

(1996) 11 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No's. 230 and 231 of 1985

Mrs. Surjeet Malhan and B.K. Malhan

APPELLANT

Vs

John Tinson and Co. Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 14-11-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 3, Order 7 Rule 11
Companies Act, 1956 — Section 159, 163, 169, 169(5), 195
Evidence Act, 1872 — Section 93

Citation : (1998) 92 CompCas 631

Hon'ble Judges : Kamlesh Sharma, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : D.K. Khanna, in M.F.A. No. 231 of 1985 and D.K. Khanna and Pritma Malhotra, in M.F.A. No. 230 of 1985, for the Appellant; P.N. Lekhi, Anand Sharma, Tarlok Chauhan and Ankush Sood for respondent Nos. 1 to 3 in M.F.A. No. 231 of 1985, P.N. Lekhi, Ravikant Chadha, Anand Sharma, Tarlok Chauhan and Ankush Sood, in R.F.A. No. 230 of 1985 and Pritma Malhotra, in M.F.A. No. 231 of 1985, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Geol, J.—We propose to dispose of both these appeals by a common judgment. R. F. A. No. 231 of 1985, has arisen out of judgment and decree dated March 4, 1985, passed by a learned single judge of this court in Civil Suit No. 1 of 1973, and R. F. A. No. 230 of 1985 has arisen out of the same judgment passed by the learned single judge in Civil Suit No. 2 of 1973. Both these suits were filed by the plaintiffs for declaration, permanent and mandatory injunction. In Civil Suit No. 1 of 1973, filed by Smt. Surjeet Malhan and in Civil Suit No. 2 of 1973 filed by her husband, Shri B. K. Malhan, defendants Nos. 1 to 3 were common. However, in Civil Suit No. 1 of 1973, defendant No. 4 is Shri B. K. Malhan, who is the plaintiff in Civil Suit No. 2 of 1973. Both the suits were taken together and by a common judgment were dismissed. The parties in both the appeals are being referred to as "the plaintiff" and "the defendants". Defendant

No. 1 is the company, defendant No. 2, R.D. Bhagat and defendant No. 3 is Mrs. Salochana Bhagat, wife of defendant No. 2, R.D. Bhagat, and in Civil Suit No. 1 of 1973, Shri B. K. Malhan is defendant No. 4.

2. Both the suits were filed by the plaintiffs claiming declaration, permanent injunction as well as mandatory injunction. The prayer made in both the suits is identical in terms except the number of shares is different, because the plaintiff, Mrs. Surjeet Malhan, was holding 1,500 ordinary shares and 10 preference shares, whereas Mr. B. K. Malhan was holding 2,330 ordinary shares and 64 preference shares. Both the plaintiffs who are husband and wife along with their relatives, family members and friends had acquired the entire shareholdings of defendant No. 1-company and Shri B.K. Malhan plaintiff became the managing director of the said defendant company and continued to work till January 15, 1971, when he resigned from the managing directorship of the company. In the year 1970, the defendant company had some setback in its business, as such, in order to salvage itself, it was in need of some additional finance for working capital. With a view to generate funds, Shri B.K. Malhan intended to let out some area, approximately 3,000 square feet in premises bearing No. 54 Janpath, New Delhi (this property belongs to defendant No. 1-company). Since defendant No. 2, Shri R.D. Bhagat was interested in opening an office in Delhi and wanted to shift from Calcutta, as such, he had given advertisement in the newspapers at Delhi. In these circumstances, defendant No. 2 met Shri B.K. Malhan, the plaintiff and offered to make financial investment in the company and after several meetings between both of them, an agreement was arrived at on September 11, 1970, wherein, Shri R.D. Bhagat was to have an effective representation on the board of directors of defendant No. 1-company. In these circumstances, it was desired by defendant No. 2, Shri R.D. Bhagat, that the total shares belonging to the plaintiffs in both the suits be handed over to him and the price and the terms and other conditions of the sale were to be fixed on September 12, 1970. It was in these circumstances, that the shares held by Mrs. Surjeet Malhan were delivered by her to her husband defendant No. 4, Shri B.K. Malhan. According to the plaintiff, her husband assured her that he would be procuring a good price for her shares in case those were sold to Shri R.D. Bhagat so as to enable him to have controlling interest in the company. Accordingly, the plaintiff handed over the share scrips along with blank transfer forms to her husband who informed the plaintiff that he has handed over all those documents to Shri R.D. Bhagat on September 11, 1970, and terms and conditions were to be settled on September 12, 1970. According to the plaintiff, instead of finalising the other terms and conditions for transfer of her shares, Shri R.D. Bhagat kept on postponing the matter for some time and the case of this plaintiff further was that there was no valid transfer/sale of her shares in favour of Shri R.D. Bhagat. The alternative case set up by the plaintiff was that the sale is void being without consideration. The plaintiff's case further was that after taking possession of the share certificates and blank transfer forms, defendant No. 2 never settled the terms and conditions, not only this but she further pleaded that her husband Shri

B.K. Malhan had no authority either in fact or in law on her behalf to transfer the shares held by her to Shri R.D. Bhagat without settlement of terms and other conditions of the sale as was mutually agreed to on September 11, 1970. The plaintiff further alleged that after obtaining control over the company, Shri R.D. Bhagat and Mrs. Salochana Bhagat became members of its board of directors and they were trying to manoeuvre the transfer of immovable assets of defendant No. 1-company. In addition to this defendants Nos. 2 and 3 had leased out from valuable area in building bearing No. 54, Janpath, New Delhi, i.e., the asset of the company. Since defendants Nos. 1 to 3 have wrongfully refused to recognise her as a shareholder of the company, it was in these circumstances that declaration was sought that she continues to be owner of 1,500 ordinary and 10 preference shares. In this context, it may be worthwhile to mention that 900 shares were held by Mrs. Surjit Malhan in her own right, whereas 600 shares were held by her along with her relatives and friends jointly and her name being the first in the share certificates. In these circumstances, the plaintiff has also prayed for mandatory injunction against defendants Nos. 2 and 3 directing them to hand over the share certificates taken over by them from defendant No. 4, Shri B.K. Malhan, her husband, and to return those to her. The further prayer made in the plaint was that defendant No. 1 be also directed to amend the register of shareholders. In addition to this relief, a decree for permanent injunction was also sought for against defendants Nos. 1 to 3 restraining them from disposing of by sale, lease, mortgage or in any other manner immovable property owned by the, defendant-company.

3. That in Civil Suit No. 2 of 1973, the plaintiff, Shri B. K. Malhan, has made identical averments against defendants Nos. 1 to 3 and in his case, 2,330 ordinary shares and 64 preference shares of the defendant-company were handed over by this plaintiff to Shri R.D. Bhagat and these shares stood in his name. Shri B.K. Malhan received one rupee as a token consideration from R.D. Bhagat, defendant No. 2 for the physical handing over of the shares and the terms and conditions of sale were to be considered on the next day, i.e., September 12, 1970. According to this plaintiff a written contract was to be entered on this day, i.e., September 12, 1970, after the price and other terms and conditions between the parties had been finalised and thus in these circumstances the price of rupee one was no consideration because the shares were of great value and thus the contract was void ab initio for lack of valuable consideration. Shri B.K. Malhan has further pleaded that he had no authority from his wife, Mrs. Surjeet Malhan, for handing over of the shares to Shri R. D. Bhagat, defendant. In these circumstances prayer for declaration, and permanent mandatory injunction as claimed by Mrs. Malhan was also claimed by this plaintiff in his suit.

4. Defendants Nos. 1 to 3 filed similar written statements in both the cases and a number of preliminary objections were raised, which related to the maintainability of the suit as also the suit being for rectification of the register of members could only be filed under the Companies Act, 1956. Estoppel was also

pleaded against the plaintiff in both the cases, the suit being bad for non-joinder of the brothers and sisters of the plaintiff, Mrs. Surjeet Malhan, who were jointholders of shares with her, The suit for permanent injunction was pleaded not to be maintainable as also the court lacked jurisdiction to try the same. It was further pleaded by defendants Nos. 1 to 3 that there is a valid and lawful transfer of the shares held by both the plaintiffs which is the subject-matter of the respective suits. According to defendants Nos. 1 to 3 since the financial health of the company was going from bad to worse, besides suffering losses, according to the defendants both husband and wife, Mr. and Mrs. Malhan, were keen to sell their shares in the company to Mr. Bhagat which proposal of theirs was agreed to by defendant No. 2, Mr. Bhagat. According to the defendants, no written agreement was to be executed on September 12, 1970, and they further pleaded that the transaction of sale of shares held by both the plaintiffs and detailed in their suits was complete with the signing of the blank transfer deeds coupled with delivery of share scrips. According to the defendants, looking to the financial health of the company, the plaintiffs were keen to finish the dispute. It was also the case of the defendants that mere inadequacy of the consideration was no ground to allow their prayer. The allegations of defendants Nos. 2 and 3 to dispose of the building 54, Janpath, New Delhi, were denied. The jurisdiction of the court was disputed since the plaintiff had ceased to be a member of the company. In the replication filed, all the averments made in the plaint were re-asserted and those of the written statement were denied,

5. On March 15, 1974, the issues framed in Civil Suit No. 1 of 1973, are to the following effect :

1. Whether there is any misjoinder of causes of action ?
2. Whether the court has no jurisdiction because the relief of rectification of register of members can only be granted under the provisions of the Companies Act, 1956 ?
3. Whether the suit is time-barred, as alleged ?
4. Whether a suit for declaration simpliciter is barred and no relief can be granted ?
5. Whether the court fee paid is insufficient ?
6. Whether the plaintiff is the owner of the disputed shares ?
7. Whether the disputed shares were handed over to defendant No. 2 without consideration and there was no legal and complete transfer of such shares ?
8. Whether defendant No. 4 had no authority to hand over the share belonging to the plaintiff to the defendant No. 2 ? If so, its effect ?
9. Whether defendants Nos. 2 and 3 could not become members of the board of directors because they did not acquire qualifying shares within a period of two months ? If so, its effect ?

10. Whether defendants Nos. 2 and 3 are likely to sell or otherwise alienate the immovable assets of defendant No. 1 ? If so can the relief of permanent injunction be granted ?

11. Whether defendants Nos. 2 and 3 can be asked to hand over the share certificates to the plaintiff and a mandatory injunction to that effect be passed in favour of the plaintiff ?

12. Whether the mandatory injunction can be granted directing defendant No. 1 to amend its register of shareholders by substituting the name of the plaintiff for these shares ?

13. Whether for the reasons stated by defendants Nos. 1 and 2, the suit is barred by waiver, acquiescence and estoppel ?

14. Whether a fraud was practised by defendant No. 2 for the reasons alleged by the plaintiff ? If so, its effect ?

15. To what relief, if any, is the plaintiff entitled ?

6. Besides these, additional issues Nos. 1-A and 2-A were framed on December 4, 1975, as under :

1-A Whether the court has no jurisdiction as alleged ? OPD

2-A Whether the suit is bad for non-joinder of necessary parties ? OPD

7. Thereafter, two O.M.Ps., i.e., O.M.P. No. 73 of 1976 in C. S. No. 1 of 1973 and O. M. P. No. 74 of 1976 in C. S. No. 2 of 1973, were filed and, vide orders dated July 14, 1976, issue No, 8 was re-cast in two parts to the following effect :

8-A. Whether the transfer forms were handed over by defendant No. 4 without any authority of the plaintiff to defendant No. 2 ?

8-B. Whether the plaintiff was present when the blank transfer forms were handed over ? If so, what is its effect ?

8. In Civil Suit No. 2 of 1973, the following issues were framed on March 15, 1974 :

1. Whether the suit is bad for misjoinder of causes of action ?

2. Whether the court has no jurisdiction because the relief of rectification of register of members can only be granted under the provisions of the Companies Act, 1956?

3. Whether a suit for declaration simpliciter is barred and no relief can be granted ?

4. Whether the court fee paid is insufficient ?

5. Whether the plaintiff is the owner of the shares in dispute and defendants Nos. 2 and 3 can be directed to hand over all the share certificates to the plaintiff ?

6. Whether the alleged transaction for the sale of shares in favour of defendants Nos. 2 and 3 was not completed and the plaintiff has not been divested of the ownership of such shares ?

7. Whether the plaintiff and his wife have transferred the disputed shares for a consolidated consideration of Re. 1 to defendants Nos. 2 and 3 ? If so, its effect ?

8. Whether the plaintiff had no authority or power to hand over the share certificates owned by his wife and other relatives ? If so, did defendants Nos. 2 and 3 become the owners of such shares ?

9. Whether defendants Nos. 2 and 3 could not become members of the board of directors because they did not acquire qualifying shares within a period of two months ? If so, its effect ?

10. Whether the control of defendant No. 1 was passed on to the defendant No. 2 ? If so, its effect ?

11. Whether the plaintiff has resigned from the managing directorship of the defendant No. 1 as alleged ? If so, its effect ?

12. Whether defendant No. 1 be directed to amend its register of shareholders and the name of the plaintiff is to be substituted in place of defendants Nos. 2 and 3 ?

13. Whether the defendants are disposing of by sale, lease, mortgage or in any other manner immovable property owned by defendant No. 1 ? Can the plaintiff be granted permanent injunction to restrain such alienation ?

14. Whether for the reasons stated by defendants Nos. 2 and 3, the suit is barred by waiver, acquiescence and estoppel ?

15. Whether a fraud was practised by defendant No. 2 for the reasons alleged by the plaintiff ? If so, its effect ?

16. To what relief, if any, is the plaintiff entitled ?

9. Issue, No. 8. was split in two parts on July 14, 1976, and additional issues Nos. 1-A and 2-A were framed on December 4, 1975, and these issues are reproduced hereinbelow :

8-A. Whether the transfer forms were handed over by defendant No. 4 without any authority of the plaintiff to defendant No. 2 ?

8-B. Whether the plaintiff was present when the blank transfer forms were handed over ? If so, what is its effect ?

10. Additional Issues :

1-A. Whether the court has no jurisdiction as alleged ? OPD

1-B. Whether the suit is bad for non-joinder of necessary parties ? OPD

11. During trial it was agreed between learned counsel for the parties that the market value of property in question held by defendant No. 1, i.e., 54, Janpath, New Delhi, as in September, 1970, for the purpose of both suits if found relevant be taken at Rs. 22 lakhs and it was further agreed that the evidence produced by either party on the point of valuation be ignored. In these circumstances, and on the basis of the submissions of learned counsel for the parties, the learned single judge directed that the market value of the property, i.e., 54, Janpath, New Delhi, as in September, 1970, was to be taken as Rs. 22 lakhs. The learned single judge after hearing the counsel for the parties dismissed both the suits. It was in these circumstances that the present appeals had been filed.

12. By way of preliminary submission, Shri P.N. Lekhi, had argued that both the suits were filed by same counsel on the same date i.e., January 9, 1973. According to him, counsel was aware of all the facts and while doing so he concealed the facts which would form the grounds agitated by Mrs. Malhan for annulling the transfer in her case. This, according to him, was a speculative act on the part of the plaintiff which according to him in civil litigation is not only vexatious but was also an abuse of the process of law and court and thus the provisions of Order 7, Rule 11, of the Civil Procedure Code, were attracted to the facts of this case. Since according to learned counsel for defendants Nos. 1 to 3, the powers of this court in appeal are identical as in a suit, therefore, on that analogy he prayed for dismissal of the present appeals on this short ground alone. In support of his this preliminary submission, Shri P.N. Lekhi referred to Radakishen v. Wall Mohammed AIR 1956 Hyd 133 and T. Arivandandam Vs. T.V. Satyapal and Another, .

13. On the other hand, Shri D.K. Khanna, learned counsel for the appellants, has submitted that this objection ought to have been taken before the learned single judge and because no foundation has been laid in the written statement filed by the defendants in both suits, as such, this objection is firstly not open and secondly in no case, should the appellant be permitted to take it up in appeal, The further submission of Shri D.K. Khanna was that the case law cited in support of the preliminary submissions does not bar, much less prohibit, the filing of suits by the same counsel and above all the cases cited are not attracted in the peculiar facts and circumstances of the present case.

14. In Radakishen v. Wall Mohammed AIR 1956 Hyd 133 , it has been held that instances given in Order 7, Rule 11 of the CPC cannot be regarded as exhaustive of all the cases in which a court can reject a plaint or as limiting the inherent powers of the court in respect thereof. It has further been held in this judgment that in case a court comes to the conclusion that the person signing the plaint was not authorised, it should call upon the plaintiff to cure the defect and it is only on his failure to do so that the court should proceed to decide the question either dismissing it under Order 17, Rule 3 or rejecting it under Order 7, Rule 11. This was also permissible to be done under inherent powers of the court. According to the learned judges, an omission to sign the plaint is a mere

irregularity and a defect of procedure does not affect the jurisdiction of the court and this omission is not fatal to the suit as it is curable. It is only after the plaintiff had been given a chance to remove the defect and it fails to do the needful, as such this case has no applicability to the facts of the present case.

15. In *T. Arivandandam Vs. T.V. Satyapal and Another*, it has been held as under :

"We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful--not formal--reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 of the Civil Procedure Code, taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X of the Civil Procedure Code. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Chapter XI) and must be triggered against them. In this case, the learned judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi : "It is dangerous to be too good"."

16. On a perusal, the complaint does not disclose any such defect or lead to a conclusion that it does not disclose a clear cut right to sue inviting rejection of the complaint under Order VII, Rule 11 of the Civil Procedure Code. In these circumstances, this judgment also does not advance the case of defendants Nos. 1 to 3. Needless to point out, for the purpose of determining whether the complaint discloses any cause of action or not, a reference needs to be made to the complaint which prima facie discloses a cause of action and it may not be said to be vexatious after having gone through the complaint. In this view of the matter, the preliminary submission made on behalf of defendants Nos. 1 to 3 are hereby rejected.

17. Shri D.K. Khanna urged that the shares which were handed over to Shri R.D. Bhagat, the transaction relating to the transfer of such shares is incomplete, as such the plaintiffs in both the cases are entitled to declaration being the owners thereof. Further, according to him, the learned single judge has fallen into error as according to learned counsel for the appellant, the matter was about some price and number of shares as pleaded in both the suits but while dealing with exhibits PW-5/A, it has been wrongly held in both the suits that all the shares including those which were pledged with the Frontier Bank, as well as held by the sisters and other relations of both the plaintiffs were also taken into account. Besides this, there was no concluded agreement in respect of the shares either of

Mrs. Surjeet Malhan or Shri B.K. Malhan, the plaintiffs. Since defendants Nos. 2 and 3 had failed to acquire qualifying shares within the prescribed time of 60 days, after their co-option as directors, their office stood automatically vacated, as co-opted directors can hold office up to the date of the next annual general meeting and not thereafter. Accordingly, defendants Nos. 2 and 3 ceased to be directors of defendant No. 1-company with effect from June 30, 1971, when the annual general meeting was to be held. It was further pointed out by Mr. D.K. Khanna that there could not be transfer of shares without complying with the provisions of the memorandum and articles of association of defendant No. 1-company (exhibit PW-6/1). Admittedly, no previous sanction was obtained for the transfer of shares and in this view of the matter the so-called transfer in favour of defendants Nos. 2 and 3 is void ab initio. With special reference to the case of Mrs. Surjeet Malhan, Mr. Khanna urged that no consideration was given to her for transfer of her shares as also no previous permission of the board of directors of defendant No. 1-company was there and above all, she had never authorised her husband Shri B.K. Malhan to give away the shares as was being claimed by defendant No. 2, Shri R.D. Bhagat. Lastly, it was urged that the minutes book of the company is forged in order to deprive the plaintiffs of their claim as resolutions were incorporated therein after the interim order had been passed on January 18, 1973, in Civil Suit No. 1 of 1973.

18. All these submissions have been repudiated by Shri P.N. Lekhi who has pointed out that the company was in a complete financial mess and both the plaintiffs wanted to get rid of the same. Defendant No. 2 had taken over all the shares not only of the plaintiffs but of their friends and relations. In fact, according to Mr. Lekhi, the plaintiffs were happy and satisfied as there was pressure of creditors on Shri B.K. Malhan for the refund of their deposits, to a few of whom even the interest was not being remitted. The bank from whom limits had been obtained by defendant No. 1-company were pressing hard and, thus, it was felt that in order to overcome the situation and finding that the plaintiff, Mr. B.K. Malhan, was not in a position to retrieve defendant No. 1-company out of the financial mess, so the consideration of one rupee was enough for the entire shareholding of all the shareholders which was agreed to be transferred and had in fact been transferred in favour of defendants Nos. 2 and 3. Estoppel as well as waiver was pleaded against the plaintiffs as they slept over the matter from September 11, 1970, to January 9, 1973, to assert their rights, if any, and, thus, the story woven by them was unnatural. According to him, the transaction was complete with the writing of exhibit PW-5/1 and receipt of one rupee, vide exhibit DW-2/1. Blank transfer deeds when executed complete the contract and there is no difference in case of such transfer of shares whether in the case of a private limited company or a public limited company, as according to him the net result of signing such blank transfer deeds and handing over of the share certificates to the transferee is that the transferors lose all their rights. The whole issue, according to defendants Nos. 1 to 3, is whether the plaintiffs, Mrs. Malhan and Mr. Malhan, have executed the transfer deeds or not

and in support of his this submission he has referred to the provisions of the Sale of Goods Act, 1930. It was urged that the price was not at variance in terms of exhibit PW-5/1, so the suit is not maintainable and remedy, if any, can be availed of by the defendants for the recovery of the price of the shares.

19. Shri P.N. Lekhi has also further pointed out that defendant No. 1-company is bound to give effect to the transfer as it has no concern with any transferee or the transferor, i.e., the plaintiff on one side and defendants Nos. 2 and 3 on the other, in the present case. So far as exhibit PW-6/1 memorandum and articles of association are concerned, that is a matter between the company and its shareholders and it does not affect the rights of the transferees. He also referred to the pleadings.

20. On the conduct of Shri B.K. Malhan who was the managing director of defendant No. 1-company till January 15, 1971, it was submitted that he never raised any objection against the transfer of shares in favour of the defendants. On the other hand, Mrs. and Mr. Malhan were happy and satisfied that they are being relieved of the problems in which defendant No. 1 company was placed at that point of time. According to Mr. P.N. Lekhi, these were voluntary transactions to show that the plaintiffs in both cases had voluntarily transferred shares belonging to them and the plea of there being any duress, undue influence or misrepresentation is without any merit and the plaintiffs are precluded from urging that the transaction is void.

21. Reference was also made to the provisions of the Companies Act, 1956, by Shri P.N. Lekhi while urging that instead of having recourse to those provisions, for reasons best known to the plaintiffs, they approached the Registrar of Companies. As according to him, in case the meeting was not called as per the provisions of Section 169 of the Companies Act, then the requisitionist, if he is a member of the company, can hold the meeting in accordance with Section 169(6) of the Companies Act, and then they can pass a resolution which is binding on the company. Similarly, it was pointed out on behalf of the defendants that the transfer deeds exhibit DW-2/2 and exhibit DW-2/3 were duly proved. Lastly, it was urged that the powers of this court in appeal are limited and the plaintiffs cannot ask for reassessment of the evidence and reference was made to certain decided cases in this behalf.

22. The main issue in this case is what was intended to be conveyed by exhibit PW-5/1 and how and in what manner and on what terms the shares were to be transferred, whether after the first meeting held on September 11, 1970, the subsequent meeting was held at 4 p.m. or at about 6 p.m. The further question also arises as to whether the transaction was complete with the execution of exhibit PW-5/1 and receipt of rupee one, vide exhibit DW-2/1 or in order to complete the transfer something more was required to be done by the parties.

23. It may be appropriate to point out here that the company is governed under the provisions of the Companies Act, as well as under its memorandum of

articles of association exhibit PW-6/1. When a reference is made to the terms of exhibit PW-6/1, it will be seen that no transfer of share in the capital of the company could be made without previous sanction of the board of directors who had the power to decline such sanctions, besides this the directors of defendant No. 1-company were also required to hold qualifying shares and unless a director held the requisite number of shares, as such, till these conditions are fulfilled under the terms of articles, a person could not remain director. This was the position under the terms of the memorandum of articles of association whereas the co-opted director could continue till the next annual general meeting which in the present case was to be held on June 30, 1971.

24. The admitted case of the parties is that there was no sanction accorded by the board of directors of defendant No. 1-company authorising the transfer of all shares, held by the plaintiffs to alienate those in favour of defendants Nos. 2 and 3. Shri P.N. Lekhi has urged that there was implied sanction on the part of defendant No. 1 and plaintiff Shri B.K. Malhan who was the managing director never agitated against such transfer of shares in favour of his clients. We are not impressed by this argument raised on behalf of the defendants. Needless to point out in this behalf, when the law requires a particular thing to be carried out in a particular manner, there is no question of there being any implied sanction. In this view of the matter, we are of the view that there was no transfer of shares in accordance with exhibit PW-6/1, as such, no benefit can be derived by the defendants therefrom.

25. Now, coming to exhibit PW-5/1, the letter dated September 11, 1970, written by Mr. B.K. Malhan, the plaintiff, to defendant No. 2, it may be appropriate to point out here that B.K. Malhan alone was not the shareholder of defendant No. 1-company, his father, his wife, relations of his wife and other persons were also the shareholders of defendant No. 1-company. Besides such persons, a number of other persons were the creditors whose money was lying in deposit with defendant No. 1, therefore, perusal of exhibit PW-5/1 shows that there is nothing which could be read to mean, much less presume, that, firstly, Shri B.K. Malhan had any authority on behalf of any of the other shareholders to have transferred the shares for the price at rupee one ; and, secondly, if the transaction of transfer was concluded at one rupee, then where was the occasion of mentioning in exhibit PW-5/1, further the terms and conditions of sale as agreed upon between ourselves will be signed by us tomorrow. After the transaction was complete and there was a concluded and binding contract entered into between the parties, i.e., B.K. Malhan on one side and defendant No. 2 on the other, there was no need of having mentioned what has been re-produced hereinabove. Similarly, there is nothing on record to suggest that any other shareholders ever authorised Shri B.K. Malhan to agree much less undertake the transfer of their shareholdings held by them in defendant No. 1-company in favour of defendant No. 2. Thus, the receipt of rupee one, vide exhibit DW-2/1 cannot by any stretch of imagination be taken to be a concluded contract for the purpose of transfer of shares of all the shareholders of defendant No. 1 in favour of defendant No. 2 or

his nominee. The findings recorded in this behalf by the learned single judge are contrary to the records and are thus set aside. Further, the consequence of the aforesaid discussion is that the matter was at the negotiation stage and the terms and conditions of the sale were to be settled between the parties on September 12, 1970, which position is clear.

26. Regarding execution of exhibit DW-2/1, after a reference is made to the statement of Shri R.D. Bhagat, DW-2, as well as to the statement of DW-4, Shri Vidya Sagar, advocate, who was the solicitor of defendant No. 2, it is clear that one says that it was executed at the residence of Shri Malhan whereas DW-4 states that DW-2/1 was executed at his office, after exhibit PW-5/ 1 had been typed out there. It is very strange that on what basis DW-2 had courage of conviction to say that the shares which were in the possession of Mr. and Mrs. Malhan would be handed over to him for a consideration of one rupee and later on shares mortgaged with the Frontier Bank were to be got released by Shri Malhan and handed over to him. Not only this but DW-2 further stated that B.K. Malhan was to transfer all the shares of his relations, friends, etc., that too for the consideration of one rupee.

27. Shri Bhagat appears to be interested in taking undue advantage of the financial position of defendant No. 1-company and had further gone on record to say that it was also agreed that the shares of B.K. Malhan's sister from Bangalore would also be transferred to him. If these were the terms and conditions, why he did not get those incorporated in exhibit PW-5/1 as he was having proper legal advice at the point of time. Mr. Bhagat was well aware about the financial position of the company and the works which were being carried out by defendant No. 1-company at different places as complete information had been given to him by the staff of the company, i.e., PW-7, Uma Dutt Pathak and PW-8, H.S. Bhalla, In addition to these, balance-sheet(s) of the company was also available with Shri Bhagat.

28. Nothing has been brought on record by any of the defendants to show that Mrs. Malhan had ever agreed much less consented for the transfer of her shareholdings. Similarly, no previous sanction of the board of directors was brought on record to show that she had ever asked the board to permit her to transfer the shares in question, and in no case exhibit PW-5/1 can be read down to mean that not only her own share holding but that of Mr. Malhan and other persons was also intended to be transferred by him for a consideration of one rupee. From the statement of DW-2, it is clear that he is a businessman of long standing and was having proper legal advice in all the matters while dealing with B.K. Malhan plaintiff.

29. In this view fit the matter, it is held that Shri B, K, Malhan had no authority either express or implied on behalf of Surjeet Malhan to transfer her shares as urged on behalf of the defendants and consequently merely because blank transfer deeds coupled with the share certificates were handed over to Shri R.D. Bhagat, defendant No. 2, is of no consequence. In fact before transfer, sanction

of the board of directors was necessary and admittedly no sanction was ever accorded permitting the transfer of shares by either Shri B.K. Malhan or Smt. Surjeet Malhan, so even if any transfer is made as claimed by defendant No. 2, it is no transfer in the eyes of law and it is declared accordingly. The submissions of Mr. P.N. Lekhi that the plaintiffs could have recourse to the provisions of the Companies Act under Sections 163, 169 and 195, as such why did Shri Malhan approach the Registrar of Companies. This plea was pressed into service on behalf of the defendants for pleading estoppel against the plaintiffs. In this behalf it may be appropriate to point out that under the provisions of the Companies Act, defendant No. 1 was required to file returns, from time to time. PW-4, Om Parkash is a Superintendent from the office of Registrar of Companies, Jullundur, who had categorically pointed out that returns were not filed as envisaged under the Companies Act and for not filing the returns, the defendants were prosecuted in the court at Jullundur and have been fined. Auditors in their reports have categorically stated that the records were not shown to them. Had there been any transfer those would have been reflected in the books of defendant No. 1-company and defendant No. 2 would not have hesitated in showing those to the auditors. The thrust of the argument of Mr. Lekhi was that at the meeting held at 4.30 p.m. on September 11, 1990, the matter relating to transfer was complete. In this behalf, it may be appropriate to mention that there are serious doubts about the holding of this meeting and further if what is pleaded by the defendants is correct, then there ought to have been a resolution of the board that the transfer deeds along with share certificates were put up before the board and the further consequence would be that in the event of the transfer forms and share certificates being there, the board would have sanctioned the transfer in favour of defendant No. 2 as well as his nominees.

30. Another salient feature in this case is that there is nothing to show when the share transfer forms exhibits DW-2/2 and DW-2/3 were lodged by the transferee Shri R.D. Bhagat with defendant No. 1-company. Admittedly, defendant No. 2 was the managing director and it has come on record in his statement that he was in charge of the affairs of defendant No. 1-company. In case the transfer forms were ever lodged with the company, they would have found mention in its records and defendant No. 2 would not have hesitated in producing those in the court. Similarly, if a reference is made to exhibit PW-5/2 and exhibit PW-5/3, transfer forms which relate to the shares of Surjit Malhan, the position remains the same as there is nothing to suggest as to when these were lodged with defendant No. 1-company. Further, exhibit PW-5/4 is a list of share scrips which were handed over to Shri R.D. Bhagat on September 11, 1990, with two blank transfer deeds of Mrs. Surjit Malhan. In this view of the matter, no benefit could be derived by the defendant out of blank transfer deeds executed by either Shri B.K. Malhan or by Smt, Surjit Malhan. plaintiff. Similarly, in exhibit DW-2/2, there is no mention of 268 shares Nos. 1118 to 1268 and 400 shares Nos. 2431 to 2830 and defendant No. 2 had not been able to produce any transfer deed in respect of these shares. In this view of the matter, no reliance can be placed on

the board meeting purported to have been held on September 11, 1970, at 4.30 p.m., the minutes whereof have been produced by defendant No. 2 as exhibit DW-2/4. We further hold that no meeting was held at 4.30 p.m. So, exhibit DW-2/4 is of no consequence. A reference to exhibit PW-4/39 checking up of annual return made up to June 6, 1972, in respect of defendant No. 1-company issued from the office of the Registrar of Companies clearly shows that defendant No. 2 has failed to meet the queries and one of the queries raised was :

"3. May ask to send A. R. made up to June 30, 1971, along with written statement u/s 159 of the Companies Act, 1956."

31. This position is clear from the statement of PW-4, Superintendent of the office of the Registrar of Companies, Jalandhar.

32. In the context of transfer of shares, the defendants in their wisdom have chosen not to specify the date(s) relating to the transfer of such shares of both the plaintiffs.

33. In the context of transfer of shares, it may be necessary to examine the background wherein the parties were placed when the negotiation between them took place. Defendant No. 2 was interested in taking on rent the premises and for that he had given an advertisement in the newspapers. This court cannot lose sight of the fact that the locality where the premises were located and wherein a part was to be let out by Shri B.K. Malhan is situate at a prime location at New Delhi. The plaintiff Shri Malhan could have negotiated terms for accepting premium and rent. It appears that Shri Bhagat having got full information regarding the financial affairs of defendant No. 1-company appeared to be interested in entering into a business venture with Shri Malhan although DW-4, his solicitor had advised him against such exercise. But it is not understandable as to without settling the terms and conditions of sale between the parties and without signing the terms and conditions of the sale as agreed upon between the parties, why would even Shri B.K. Malhan have parted with everything. May be that defendant No. 1-company was passing through a financially lean period although the situation was not of such a nature that it was totally out of control of the management of defendant No. 1-company.

34. In this view of the matter, it is held that there was no transfer of shares in favour of Shri R.D. Bhagat, defendant No. 2 or his nominee (and nothing) has been brought on record by defendants Nos. 2 and 3 to show that any shares were transferred in favour of defendant No. 3 and thus, how she continued to be on the board of directors of defendant No. 1-company after the expiry of two months is not known.

35. Similarly, the plea of the defendants that there was no question of signing a written agreement on September 12, 1970, and this plea having been concocted is not correct in the face of exhibit PW-5/1. Replication in this case has been filed under the orders of the court and it forms a part of the pleadings. All the facts have been detailed by the plaintiff in the replication filed in both the cases. In

these circumstances, it was, thereafter, that the so-called terms and conditions of transfer were suggested to the witnesses on behalf of the plaintiffs. In this context, it may be appropriate to refer to the provisions of Section 93 of the Evidence Act, 1872, and, thus, no amount of oral evidence can be allowed to be brought on record in the face of written documents being there. That being the position, the contention raised on behalf of defendants Nos. 2 and 3 that there was nothing to be signed on September 12, 1970, is not correct.

36. From whatever angle the case may be viewed the fact remains that defendant No. 2 has miserably failed to establish lawful transfer of shares either in his favour or in favour of any of his nominees much less defendant No. 3. Similarly, no advantage can be derived by any of these two defendants by merely being in possession of either the blank transfer deeds signed by the plaintiff B.K. Malhan or by Mrs. Surjeet Malhan together with the share scrips.

37. Consequently, the judgment and decree passed by the learned single judge in Civil Suit No. 1 of 1973 and Civil Suit No. 2 of 1973 are hereby set aside and the suits filed by the plaintiffs are decreed and it is declared that the plaintiff, Smt. Surjeet Malhan in Civil Suit No. 1 of 1973 is the owner of 1,500 ordinary shares and ten preferential shares of defendant No. 1. Defendants Nos. 2 and 3 are commanded by a decree of mandatory injunction to hand over the share scrips of these shares to this plaintiff. In case those have been transferred in the names of defendant No. 2 or any of his nominees, defendant No. 1 is directed to rectify the register by substituting the name of the plaintiff by amending the register of its shareholders and showing this plaintiff to be the holder of these shares.

38. Similarly, Civil Suit No. 2 of 1973 of Shri B.K. Malhan is also decreed and it is declared that he is the owner of 2,230 ordinary shares and sixty four preferential shares of defendant No. 1-company and defendants Nos. 2 and 3 are directed to hand over all the share certificates in relation to these shares to this plaintiff. In case the name of defendants Nos. 2 and 3 or any other person has been substituted in respect of these shares, then defendant No. 1 is commanded by a decree of mandatory injunction to amend its register of shareholders and show the name of the plaintiff to be the rightful owner of these shares. In both Civil Suits Nos. 1 and 2 of 1973, defendants Nos. 2 and 3 are restrained from transferring and/ or alienating as well as encumbering any of the property of defendant No. 1- company in any manner. Costs on the parties.