defect was found, a share-holder who wants to waive any irregularity in a good investment company would not be able to do so, because, if the contract is void, he has no contractual rights whatever against that company. In these circumstances, I am not prepared to accept that on a proper construction of this section by implication, the Legislature intended that contracts entered into through application forms issued before the filing of the prospectus, invalidated any contract with the company, and that there was no acceptance of the offer on the allotment of the shares.

(24) This disposes of issue No. 8(A) which is the most important issue in these proceedings and on the same considerations issue No. 9 is also disposed of.

(25) The only two other issues which remain for consideration are issues Nos. 1 and 2. In connection with issue No. 1 it is obvious that there is not the same claim made by the parties, because the dates of allotment and the dates of call moneys, apart from the dates of application, would distinguish one share-holder's case from another, namely, whether the application was after the filing of the statement or before. The dates of allotment would also be different, and the payment of call moneys would also be different. In these circumstances, inasmuch as I have held that the contract is a valid contract, and may be a voidable one or not, the question in each case would raise the question of laches and acquiescence, in other words, estoppel in connection with each of the parties, and, therefore, the efficacy of each contract would depend upon different facts and different conduct of parties, vis-a-vis the company, and the conduct of the company "qua" each shareholder. Besides it would raise the question on the nature of the objection taken by the shareholder, and whether that share-holder had waived it or not. In those circumstances, clearly to ray mind, a glance at Exh. H will show that the facts of each case would have to be differently approached and analysed, and, therefore, this is not a suit which can be brought under the provisions of Order 1, Rule 1. The same reasoning applies as regards the second issue, namely, the question of a representative suit under Order 1, Rule 8. Identical interest cannot possibly be pleaded, and different considerations would apply to each of the plaintiffs, apart from the other share-holders, as appearing from Exh. H. In fact, in certain cases there are transferees, (see Exts. 5 and 6), and, therefore, how can the plaintiffs' relief be applicable or allowed to the transferees? In fact, it is apparent that another suit is pending by certain share-holders, which was on my board immediately after this suit, and for a similar relief.

(26) In considering the questions under issues Nos. 1 and 2, I put it to Mr. Khambatta how a Court could at all pass a monetary decree where there are different parties with different claims? I can understand where there is one

general declaration alone in which all the plaintiffs are interested. But where there is a money decree, how could the Court pass a decree which could be drawn up by the Prothonotary giving monetary relief to each of the shareholders, unless a claim, which is a liquidated claim, is placed before the Court, and the only answer that Mr. Khambatta could make to this was that that was a serious difficulty which may be met by reference to the Commissioner for Taking Accounts.

(27) There is only one further point which may be referred to, and which I have already referred to shortly, and which I may refer to again, namely, as regards the change in capital structure. I have already referred to the resolution of July 20, Exh. F, which was duly filed, but a reference to Exh. O may be made, and in these circumstances, to my mind, there is no substance in this allegation. The capital structure was changed at the end of July 1946, and the share scrips issued on December 3, 1946, clearly indicate on the face of them what the capital structure of the company was, and there is no evidence whatever before the Court that any single share-holder lodged any protest against that position.

(28) The suit stands dismissed with costs. The costs of the suit to include the costs of the notice of motion and the chamber summons. Interim injunction to stand dissolved.

(29) Suit dismissed.