

(2017) 05 KAR CK 0014

In the Karnataka High Court

Case No : 6011 of 2016 C of W MFA No 6012 of 2016

M/s. Alliance University

APPELLANT

Vs

Sri. Sudhir, S/o Sri. Guddappa B. Angur, & Ors.

RESPONDENT

Date of Decision : 10-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 1 Rule 10](#), [Order 39 Rule 1](#), [Order 39 Rule 2](#), [Order 6 Rule 17](#)

Citation : (2017) 05 KAR CK 0014

Hon'ble Judges : Raghvendra S. Chauhan

Bench : SINGLE BENCH

Advocate : V. Lakshminarayana, Vivek S. Reddy, Ashok Haranahalli, Shaik Ismail Zabiulla, K.N. Subba Reddy, A.P. Pulakeshi, Mudit Kundlia, Sajjan Poovayya, D.N. Nanjunda Reddy, Jayakumar S. Patil, Shyam Sundar, Prasanna Kumar, Priyadarshi Banerjee, Pratibhanu Singh Kh

Judgement

1. The appellant, the Alliance University, is aggrieved by the order dated 10-8-2016, passed by the XXVII Additional City Civil Judge, Bangalore city (CCH-9), whereby the learned Judge has rejected the temporary injunction application filed by the appellant, but has allowed the temporary injunction application filed by the respondent- defendants in their counter-claim. The appellant has filed two Miscellaneous First Appeals, namely M.F.A. No. 6011/2016, and M.F.A. No. 6012/201. In the former MFA, the appellant has challenged the rejection of its application for temporary injunction; in the latter MFA, the appellant has challenged the grant of temporary injunction to the respondents. Since these two MFA's arise out of the same factual matrix, since the legal issues overlap, since the contentions raised by the learned Senior Counsel are interconnected, the two MFA's are being decided by this common order.

2. The appellant is also aggrieved by another part of the impugned order, namely

the rejection of its application under Order I, Rule 10, read with Order VI, Rule 17 of the CPC, for amending the plaint. The appellant has challenged this part of the impugned order by filing a Writ Petition, namely W.P.No. 48506/2016. Since the writ petition deals with a separate application, since it involves a different set of contentions, it is being decided by a separate order. This order is concerned only with the two aforementioned MFA's filed by the appellant University.

3. This case has a long and a chequered history which, out of sheer necessity, needs to be narrated. For, the events are relevant in order to understand the myriad contentions and counter-contentions subsequently raised by the learned Senior Counsel for the parties.

4. Mr. Madhukar Angur, the alleged Chancellor of the appellant University, and Mr. Sudhir Angur, the respondent No. 1, are real brothers. Mrs. Shaila Chebbi, respondent No. 2, and Mrs. Mala Gouda, respondent No. 3, are their real sisters. Mr. Abhay Chebbi, respondent No. 4, is a son of Mrs. Shaila Chebbi, and thus, the nephew of Mr. Madhukar Angur. Mr. Prakash Siddappa, respondent No. 5, on the other hand, is an ex-employee of the appellant University. The bone of contention in the present case is the management of the Alliance University. The contest is between Mr. Madhukar Angur, who claims to be the Chancellor of the University, appointed for life, and Mr. Sudhir Angur who equally claims to be the lawfully appointed Chancellor of the University. The other respondents, named above, claim to be the directors of the Alliance Business School Pvt. Ltd, the Sponsoring Body of the appellant University. They are supporting the case of Mr. Sudhir Angur.

5. Way back in 1997, Mr. Sudhir Angur had established the Sainath Education Trust. Mr. Sudhir Angur was the Managing Trustee. The Managing Trustees operated the Alliance Business Academy. On 16-6-2005, the Alliance Business School, ("the Company", for short), a private limited company, was registered under the Company Act, 1956. The founding shareholders of the said Company where the two sisters of Mr. Sudhir Angur, namely Mrs. Mala Gouda, who held 5000 shares, and Mrs. Shaila Chebbi, who also held another 5000 shares. Thus, the Company began with 10,000 shares.

6. Around 2007, Mr. Madhukar Angur was teaching at the University of Michigan in the United States of America. On 25-4-2007, he was inducted as a Director of the Company. On 27-11-2008, he was appointed as the Managing Director of the Company. Thus, on 20-5-2009, the Board of Directors consisted of Mr. Madhukar Angur, as the MD, Mrs. Mala Gauda and Mrs. Shaila Chebbi as the Directors. During the period of 2005 to 2009, the shares of the Company increased exponentially. On 20-5-2009, the Board allotted 2,40,000 shares in favour of Mr. Madhukar Angur. Subsequently, on 16-10-2009, Mrs Mala Gouda transferred 2500 shares of hers to Mr. Madhukar Angur. On the same day, she also transferred her remaining 2500 shares to Mr. Sachindananda Machineni. He was also inducted as a Director of the Company. Likewise, on 16-10- 2009, Mrs. Shaila Chebbi transferred her 5000 shares to Mr. Madhukar Angur. On

16-10-2009 itself, both Mrs. Mala Gouda and Mrs. Shaila Chebbi resigned from the Board of Directors of the Company.

7. But on 6-4-2010, Mr. Madhukar Angur transferred 38% of his shares to his real sister, Mrs. Mala Gouda, and 5% of his shares to her husband, Mr. Srinivas Gowda, his brother-in-law.

8. On 4-6-2010, the Company, the ABS Pvt. Ltd, was converted into a non-profit Company; it was brought under Section 25 of the Company Act, 1956.

9. On 28-7-2010, the Alliance University Act, 2010 ("the Act", for short) was published in the Official gazette. The said Act came into force on 2-8-2010. Under the Act, the Company was declared as the "Sponsoring Body". According to Section 15 (2) of the Act, the Managing Director of the Sponsoring Body is to be appointed as the First Chancellor of the University. The appointment was to be "for life". Since at the relevant time, Mr. Madhukar Angur was the MD of the Company, he was appointed as the First Chancellor of the University; the appointment was "for life". On 16-9-2010, the Government of Karnataka approved the establishment of a private university in the name and style of "Alliance University", at Anekal.

10. According to the Annual Returns of the Company, for the years 2011-12 and 2012-13, Mrs. Mala Gouda and Mr. Srinivas Gowda were shown to have the shares to the extent of 43 %. However, when the Annual Returns of the Company were published in 2013-14, Mrs. Mala Gouda allegedly learnt that her shares and the shares of her husband, Mr. Srinivas Gowda were transferred to Mrs. Prinyanka B. S., the wife of Mr. Madhukar Angur. After the year 2013, things get murky within the Company. The affairs of the Company will eventually affect the functioning of the Alliance University as well.

11. On 30-1-2015, Mr. Madhukar Angur, as the MD, separately wrote to Mr. Sachidananda Rao Machineni, Mrs. Priyanka B. S., Mr. Krishna Mohan Ramineni (who was one of the Directors inducted on 5-3-2009), with regard to offering his shares. On 16-2-2015, a notice was also issued for calling a meeting of the Board of Directors of the Company on 4-3-2015 and 5-3-2015. In the meeting held on 4-3-2015, Mr. Abhay Govind Chebbi, respondent No. 4 and Mr. Prakash Siddappa, respondent No. 5, were appointed as Additional Director of the Company.

12. After the meeting of 4-3-2015, the facts of the case become unclear as both the sides, the appellant and the respondents, have different versions of the events. According to the appellant University, no meeting was called for on 5-3-2015, and no meeting took place on that date. According to the appellant, henceforth, the facts alleged by the respondents are full of falsehood and fraud.

13. But according to the respondents, on 5-3-2015, Mr. Madhukar Angur resigned from the office of Managing Director, and from the Board of Directors of the Company. Further, Mr. Madhukar Angur allegedly offered to transfer 1,22,500

shares of his to Mrs. Mala Gouda, respondent No. 3, and to Mr. Abhay Govind Chebbi, respondent No. 4. Consequently, while 58,800 equity shares were transferred to Mrs. Mala Gouda, 63,700 equity shares were transferred to Mr. Abay Govind Chebbi. Similarly, Mrs. Priyanka B. S. also informed the Board of her intention to transfer her 1,70,500 shares to Mr. Prakash Siddappa, respondent No. 5 and to Mr. Shivappa Mantur. Thus, according to the respondents, 56,000 equity shares were transferred to Mr. Prakash Siddappa and 51,500 equity shares to Mr. Shivappa Mantur. Moreover, Mr. Krishna Mohan Ramineni also resigned from the office of Director of the Company. Further, according to the respondents, on 5-3-2015, the Board of the Company accepted the resignations of Mr. Madhukar Angur and of Mr. Krishna Mohan Ramineni.

14. However, as Mr. Madhukar Angur was of the opinion that the alleged transfer of his shares and his alleged resignation were staged managed by the respondents, on 6-3-2015, he lodged a criminal complaint against some of the respondents. In the criminal complaint, he claimed that he was forced to resign from the Board, and was equally forced to transfer his shares to Mrs. Mala Gouda and Mr. Abay Govind Chebbi. However, after a thorough investigation, the Police has filed a negative Final Report and closed the case.

15. The respondents further claim that in April 2015, Mrs. Priyanka also declared her intention to resign from the Board of the ABS Company. Her resignation was accepted on 11-4-2015. On the same date, Mrs. Shaila Chebbi, respondent No. 2, and Mrs. Mala Gouda, respondent No. 3, were appointed as the Additional Director of the Company.

16. Moreover, according to the respondents, the information with regard to Directors of the Company, and with regard to the shares of the Company were uploaded to the Registrar of Company ("the ROC", for short) through e-filing on 13-4-2015. The e-filing was done under the digital signature of Mr. Madhukar Angur, Mr. Krishna Mohan Ramineni and Mr. Abhay Chebbi. However, as Mr. Madhukar Angur, and Mr. Krishna Mohan Ramineni were aggrieved by the misuse of their digital signature, they filed a complaint with the ROC with regard to the illegal uploading of such documents. They also lodged FIRs against the respondents for illegally using their digital signature for uploading the documents. The FIRs were registered as Crime Nos. 97/2015, 104/2015 and 105/2015. However, the said FIRs, were quashed qua Mr. Sudhir Angur, Mrs. Shaila Chebbi, Mrs. Mala Gouda, Mr. Abhay Chebbi and Mr. Prakash Budoor, by this court, by its order dated 4-10-2016, in Writ Petition No. 19462-466/2016.

17. With regard to the uploading on 13-4-2015, the ROC issued a notice to the Company and to Mr. Abhay Chebbi, Mrs. Shaila Chebbi, Mrs. Mala Gouda and Mr. Prakash Sidappa, on 7-5-2015, as to why the uploading done by them on 13-4-2015 should not be invalidated and why the constitution of the Board of Directors should not be restored? By letters dated 2-6-2015, and 3-6-2015, the above named persons gave their consent for invalidating the DIR-12 forms, namely the information which was uploaded on 13-4-2015. By order dated

8-6-2015 the ROC informed the Company that the DIR-12 Forms have been marked as "invalid". Further, on 9-6-2015, the Ministry of Corporate Affairs informed Mr. Abhay Chebbi, respondent No. 4, that the filing pertaining to the uploading done on 13-4-2015 is "defective", and rectification of the same should be done within a period of thirty days.

18. According to the respondents, on 30-9-2015, Mrs. Shaila Chebbi, respondent No. 2, and Mr. Abhay Chebbi, the respondent No. 4, were appointed as the Directors of the Company from the post of Additional Directors of the Company.

19. On 5-2-2016, Mr. Madhukar Angur was arrested in an alleged case of rape purportedly committed on a mentally challenged woman. According to the respondents, on 11-2-2016, the Board of Directors of the Company re-accepted the resignation of Mr. Madhukar Angur and Mrs. Priyanka B. S.

20. On 23-2-2016, Mr. Krishna Mohan Ramineni uploaded the DIR-12 Forms about the position of the Directors, and about the position of the Shares of the Company.

21. On 4-3-2016, an employee of the Company lodged another criminal complaint against Mr. Madhukar Angur wherein she claims that she has been raped by him. Presently, according to both the parties before this court, the investigation is still continuing in the said case.

22. On 14-3-2016, Mr. Madhukar Angur lodged a complaint with the ROC requesting him to initiate a criminal case against Mr. Sudhir Angur, Mr. Abhay Chebbi, Mrs. Shaila Chebbi, Mrs. Mala Gouda, and Mr. Prakash Budur for the offences of cheating, falsification of documents, forgery, impersonation, using forged documents as genuine and for tampering with electronic records. However, so far, the ROC has not initiated any action against the aforementioned persons.

23. Further, according to the respondents, on 7-4-2016, the Company, as the Sponsoring Body of the Alliance University, removed Mr. Madhukar Angur from the post of Chancellor. Although this fact is being hotly contested by the appellant before this court, but Mr. Madhukar Angur has not challenged the resolution of the Company ousting him from the said post before any court, so far.

24. On 11-4-2016, one Ms. Shreya Sanjeev filed a civil suit against the University, the Company, Mr. Madhukar Agngur and others, namely O. S. No. 2911/ 2016 wherein she claimed that she had purchased shares from Mr. Shivappa Mantur. She has sought a declaration from the civil court that her shareholding is valid. By order dated 30- 8-2016, the learned Civil Court has restrained Mr. Madhukar Angur, Mrs. Priyanka B. S. and others from interfering with the management of the Company and the University.

25. The respondents further claim that Mr. Sudhir Angur, respondent No. 1, was appointed as an Additional Director of the Company on 15-4-2016. Subsequently,

on 16-4-2016, he was appointed as the Chancellor of the University. On 28-5-2016, he was appointed as the Managing Director of the Company. Hence, according to the respondents, presently, Mr. Sudhir Angur, the respondent No. 1, is the MD of the Company, and the Chancellor of the University.

26. Since the University was aggrieved by the interference of Mr. Sudhir Angur and of others in its affairs of the University, since Mr. Madhukar Angur claimed to be the Chancellor for life, the University filed a civil suit through the Chancellor for injunction against Mr. Sudhir Angur and others, namely O. S. No. 3006/2016 before the learned Civil Judge. Along with the civil suit, the University, as the plaintiff, filed an application under Or. XXXIX, Rules 1 and 2 of CPC. The respondents not only filed their written statements, but also filed their counter-claim. Along with the counter-claim, the respondents also filed an application under Or. XXXIX, Rules 1 and 2 of CPC. Subsequently, Mr. Madhukar Angur also filed an application under Or. I, Rule 10 read with Or. VI, Rule 17 for amending the cause title and the plaint of the civil suit. The three applications, so filed, were decided by a common order, namely the impugned order. Hence, the two MFAs, and the writ petition filed before this court.

27. The two MFAs, mentioned hereinabove, shall be decided separately by this common order.

M. F. A. No. 6011/2016:

28. This Miscellaneous First Appeal has been filed by the Alliance University challenging the Order dated 10-8-2016, whereby the learned Civil Judge has rejected the appellant's application for temporary injunction filed under Or. XXXIX, Rules 1 and 2 CPC.

29. Mr. Lakshminarayan, the learned Senior Advocate for the appellant, has raised the following contentions before this court:-

1) The learned Judge is legally bound to carefully examine the entire pleadings and documents with outmost care and seriousness while dealing with a temporary injunction application. The learned Judge is required to see if the three elements for grant of temporary injunction exist in favour of the appellant or not? However, in the present case, despite the allegations that the respondents have practiced fraud on the Company, and are also practicing fraud on the court, the learned Judge has cursorily examined the case and has passed the impugned order.

2) The learned Civil Judge has erred in holding that the civil suit is not maintainable as it has been filed by the Chancellor. According to the learned Civil Judge, the suit should have been filed only by the Registrar of the University in accordance with Section 4 (6) of the Act. However, according to the learned Senior Counsel, the learned Civil Judge has misread the provisions of the Act. According to the Act, the Chancellor has the absolute power. Under Section 15 (5) (i) of the Act, the Chancellor is declared to be the head of the University.

According to Section 15 (6) of the Act, in case of a conflict inter-se between the functionary or functionaries or body or bodies and any other functionary or body of the University, then the issue would be referred to the Chancellor, whose decision shall be final. Moreover, under Section 16 of the Act, the power of appointing the Vice-Chancellor is vested in the Chancellor. According to Section 17 of the Act, even the appointment of the Pro-Vice- Chancellor has to be with the consent of the Chancellor. Under Section 19 of the Act, the Registrar is also appointed by the Chancellor. Hence, the Chancellor is the supreme authority in the University.

3) Section 4 (4) of the Act spells out the constituent members of the body corporate. The body corporate includes the Chancellor, the Vice-Chancellor, members of the Board of Governors, members of the Board of Management and the Academic Council for the time being holding office. The body corporate can sue and be sued in the name of the University. But the right to sue depends on the cause of action. If the University as a whole has a cause of action, then the University will sue through the Registrar as prescribed by Section 4 (6) of the Act. But if a constituent part of the body corporate has a cause of action, then the constituent part has the right to sue under Section 4 (4) of the Act. In such a scenario, Section 4(6) of the Act does not come into picture. Further, Section 19 of the Act defines the powers of the Registrar. Section 19 read with Section 4 (6) of the Act clearly demonstrates that the Registrar performs merely a clerical role under the latter provision. For, Section 4 (6) of the Act merely requires that the Registrar should sign and verify the pleadings, and all processes in the suits, and "proceedings shall be issued to and be served on the Registrar." If the Registrar were to refuse to sign and verify the pleadings, then the University is not helpless. It can sue through its Chancellor under Section 4 (4) of the Act. Moreover, even under Or. XXIX, Rule 1 of CPC, a pleading may be signed and verified on behalf of a corporation by any director. Hence, the finding given by the learned Civil Judge that the suit is not maintainable as it has been presented through the Chancellor, such a finding is clearly belied by Section 4 (4) of the Act.

4) Since the suit could be presented through the Chancellor, the learned Civil Judge is unjustified in concluding that the suit was not maintainable. Hence, the further conclusion drawn by the learned Civil Judge, that the appellant has failed to make out a strong prima facie case in its favour, is equally misplaced.

5) The learned Civil Judge has ignored the fact that Mr. Madhukar Angur was appointed as the first Chancellor under the Act. Since he was the first Chancellor of the University, under Section 15(2) of Act, he was appointed for life. Since the appointment was for life, since he had been appointed under the statute, he could not be removed from the office of Chancellor by the respondents, or by the Sponsoring Body. Yet, the learned Civil Judge has concluded that by order dated 7-4-2016, Mr. Madhukar Angur was removed from the post of Chancellor of the University by the Sponsoring Body. Such a finding clearly shows a poor understanding of Section 15 (2) of the Act, in particular, and of Section 15 of the

Act in general.

6) Both in the plaint and in the oral arguments, the appellant had pleaded that a great fraud was played by the respondents Nos. 1 to 4. According to Article 15 of the Articles of Association of the Company, only the MD has the power to convene the Board meeting. The appellant has denied that Mr. Madhukar Angur, as the MD, had ever called a meeting on 5-3-2015. Further, the appellant has denied that the shares of Mr. Madhukar Angur and Mrs. Priyanka were ever transferred to the respondents. Thus, the alleged transfer of shares on 5-3-2015 is merely a fraud played by the respondents.

7) The allegation of fraud is further buttressed by the fact that on 7-5-2015 the ROC had issued a notice to the respondents that he had received information that the uploading done by the respondents on 13-4-2015, with regard to the transfer of shares of Mr. Madhukar Angura and Mrs. Priyanka, was fraudulent. Thus, the ROC had asked the respondents to show cause as to why the said uploading should not be invalidated. Since their fraud was discovered, therefore by letters dated 2-6-2015 and 3-6-2015, the respondents had informed the ROC to invalidate the uploading of 13-4-2015. Consequently, the uploading was invalidated by Order dated 8-6-2015.

8) The learned Civil Judge has also ignored the fact that once the uploading was invalidated on 8-6-2015, the second uploading was done on 23-2-2016 by Mr. Krishna Mohan Ramineni. However, so far, even the second uploading has not been approved by the ROC. In fact, on 2-6-2016, the ROC has informed the respondents that the groups of directors would not be approved unless Mr. Madhukar Angur and the respondents settle their disputes. Thus, according to the said letter even the uploading of 23-2-2016 is yet to be approved by the ROC. Therefore, unless the transfer of shares is approved, unless the appointment of the directors is approved, the respondents cannot claim to be either the directors of the Company, or to be members of the Sponsoring Body. Thus, they cannot interfere with the functioning of the appellant University. However, these glaring facts have been totally ignored by the learned Civil Judge. But once the allegation of fraud was leveled against the respondents, the learned Civil Judge should have been on his guard. However, the learned Civil Judge has accepted the transfer of shares on 5-3-2015 as the gospel truth. Hence, the learned Civil Judge has misapplied himself.

9) The learned trial court has ignored the relevant provisions of the Companies Act for a valid transfer of shares. The Companies Act provides an elaborate procedure for transfer of shares. Firstly, the transfer of shares is subject to the Article of Association of the Company. According to Section 56 of the Companies Act, a company shall not register a transfer of securities of the company, unless the deed of the transfer of shares is delivered to the company along with the Share Certificate. However, in the present case, the Share Certificates have never been produced by the respondents either before the company, or before the learned Trial Court.

Moreover, the Companies (Registration Offices and Fees) Rules, 2014 deals with the power of the ROC, with the manner of filing of declarations or intimations etc. which are required to be made by a company before the ROC. Rule 5 of the said Rules bestows powers on the ROC as conferred by the Act, or the rules made thereunder. Rule 7 of the said Rules deals with "Manner and conditions of filing" of declarations, or intimation etc to the ROC. Rule 8 of the said Rules deals with "Authentication of documents." Rule 10 of the said Rules prescribes the "Procedure on receipt of any application or form or document electronically." Under Rule 10 (4) of the said Rules, the ROC has the power to invalidate the declaration, or intimation etc. Thus, the transfer of shares has to be approved by the ROC. But in the present case, there is no evidence to show that the alleged transfer of shares from Mr. Madhukar Angur or from Mrs. Priyanka Angur were approved by the ROC.

10) Furthermore, the appellant has denied that Mr. Madhukar Angur has ever resigned from the Board of the Company. Yet despite these denials, the learned Judge has failed to examine the relevant provisions of law, and the relevant documents. Section 168 of the Companies Act, 2013 prescribes the procedure for acceptance of a resignation by a Director. The provision requires that the Director should give a notice to the company, the company should intimate the ROC, in such manner, and in such form as may be prescribed, the Director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar. Likewise, Rule 16 of the Companies (Appointment of Directors) Rules, 2014 requires that the copy of the Director's resignation should be sent to the ROC within thirty days of his resignation. However, the said procedures, contained in the Companies Act and the Rules of 2014, have not been followed. Thus, the alleged resignation by Mr. Madhukar Angur is a fraud played by the respondents. Yet, the learned Civil Judge has accepted Mr. Madhukar Angur's resignation as a *fait accompli*. Although the learned Civil Judge is supposed to cull out the truth about the case, yet the learned Judge has accepted the documents submitted by the respondents as the gospel truth. If the learned Civil Judge had probed a little deeper, rather than relying on the face value of the documents submitted by the respondents, he would have realized that the court was being taken out for a ride. But the learned Civil Judge has failed to examine the case in the proper perspective. Hence the perversity of the order is writ large on the face of the record.

11) The learned Civil Judge has, thus, ignored the existence of a strong *prima facie* case in favour of the appellant University. Moreover, since the respondents are alien both to the Company and the Sponsoring Body, they are alien to the functioning of the University. Thus, the balance of convenience is also on the side of the University to ensure that the respondents, who are unconnected with the University, are not permitted to meddle with the affairs of the University. Most importantly, if the administration of the University is permitted to be high-jacked by the respondents, an irreparable loss would be caused to the University. Therefore, all the three ingredients for grant of temporary injunction exist in

favour of the appellant. Yet the learned Civil Judge has dismissed the application for Temporary Injunction filed by the appellant. Hence, the impugned order deserves to be set aside by this court.

30. On the other hand, Mr. Sajan Poovayya, the learned Senior Counsel for the respondents, has raised the following counter-arguments:-

1) The scope of interference in an appeal against an temporary injunction order is a limited one. It is limited to the pleadings and the material placed before the trial court. Once the trial court has exercised its discretion to grant, or refuse to grant a temporary injunction, based on an objective consideration of the material placed before it, and as supported by cogent reasons, the appellate court should be slow to interfere based on a de novo consideration of the matter which could yield a different opinion on the issues of prima facie case, balance of convenience , irreparable injury and equity. The appellate court could interfere with an order granting or refusing to grant a temporary injunction order if the order suffers from perversity, or manifest arbitrariness. However, the appellate court would not be justified in substituting its discretion with that of the trial court. In order to buttress this plea, the learned Senior Counsel has relied upon the case of Wander Ltd. v Antox India [1990 (Supp) SCC 727].

2) A suit by a body corporate can be filed only by the competent authority. According to Section 4 (6) of the Act, the Registrar of the University is the only competent authority to file a suit. Moreover, since the Act is a special legislation, it would override the general provision contained in Or. XXIX, Rule 1 of CPC. Therefore, only the Registrar of the University could have filed the suit. Arguendo, if it were accepted that Or. XXIX, Rule 1 CPC would be applicable, even then, Mr. Madhukar Agnur has not been authorised by the University to file the suit. Thus, the learned Civil Judge was justified in concluding that the suit has not been filed by a competent person. Hence, the suit is not maintainable. Therefore, the University does not have a strong prima facie case in its favour.

3) While considering the grant of a temporary injunction in favour of a party, the learned court is required to consider the question with regard to the maintainability of the suit. Hence, the learned trial court was justified in examining the said issue, and in concluding that the suit was not even maintainable as it had been filed by an incompetent authority.

4) Although the Chancellor of the University may be the supreme authority, although Mr. Madhukar Angur was appointed as a Chancellor for life, but such an appointment is not inviolable. In order to understand the appointment of the first Chancellor and the power of the Sponsoring Body to remove him, one would need to comprehend the architecture of the Act. According to the Act, the Sponsoring Body has both the administrative and financial control over the University. Section 11 of the Act prescribes the powers of the Sponsoring Body. According to Section 11 (i) of the Act, the Sponsoring Body, "at its discretion, shall appoint, or reappoint, or terminate the appointment of the Chancellor."

According to Section 15 (1) of the Act, "the Chancellor shall be appointed by the Sponsoring Body." Both the provisions use the word "the Chancellor" without making any distinction between "the first Chancellor" and the "subsequent Chancellor". Hence, the power to appoint and terminate the service of the Chancellor is bestowed upon the Sponsoring Body. Even otherwise, the power to appoint would necessarily include the power to terminate the service. In order to support this plea, the learned Senior Counsel has relied upon the case of *Heckett Engineering Co. v. Their Workmen* [(1977) 4 SCC 377]. Moreover, although at the first blush Section 15 (2) of the Act seems to suggest that the appointment of the first Chancellor is for life, but it is not an inviolable appointment. Relying on the case of *Dr. Bhool Chand, Chancellor v. Kurukshetra University* [AIR 1968 SC 292], the learned Senior Counsel has pleaded that even if the appointment of a Chancellor were for life, even then he can be removed from the post if "he is physically decrepit, mentally infirm, or grossly immoral." Thus, the Sponsoring Body has ample power to terminate the services of Mr. Madhukar Angur from the post of Chancellor.

Further, since there were allegations of having committed gross irregularities with the affairs of the University, since there were allegations of rape upon Mr. Madhukar Angur, the Sponsoring Body was well justified in terminating his service from the post of Chancellor. Furthermore, Mr. Madhukar Angur has not even challenged the termination order so far. Thus, the learned Civil judge was well justified in concluding that Mr. Madhukar Angur was legally terminated from his post of Chancellor. Hence, he is alien to the running of the university. Thus, he could neither have filed the suit on behalf of the University, nor can be permitted to run the University. Therefore, the University does not have a strong *prima facie* case in its favour.

5) There is sufficient evidence to prove that Mr. Madhukar Angur and Mrs. Priyanka Angur had transferred their shares to some of the respondents on 5-3-2015. The transfer deed, signed by the transferor and the transferee were duly produced before the learned trial court by the respondents. Even if the first uploading of 13-4-2015 had been invalidated by the ROC by its order dated 8-6-2015, even then such invalidation would not make the transfer illegal. What has been invalidated is the uploading, and not the transfer of shares. Moreover, while invalidating the uploading, the ROC had given time of thirty days to the respondents to upload the fresh DIR-12 forms. This clearly proves that only the uploading was invalidated and not the transfer of shares.

6) According to Section 168 of the Companies Act, the resignation of a director takes effect from the date on which the notice is received by the Company. Any subsequent non-compliance with the procedural filing will have little consequence on the validity of the resignation. In order to support this plea, the learned Senior Counsel has relied on the case of *Mother Care (India) Limited v. Prof. Ramaswamy P. Aiyar* [ILR 2004 Kar 1081]. According to the learned Senior Counsel, since Mr. Madhukar Angur had resigned from the Board of Directors on

5-3-2015, the resignation came into effect on the said date. Hence, even if the subsequent procedure were not followed, it would not dilute the legality of the resignation. Moreover, since the resolution accepting the resignation was submitted by the respondents, at the threshold stage of adjudication, the learned trial court could not have gone beyond the said resolution. Prima facie there was documentary evidence that, indeed, Mr. Madhukar Angur had resigned, on 5-3-2015, from the Board of Directors. Thus, the learned Civil Judge was justified in concluding that Mr. Madhukar Angur was no longer on the Board of Directors.

7) Despite the elaborate arguments raised by the learned Senior Counsel for the appellant that the learned trial court should have considered the relevant provisions of the Companies Act with regard to transfer of shares, and with regard to the resignation of a director from the Board of Directors, the learned trial court is not expected to hold a mini-trial at the initial stage of considering the temporary injunction application. At the initial stage, the learned Judge can only consider the pleas raised and the documents submitted by the parties. The documents are to be treated as prima facie evidence for the pleas raised by a party. Hence, the learned Civil Judge was justified in not considering the provisions of the Companies Act while hearing the temporary injunction application.

8) Although much has been made of the alleged fraud committed by the respondents, but the pleadings in the plaint are bereft of any details. The learned Senior counsel for the appellant, Mr. Laxminarayan, has stressed that the respondents have not denied the claim about fraud in specific terms, therefore, they have admitted the same. But relying on the case of *Bishundeo Narain v Seogeni Rai* [AIR 1951 SC 280], the learned Senior Counsel for the respondent has pleaded that a party pleading fraud must give particulars about the commission of fraud. For, general allegation of fraud cannot be taken note of by the trial court, no matter how strong the language is while alleging fraud. Since, the pleading in the plaint was vague, the same could be denied only in general terms. Hence, the question of the respondents "admitting fraud" does not even arise. Thus, even the allegation of fraud has not created a strong prima facie case in favour of the appellant.

Therefore, Mr. Sajjan Poovayya, the learned Senior Counsel has supported the impugned part of the order dismissing the temporary injunction application filed by the appellant.

31. Heard the learned Senior Counsel for the parties, examined the impugned order, and considered the case law cited at the Bar.

32. The following issues arise for the consideration of this court:

1. Whether the suit is maintainable through the Chancellor or not?
2. Whether the Chancellor could be legally removed by the respondents or not?
3. Whether the learned Trial Court should have considered the issue with regard

to the alleged fraud played by the respondents or not?

4. Whether the appellant had established the three ingredients for grant of temporary injunction in their favour or not?

33. While examining the existence of prima-facie case, the learned Civil Judge was justified in considering the issue about the maintainability of the suit through the Chancellor. After all, the locus of the plaintiff and the maintainability of the suit are the two most essential issues to be examined, even at the threshold of the suit. In case, the suit is found to be non-maintainable, it would directly affect the grant or refusal of the temporary injunction. Although it is true that during the course of trial, the issue of maintainability of the suit would be a preliminary issue to be framed by the learned trial court, but nonetheless even at the initial stage of considering the temporary injunction application, the learned trial court is required to consider the issue, albeit in a prima facie manner. The observations made with regard to the maintainability of the suit while dealing with a temporary injunction application is, thus, not a judicial finding binding on the parties. It is merely an opinion expressed as one of the reasons for granting or for refusing the temporary injunction.

34. Section 4 of the Act deals with establishment of the University. The relevant portion of the Section, dealing with the University "suing or being sued", is as under:

Section 4 (4) of the Act:

The Chancellor, the Vice-Chancellor, members of the board of Governors, members of the Board of Management and the Academic Council for the time being holding office as such in the University so established, shall constitute a body corporate and can sue and be sued in the name of the University.

Section 4 (6) of the Act:

In all suits and other legal proceedings by or against the University, the pleading shall be signed and verified by, and all processes in such suits and proceedings shall be issued to and be served on the Registrar.

35. A bare perusal of the said provisions clearly leads to certain conclusions: firstly, Section 4 (4) of the Act merely prescribes the constituent members of the body corporate. Secondly, it neither bestows the right to sue, nor imposes the liability to be sued on the constituent members. Thirdly, the right to sue, and the liability of being sued is specifically bestowed on the University, which is a body corporate. Fourthly, according to Section 4 (6) of the Act, all the suits by the University shall be signed and verified by the Registrar. Therefore, reading both the provisions co-jointly makes it abundantly clear that a suit can be filed only in the name of the University, the suit shall be signed and verified by the Registrar. Thus, a suit filed by the University can be filed only through the Registrar and not through the constituent members, including the Chancellor.

36. The contention raised by Mr. Laxminarayana, the Senior Counsel for the appellant, that each member of the corporate body would be free to sue and be sued under Section 4 (4) of the Act is clearly untenable. For, such a wide interpretation of Section 4 (4) of the Act would make Section 4(6) of the Act otiose. An interpretation which renders another provision of the Act otiose cannot be accepted. Moreover, Section 15 (5) of the Act bestows different powers upon the Chancellor. But the power to sue on behalf of the University is conspicuously missing in Section 15 (5) of the Act. Thus, Mr. Laxminarayana, the learned Senior Counsel, is unjustified in pleading that the suit can be filed by the University through the Chancellor.

37. Of course, the learned Senior Counsel has tried to buttress his plea with the help of Or. XXIX, Rule 1 of CPC, but even the said contention is unacceptable for two reasons: firstly, once there is a special law specifically dealing with the right to file a suit by the University, the special law would prevail over the general law. Therefore, the provisions of the Act, namely Section 4 (6) of the Act, would override Or. XXIX, Rule 1 of CPC. Secondly, even if the Chancellor could file the suit under Or. XXIX, Rule 1 of CPC, the Chancellor would need to be authorised by the body corporate. However, in the present case, Mr. Madhukar Angur has not been authorised by the body corporate to file the suit on behalf of the University. Therefore, the reliance on Or. XXIX, Rule 1 of CPC does not buttress the appellant's case.

38. Mr. Laxminarayana, the learned Senior Counsel, has also raised a hypothetical plea that in absence of the Registrar, the University would be entitled to file a suit through the Chancellor. Firstly, there is no evidence to show that the Registrar was unavailable when the suit was filed. Secondly, this contention was not raised before the learned trial court when the application for temporary injunction was argued before the said court. Therefore, a new plea, that too based on facts, cannot be raised before this court for the first time. Thirdly, even if the Registrar were unavailable, the officer in-charge of the post of Registrar would be available to file the suit for the University. Hence, the contention raised by the learned Senior Counsel is unsustainable.

39. Thus, prima facie, the suit could not have been filed by the University through the Chancellor. Therefore, the learned Civil Judge was justified in concluding that one of the main ingredients for making out a prima facie case in favour of the appellant is conspicuously missing in the case.

40. Mr. Laxminarayana, the learned Senior Counsel, has vehemently contended that the learned Trial Court has misapplied itself while concluding that Mr. Madhukar Angur is no longer the Chancellor of the University as he was removed from the said post by the Sponsoring Body. Thus, Mr. Madhukar Angur could not file the suit on behalf of the University. But according to the learned Senior Counsel, since Mr. Madhukar Angur was appointed as the Chancellor for life, he could not be removed from the said post either by the respondents, or by the Sponsoring Body. Hence, the conclusion drawn by the learned Civil Judge is

against the provisions of the Act.

41. Sections 11 and 15 of the Act deal with the powers of the Sponsoring Body, and with the post of the Chancellor, respectively. In order to answer the issue whether a Chancellor appointed for life could be removed or not, it is imperative to interpret both these provisions.

The relevant portion of Section 11 of the Act is as under:

11. Power of the Sponsoring Body:- The Sponsoring Body shall have the following powers with reference to the University each of may be exercised by the Sponsoring Body at its discretion, namely:

i) to appoint or re-appoint or terminate the appointment of the Chancellor.

The relevant portions of Section 15 of the Act is as follows:

15. The Chancellor:- (1) The Chancellor shall be appointed by the Sponsoring Body.

(2) The current Chairperson of the Sponsoring Body shall be the first Chancellor, who shall hold the office of the Chancellor for life.

(3) The subsequent Chancellor shall be either the Chairperson of the Sponsoring Body or such other person including the Director of the Sponsoring Body, at the relevant time, when such an appointment is being considered, as may be decided by the Sponsoring Body.

(4) The subsequent Chancellor so appointed shall hold office as determined by the Sponsoring Body.

42. Mr. Laxminarayana, the learned Senior Counsel, has harped on Section 15 (2) of the Act in order to plead that since Mr. Madhukar Angur was appointed as a Chancellor for life, he could not be removed from the said post either by the Sponsoring Body, or by the respondents. According to the learned Senior Counsel, Section 15 (2) of the Act is a provision by itself, and is unconnected to either Section 11 (1) of the Act, or to Section 15 (3) of the Act. For, Section 15 of the Act makes a distinction between the first Chancellor and the "subsequent" Chancellor. While the first Chancellor is appointed by virtue of the fact that he is "the current Chairperson of the Sponsoring Body", the "subsequent Chancellor" is appointed by the Sponsoring Body. Hence, the first Chancellor is not appointed by the Sponsoring Body, but is appointed under the statute. Secondly, while the first Chancellor is appointed "for life", the "subsequent Chancellor" is appointed for the tenure "determined by the Sponsoring Body" under Section 15 (4) of the Act. Thus, the learned Trial Court is unjustified in concluding that Mr. Madhukar Angur has been validly removed from the post of Chancellor by the Sponsoring Body.

43. However, the pleas raised by the learned Senior Counsel are unacceptable. For, firstly, not only the Act has to be read as a whole, but even the provisions

dealing with appointment of the Chancellor would have to be read co- jointly. As one provision would affect the scope and ambit of other provisions, for they cover the same sphere. To interpret provisions individually, while ignoring their inter- relationship, is to deviate from the well established rules of interpretation; a course this court is weary of treading.

44. Section 11 of the Act bestows powers on the Sponsoring Body. It further empowers the Sponsoring Body to exercise these powers separately and "at its discretion." Section 11 (1) of the Act emphatically bestows the power "to appoint or re-appoint or terminate the appointment of the Chancellor." Interestingly, the provision uses the words "the Chancellor". It does not distinguish between "the first Chancellor", or "the subsequent Chancellor". The power granted to the Sponsoring Body in Section 11 (1) of the Act is further reiterated in Section 15 (1) of the Act. According to Section 15 (1) of the Act, "The Chancellor shall be appointed by the Sponsoring Body." Again even this sub-section of Section 15 of the Act uses the words "the Chancellor". This provision also does not distinguish between "the first Chancellor" and "the subsequent Chancellor". Thus, a co- joint reading of Sections 11 (1) and 15 (1) of the Act makes it abundantly clear that all the Chancellors, whether the first one or the subsequent ones, would have to be appointed by the Sponsoring Body.

45. Further, Section 11 of the Act prescribe that the Sponsoring Body may invoke its power "at its discretion". Similarly, while dealing with the appointment of "the subsequent Chancellor", the word used are "as may be decided by the Sponsoring Body". Thus, the appointment of the Chancellor is at the discretion of the Sponsoring Body. However, Section 15 (2) of the Act controlled the discretion of the Sponsoring Body when the question of appointment of the first Chancellor arose. According to Section 15 (2) of the Act, the Sponsoring Body has no other option but to appoint "the current Chairperson of the Sponsoring Body" as the first Chancellor. Since Section 15 (2) of the Act curbed the discretion of the Sponsoring Body, it is an exception to Sections 11 (1) and 15(3) of the Act. But merely because the discretion is limited by Section 15 (2) of the Act, the said sub-section does not denude the Sponsoring Body of its power to appoint "the Chancellor". The power to appoint continues, although in the case of appointment of the first Chancellor the discretion is cribbed, cabined and confined.

46. Undoubtedly, under Section 15 (2) of the Act, the tenure for the first Chancellor is "for life"; under Section 15 (4) of the Act, the tenure for "the subsequent Chancellor" is to be determined by the Sponsoring Body. However, the issue is whether the appointment "for life" deprives the Sponsoring Body of its power to "terminate the appointment of the Chancellor" as bestowed under Section 11 (i) of the Act or not? Moreover, does the appointment "for life" mean the appointment shall continue till the last breath of the first Chancellor?

47. A bare perusal of Section 11 (i) of the Act clearly reveals that it is not subject to the provision of Section 15(2) of the Act. If the power to terminate the

appointment of the first Chancellor were not to be given to the Sponsoring Body, then Section 11 (1) of the Act would have begun with the words, "subject to Section 15 (2) of the Act". However, these words are conspicuously missing from Section 11 (i) of the Act. Thus, the power "to terminate the appointment of the Chancellor" is intact and is bestowed unconditionally upon the Sponsoring Body under Section 11 (i) of the Act.

48. Furthermore, if Section 15 (2) of the Act were to deprive the Sponsoring Body of its power to terminate the service of the first Chancellor, the said subsection would have begun with a non-obstante clause and would have clearly stated that "Notwithstanding anything contained in Section 11 (i) of the Act", the appointment of the first Chancellor is for life. However, Section 15 (2) of the Act does not contain any non-obstante clause. Thus, the power to terminate the appointment of the Chancellor, as granted under Section 11 (i) of the Act, is applicable even on the first Chancellor. Thus, the appointment of the first Chancellor "for life" does not deprive the Sponsoring Body of its power to terminate the service of the first Chancellor, if necessary.

49. Of course, Mr. Laxminarayana, the learned Senior Counsel, has argued that unless the Act is amended, the appointment of the first Chancellor is for life. Hence, his services cannot be terminated from the said post. However, this argument is unsustainable, as it leads to absurd results. Merely because an appointment is meant "for life", it does not mean that the appointment cannot be set at naught. For, in case the Chancellor were to become mentally or physically incapacitated, or become insolvent, or is convicted of offence involving moral turpitude, or is facing a criminal trial for a grave offence, would the University still be saddled with such a Chancellor only on the ground that his appointment is for life? Obviously, the legislature in its wisdom could not have given a carte blanche tenure to the first Chancellor. Since a University is a temple of learning, since the aim and object of the Act was to establish a University of national repute, therefore, the Act has granted ample power to the Sponsoring Body to terminate the service of "the Chancellor", which would also include "the first Chancellor", in its discretion. Undoubtedly, the discretion would have to be exercised objectively, and reasonably. Therefore, the wide interpretation being given to Section 15 (2) of the Act is unacceptable as it would lead to absurd and anomalous situations. It is trite to state that an interpretation that may lead to absurdity cannot be accepted.

50. The main issue is not whether the first Chancellor could be appointed by the Sponsoring Body or not, or whether his services could be terminated by the Sponsoring Body or not? The basic question before the learned Trial Court was whether Mr. Madhukar Angur has been removed from the Chancellorship legally or illegally? For, if he has been removed illegally, then Mr. Sudhir Angur, the respondent No. 1, would not be justified in claiming that, in fact, he is the legally appointed Chancellor of the University.

51. The appellant had both pleaded and argued before the learned Trial Court

that the respondents had played fraud on the Sponsoring Body, and on the University. The appellant had also argued that a fraud was being played by the respondents upon the court. However, despite the said pleas, the learned Trial Court has not taken the said plea seriously. Once the said submissions were made, in fact, the learned Civil Judge should have been on his guard. The learned Civil Judge should have examined the pleading with care and caution, should have scratched the surface of the case, and probed a little deeper. But the learned Civil Judge has failed to do so.

52. Mr. Laxminarayana, the Senior Counsel, is justified in claiming that once the said stand was taken in the plaint, the respondents were duty bound to specifically deny the same. However, they have failed to do so. Thus, they have admitted the submissions made in the plaint. However, Mr. Sajjan Poovayya, the learned Senior Counsel for the respondents, has contended that only vague allegations of fraud have been leveled against the respondents, therefore only a general denial could be had from the side of the respondents. Therefore, a vague denial does not amount to an admission of the allegations.

53. A bare perusal of the plaint clearly reveals that the appellant has not made vague allegations against the respondents with regard to the alleged fraud played by them on the Sponsoring Body, the Company and upon the ROC. In fact, Paras 8, 9, 10, 11 and 15 of the plaint deal specifically with the allegations of fraud being played by the respondents. Yet, the learned Trial Court has ignored these relevant paragraphs of the plaint. As stated earlier, the learned Trial Court is duty bound to go through the plaint and the written statement, if any, before granting or refusing to grant a temporary injunction. However, the learned Trial Court has totally ignored the same. Instead, the learned Trial Court has relied upon documents which were produced by the respondents, although the appellant had questioned their genuineness and legal validity.

54. Although the approach of the learned Trial Court while dealing with questionable documents may not be correct, but nonetheless, as discussed above, the learned Civil Judge is well justified in concluding that the suit is not maintainable as it has been filed by the Chancellor. Once the learned Trial Court has concluded that the suit is prima facie not maintainable as it has not be filed by the Registrar as required by Section 4 (6) of the Act, then it was well justified in dismissing the temporary injunction application filed by the appellant. For, if the prima facie case is not made out by the appellant, there was no need for the learned Trial Court to enter into the issues of balance of convenience and irreparable loss or even into the issue of the alleged fraud being played by the respondents.

55. Mr. Laxminarayana, the learned Senior Counsel for the appellant, has raised certain contentions with regard to the learned Trial Court not considering the relevant provisions of the Companies Act dealing with acceptance of resignation of a director, and with transfer of shares. However, once the learned Trial Court has concluded that prima facie the suit is not maintainable, there is no need for it

to probe the case further. To examine the case further would have been an exercise in futility. For, even if the learned Trial Court were convinced of the pleas raised by the learned Senior Counsel, even then the main relief could not be granted to the appellant. Since the main relief could not be granted, the question of granting the temporary injunction in favour of the appellant does not even arise.

56. For the reasons stated above, this court does not find any merit in the present Miscellaneous First Appeal. It is, thus, hereby dismissed. Misc. First Appeal No. 6012/2016:

57. The appellant, the Alliance University, has challenged the part of the impugned order dated 10-8-2016, passed by the XXVII Additional City Civil Judge, whereby the learned Civil Judge has granted the temporary injunction to the respondents in the counter-claim filed by them. Since the relevant facts have already been narrated, hereinabove, they are not being repeated again. Although in their counter-claim the respondents would be the plaintiff, but they shall continue to be referred to as "the respondents", since they are respondents before this court.

58. Mr. Ashok Haranahalli, the learned Senior Advocate, and Mr. Vivek Reddy, the learned Senior Advocate, have led the frontal attack on the respondents in this appeal. Mr. Laxminarayana, the learned Senior Counsel, has merely elaborated on the contentions raised by him in the previous Miscellaneous First Appeal, discussed above.

59. Reiterating the earlier plea of Mr. Laxminarayana, the learned Senior Counsel, Mr. Ashok Haranahalli, the learned Senior Counsel, has also pleaded that while dealing with the temporary injunction application filed by the respondents in their counter-claim, the learned Civil Judge is legally bound to consider the pleadings and the documents. However, the learned Civil Judge has not examined the pleadings in proper perspective. Moreover, the temporary injunction can be granted only if the respondents make out a prima facie case in their favor. However, they have failed to do so. Yet still, the learned Civil Judge has granted a temporary injunction in their favour.

Secondly, relying heavily on Or. VIII, R. 6 A of the CPC, Mr. Ashok Harnahalli, the learned Senior Counsel, has pleaded that the counter-claim filed by the respondents was not even maintainable under the said provision. For, the suit was filed by the Alliance University. The reliefs sought in the suit were in relation to the University. Thus, the University was the plaintiff, and not Mr. Madhukar Agnur. Mr. Madhukar Angur was merely the presenter of the suit. But nonetheless, it is the University which is the plaintiff. However, the counter-claim has been filed against Mr. Madhukar Angur, "against his wives, his associates and anyone claiming under him". However, neither Mr. Madhukar Angur is the plaintiff, nor his wives, or associates, or anyone claiming under him are the plaintiffs. According to Order VIII, Rule 6-A of CPC, a counter-claim can be filed

only against the plaintiff and not against any other person. Thus, the counter-claim is not maintainable.

Thirdly, since the counter-claim has been filed against Mr. Madhukar Angur, who is not the plaintiff in the suit, the main reliefs prayed against him cannot be granted by the learned Civil Court. Thus, the question of granting the temporary injunction in favour of the respondents does not even arise. Hence, the grant of temporary injunction in favour of the respondents is illegal.

Fourthly, even while arguing against the counter-claim and against the temporary injunction application filed by the respondents, the appellant had repeatedly pointed out that the respondents had played fraud both with the Sponsoring Body, and with the ROC. Moreover, the appellant had questioned the genuineness of the documents produced by the respondents. But despite the plea raised by the appellant, the learned Civil Judge has accepted the questionable documents as genuine. Therefore, the learned Civil Judge has misapplied himself.

60. On the other hand, Mr. Vivek Reddy, the learned Senior Counsel for the appellant, has pleaded that the respondents have suppressed material facts in the counter-claim. Thus, they are committing fraud on the court.

Firstly, the respondents have nowhere mentioned as to how, and on what date they became directors in the Company, the Sponsoring Body. They have not placed any evidence to show how the shares were transferred in their favour, whether the transfer of shares were ever approved by the ROC, when was Mr. Sudhir Angur inducted as a director of the Company. The absence of these essential facts proves the appellant's case that the alleged proceedings after 5-4-2015 are all fake and forged. Thus a fraud was played by the respondents upon the Company.

Secondly, the respondents have not mentioned that the first uploading by them, on 13-4-15, was invalidated by the ROC. They have not mentioned that Mr. Madhukar Angur had filed a complaint before the ROC that his digital signature was used illegally, that the ROC had discovered their fraud, that they had given their consent to have the uploading of 13-4-2015 declared as "invalid", that subsequently, by order dated 8-6-2015 the ROC did declare the uploading as "invalid". In fact, they have cleverly skipped over the entire episode. By suppressing these essential facts, the respondents have played fraud on the learned trial court.

Thirdly, they have not mentioned the date on which Mr. Madhukar Angur was allegedly removed from the post of Chancellorship. They have baldly claimed that he was removed from the post of Chancellor. Although the learned Civil Judge has relied upon the order dated 7-4-2016 for holding that by the said order Mr. Madhukar Angur was dismissed from the post of Chancellor, but no such order or date has been mentioned in the counter-claim. Thus, the said order has no factual foundation in the pleadings. Most interestingly, although the suit was filed

on 15-4-2016, and the counter-claim was filed on 5-7-2016, yet in the counter-claim the dismissal order dated 7-4-2016 is not even mentioned. This itself creates a genuine doubt about the dismissal order dated 7-4-2016. Since the learned Civil Judge has not examined the counter-claim closely, the learned Trial Court has over-looked this essential lacunae in the respondents' case. Instead, the learned Civil Judge has relied upon the dismissal order dated 7-4-2016 as though it were a genuine document.

Fourthly, in absence of the fundamental facts of the case, the respondents have failed to establish a prima facie case in their favour. Yet, the learned Civil Judge has concluded that the respondents have established a prima facie case in their favour. Such a finding is belied by the counter-claim itself.

Fifthly, the learned Civil Judge has relied upon the notification dated 16-4-2016 in order to conclude that Mr. Sudhir Angur was appointed as the Chancellor of the University. However, the learned Civil Judge has overlooked the fact that the counter-claim does not even mention the said notification. Since the learned Civil Judge has not examined the counter-claim minutely, as is required by law, the learned Trial Court has failed to perform its legal duty.

Sixthly, since the respondents have failed to establish a prima facie case, neither the balance of convenience, nor the question of irreparable loss is on their side. Still the learned Civil Court has granted the temporary injunction in their favour.

61. Mr. Laxminarayana, the learned Senior Counsel, has reiterated his elaborate arguments with regard to the fact that the learned Civil Court should have considered the relevant provisions of the Companies Act in order to decide if the alleged resignation of the Mr. Madhukar Angur was in consonance with the provisions of the law, whether the shares were legally transferred to the respondents, and whether the respondents were legally inducted in the Board of Directors of the Company or not. According to the learned Senior Counsel, since the learned trial court has failed to examine these issues, it has failed to perform its judicial function in accordance with law. Therefore, the part of the impugned order granting the temporary injunction in favour of the respondents is arbitrary, capricious, and perverse. It deserves to be interfered with.

62. On the other hand, Mr. Sajan Poovayya, the learned Senior Counsel for the respondents, has forcefully argued that the counter-claim is, indeed, maintainable against Mr. Madhukar Angur. For, the denotation of the cause title itself reveals that the real plaintiff is not the University, but Mr. Madhukar Angur himself. Further, in the plaint, in the temporary injunction application, and in the written statement filed against the counter-claim, at numerous places, Mr. Madhukar Angur has claimed to be the plaintiff. Furthermore, it has been the consistent effort of Mr. Madhukar Angur to assert his alleged rights ostensibly through the University. It is for this reason that the relief prayed for in the counter-claim is not only against Mr. Madhukar Angur, but also against anyone claiming through him. Moreover, Order VIII, Rule 6-A of the CPC, uses the words,

"cause of action", and not "the same cause of action." Therefore, the respondents are justified in raising other causes of action against the appellant. In order to buttress this plea, the learned Senior Counsel has relied upon the case of *Jag Mohan Chawla v Dera Radha Swami Satsang* [(1996) 4 SCC 699].

Secondly, there is no question of the respondent suppressing any material facts from the purview of the learned trial court. In fact, the learned Civil Judge has noted the fact about the first uploading in the impugned order. According to the learned Civil Judge, the respondents had pointed out the said fact to the court. Moreover, according to the learned Civil Judge, the letter dated 2-6-2015, whereby the respondents had given their consent to the ROC to invalidate the uploading of 13-4-2015, was produced by the respondents. Further, according to the impugned order, it is the respondents who had produced the letter dated 8-6-2015, whereby the ROC had granted the respondents a period of thirty days for uploading the information about the Board of Directors of the Company. Similarly, the respondents had submitted the letter dated 8-7-2015, whereby the respondents informed the ROC about the pendency of civil suit No. O. S. 25382/15, wherein the respondents were restrained from further uploading of the information before the ROC without the permission of the court. Hence, the respondents had placed the relevant and material facts before the learned trial court.

Thirdly, even with regard to the transfer of shares of Mr. Madhukar Angur and Mrs. Priyanka Angur, the relevant information was placed before the learned Civil Court. The shares were duly transferred; the deeds of transfer (Form No. SH-4) were submitted before the learned Trial Court; the minutes of the meeting of the Board of Directors recording the transfer of shares were also submitted before the learned Trial Court. Thus, the respondents had placed all the relevant facts before the learned Civil Court. Hence, the argument raised by Mr. Vivek Reddy, the learned Senior Counsel, should be rejected by this court.

Lastly, the arguments of Mr. Laxminaryana, the learned Senior Counsel, that the learned Trial Court should have examined if the procedure for acceptance of resignation, and for transfer of shares have been adhered to or not, are premature arguments. For, at the initial stage of dealing with an application for temporary injunction, the learned Trial Court is not supposed to hold a mini-trial. These are issues which need to be framed, and proven during the regular trial. Hence, there was no need for the learned Civil Judge to enter into these controversies at the threshold.

63. Heard the learned counsel for the parties, perused the impugned order, and examined the record.

64. Needless to say, injunction springs from equity. Being an equitable relief, the court must not only be alive to the requirements of law, but also should be aware of the principles of equity while granting an interim injunction. In the case of *Lakshminarasimhiah and Others v. Yalakki Gowda* [AIR 1965 Mys 310] it was

observed as under:

The extraordinary character of the Injunctive remedy and the danger that its use in improper cases may result in serious loss or inconvenience to an innocent party require that the power to issue it should not be lightly indulged in, but should be exercised sparingly and cautiously only after thoughtful deliberation, and with a full conviction on the part of the court of its urgent necessity. In other words, the relief should be awarded only in clear cases, reasonably free from doubt, and, when necessary, to prevent great and irreparable injury. The Court should therefore, be guided by the fact that the burden of proof rests upon the complainant to establish the material allegations entitling him to relief.

65. Undoubtedly, while considering the grant or refusal of a temporary injunction, the court needs to examine three factors, namely the existence of a prima facie case, the balance of convenience, and the irreparable loss. In turn, while considering the existence of prima facie case, the court should examine the question of locus, the issue of maintainability of the suit, the existence of a cause of action, and the existence of a triable case.

66. Of course, in the case of *Wander Ltd.* (supra), the Hon^{ble} Supreme Court has defined the limits of the appellate court while dealing with exercise of discretionary power either by the subordinate Judge or by a Single Judge. The Apex Court observed as under:

In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

67. Thus, the ultimate issue before this court is whether the learned trial court has exercised its discretion reasonably or arbitrarily, judiciously or capriciously, in accordance with settled principles of law regulating grant of interlocutory injunction or de hors the said principles or not? But before this ultimate issue can be decided, this court would have to consider whether the learned trial court has performed its judicial duty while dealing with the application of temporary injunction or not?

68. In the case of *Maria Margarida Sequeira Fernandes and Others* (supra), the

Apex Court has opined as under:

A Judge in the Indian system has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

The Hon"ble Supreme Court further held as follows:

In a suit for mandatory injunction, then it is the bounden duty and obligation of the court to critically examine the pleadings and documents and pass an order of injunction while taking pragmatic realities...in (sic) consideration. The Court's primary concern has to be to do substantial justice.

While deciding the present MFA, this court would have to bear in mind the aforementioned principles.

69. Order VIII, Rule 6 A of the CPC deals with counter-claim by defendant. It is as under:

6A. Counter-claim by defendant:

(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

70. A bare perusal of Order VIII, Rule 6A of the CPC clearly reveals that the counter-claim is to be filed "against the claim of the plaintiff". It can be filed with regard to "any right or cause of action accruing to the defendant", but "against the plaintiff". That the counter-claim can be filed only "against the plaintiff" is further borne out by Or. VIII, Rules 6 B to 6 F of the CPC. Thus, the counter-claim cannot be filed against any other person or entity who is not the plaintiff. It is, indeed, trite to state that the purpose of permitting a counter-claim to be filed

in a suit is to lessen multiplicity of litigation. Since the suit and the counter-claim are to be tried together, the common trial permits the same court to decide the issues which may not only be common, but also may be proved by same or similar evidence. Therefore the counter-claim can be filed only qua the plaintiff. Of course, it is true that through the counter-claim the defendant is permitted to raise other cause of action, besides the ones raised by the plaintiff. But nonetheless, the focus of the other cause of action still has to be "against the plaintiff", and not against others.

71. A bare perusal of the suit clearly reveals that it is a suit filed by the Alliance University. Even if the suit has been filed through the Chancellor, nonetheless, it is a suit filed by the University. Hence, the plaintiff is the Alliance University. Moreover, it is the Alliance University which is seeking certain reliefs for itself from the court. It is not seeking any relief qua Mr. Madhukar Angur. In fact, it is because the plaintiff is the University, that the learned Civil Judge had dismissed the application filed by Mr. Madhukar Angur for amending the cause title and the plaint in the impugned order. Thus, even according to the learned Civil Judge, the University is the plaintiff, and not Mr. Madhukar Angur.

72. Even if Mr. Madhukar Angur is the presenter of the suit, he is not the plaintiff. For he is merely like a postman who has brought the suit to the court. But a postman cannot be treated as the author of the letter. Mr. Madhukar Angur, thus, remains a presenter and cannot be treated as the plaintiff. Interestingly, in the counter-claim the respondents themselves address Mr. Madhukar Angur as "the presenter of the suit". Yet, they have filed the counter-claim not against the University, but against Mr. Madhukar Angur. In fact, the reliefs sought by the respondents in the counter-claim are squarely against Mr. Madhukar Angur, and not against the University. Since Mr. Madhukar Angur is not the plaintiff, the counter-claim cannot be filed against him.

73. Mr. Sajan Poovayya, the learned Senior Counsel for the respondents, is certainly not justified in claiming that Mr. Madhukar Angur is the plaintiff. According to him, since in the plaint, in the application for temporary injunction, and in the written statement to the counter-claim, Mr. Madhukar Angur has repeatedly claimed himself to be the plaintiff, therefore, he is the plaintiff. But mere bad drafting would not change the legal position that the suit is filed by the Alliance University through its Chancellor for reliefs qua itself. The University as the plaintiff has not sought a single relief in favour of Mr. Madhukar Angur. If Mr. Madhukar Angur were the real plaintiff, he would have sought some relief for himself. Yet, the suit is silent qua him.

74. Moreover, the respondents cannot be permitted to blow hot and cold simultaneously. For, in the prayer clause of the counter-claim, they refer to Mr. Madhukar Angur as "the presenter of the suit." Thus, they themselves admit that Mr. Madhukar Angur is not the plaintiff, but is merely "the presenter of the suit."

75. Further, when Mr. Madhukar Angur had filed an application for amending the

suit, and for treating him as the plaintiff, the respondents had opposed the said application. At the time of consideration of the said application, the respondents had argued that since the relief is sought by the University for itself, Mr. Madhukar Angur should not be permitted to come on the record as the plaintiff. According to the respondents, the University is the plaintiff. Yet, curiously, the respondents have not only filed the counter-claim against Mr. Madhukar Angur, but have also sought reliefs against him. Clearly, the counter-claim is not maintainable as it has been filed against Mr. Madhukar Agnur.

76. Although the learned Civil Judge has considered the issue with regard to the maintainability of the suit, but when it came to the issue of maintainability of the counter-claim, the learned Civil Judge has turned a Nelson's eye. If the learned Civil Judge had examined the counter-claim, it would have been obvious that the counter-claim was not filed against the University, the plaintiff, but was filed against Mr. Madhukar Angur who is not the plaintiff before the court. While considering the issue of prima facie case in favour of the respondents, while dealing with the counter-claim, the learned Civil Judge was required to examine the maintainability of the counter-claim. But the learned Civil Judge has failed to do so. Thus, the impugned order suffers from non-application of judicious mind, from arbitrariness, and from perversity.

77. Once it is concluded that the counter-claim was not maintainable as it has not been filed against the plaintiff, the University, naturally the main reliefs sought for in the counter-claim could not be granted. Since the main relief cannot be granted in favour of the respondents, naturally, the temporary relief could never have been granted in their favour. This crucial aspect, too, has been ignored by the learned Civil Judge. Once the foundation of maintainability of counter-claim goes, the edifice of prima facie case falls apart. Thus, the learned Civil Judge was not justified in concluding that the respondents have a prima facie case in their favour.

78. In the case of Jag Mohan Chawla (supra) the Hon''ble Supreme Court dealt with the issue whether a counter-claim could be made on a different cause of action than the one brought by the plaintiff? The Hon''ble Supreme Court opined as under:

...the object of the amendments introduced by Rules 6- A to 6-G are conferment of a statutory right on the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of the Rule 6- A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject-matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim

arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit.

79. There can be no quarrel with the principle established by the Hon"ble Supreme Court in the case of Jag Mohan Chawla (supra). Therefore, Mr. Sajan Poovayya, the learned Senior Counsel, is justified to the limited extent that the respondents could bring other independent cause of action by filing a counter-claim. However, still the trees are missed for the wood. What is still pertinent to notice is that even the other independent cause of action must relate to "the plaintiff", and not to someone else. In the present case, as discussed above, the plaintiff is the University, and not Mr. Madhukar Angur. Therefore, the counter-claim must be against the University, and not against Mr. Madhukar Angur. However, the counter-claim filed by the respondents is, plain and simple, against Mr. Madhukar Angur. Thus, prima facie it is not maintainable.

80. Since the counter-claim is not maintainable against the University, neither the learned Civil Judge, nor this court needs to go into the questions if any material facts were hidden from the purview of the learned Trial Court, or whether any fraud was practiced by the respondents either on the Sponsoring Body or on the ROC, or on the Civil Court itself, or whether the provisions of the Companies Act were followed by the respondents while accepting the alleged resignation of Mr. Madhukar Angur, or while allegedly transferring the shares of Mr. Madhukar Angur, or whether Mr. Sudhir Angur was legally inducted as a director of the Company or not. These issues do not survive for consideration when the counter-claim is found to be non- maintainable. For, the questions of balance of convenience, and of irreparable loss would arise only after the respondents first establish that they have a prima facie case in their favour. In the absence of existence of prima facie case in their favour, to go into the questions of balance of convenience, and of irreparable loss would be again an exercise in futility.

81. Hence, the learned Civil Judge was not justified in concluding that the respondents have a prima-facie case, and the balance of convenience in their favour. The learned Civil Judge was equally unjustified in concluding that in case the temporary injunction were not granted in favour of the respondents, then they are likely to suffer irreparable loss. The learned Civil Judge has drawn these conclusion without examining the issue of maintainability of the counter-claim against the University, the plaintiff. Therefore, the finding of the learned Civil Judge is not only arbitrary, but is also perverse. Thus, the part of the impugned order granting the temporary injunction in favour of the respondent is legally unsustainable.

82. In conclusion, this court is of the opinion that there is no merit in the M.F.A. No. 6011/ 2016. It is, hereby, dismissed. However, since the part of the impugned order dated 10-8-2016, granting temporary injunction in favour of the respondents, is legally unsustainable, the said part of the order is set aside. Resultantly, the M.F.A. No. 6012/2016 is allowed.

83. But before this court parts with this case, this court would like to pass certain observations and directions for the learned Trial Court. Firstly, the pleadings of both the parties are rather confusing, and are wanting in the art of drafting. If the parties do move any application for amending the pleadings so as to set the record straight, the learned Trial Court should consider the application (s) in accordance with law. If the amendments are allowed, the parties shall be free to move their respective applications under Order XXXIX, Rules 1 and 2 of the CPC. The learned Trial Court is directed to decide the same strictly in accordance with law.

Secondly, any observation made hereinabove on the factual aspect of the case is merely prima facie in nature. For, the said observations are not based on appreciation of evidence. Thus, the observations do not amount to binding judicial findings. Therefore, the learned Trial Court should not be influenced by any such observations, on facts of the case, as made by this court. The learned Trial Court is expected to decide the suit independently, and strictly in accordance with law.

Thirdly, although the fight appears to be between the appellant and the respondents, but the real fight is between two real brothers over the management of the University. However, the real victims of this in-fight are the students, the faculty, and the staff of the University. It is they who are caught in the cross-fire. Thus, it is imperative that the civil suit be decided as expeditiously as possible, and preferably within six months from the date of the receipt of the certified copy of this order. If necessary, to decide the case within the stipulated period of six months, the learned Trial Court shall hold day to day hearing of the case. Needless to say, the parties are expected to cooperate with the learned Trial Court for bringing the dispute to a speedy end.