(2012) 03 DEL CK 0659

In the Delhi High Court

Case No : Regular First Appeal No''s. 180 of 2004 and 235 of 2004

Pawan Kumar Dalmia — APPELLANT

Vs

M/s. HCL Infosystems Ltd. and Others
 Mrs. Manju Dalmia and Another Vs M/s. HCL Infosystems Ltd. — RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

- Companies Act, 1956 — Section 193, 193(1A), 383A
- Constitution of India, 1950 — Article 12, 124, 14
- Contract Act, 1872 — Section 73
- Punjab High Court Rules and Orders — Rule 15
- Specific Relief Act, 1963 — Section 14(1)

Citation : (2012) 03 DEL CK 0659

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Neelima Tripathi, in RFA Nos. 180, 235 and 239/2004, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—All the three appeals are being disposed of by this common judgment inasmuch as the issue in all the three appeals is same viz. whether the appellant in RFA No. 180/04 Sh. Pawan Kumar Dalmia was or was not terminated from the services of the defendant No. 1/respondent No. 1-company-M/s. HCL Infosystems Ltd., and if there is termination of services, whether the services were validly terminated. The claim in the suit, which has been dismissed by the impugned judgment which is under challenge in RFA No. 180/2004 was towards salary from June, 1999 till filing of the suit on 31.5.2002 on the ground that Sh. Pawan Kumar Dalmia was not validly terminated from services and therefore liability of defendant No. 1/respondent No. 1 towards payment of salary continues. The suit which has been dismissed by the impugned judgment which is the subject matter of RFA No. 235/2004 was a suit filed by Mrs. Manju Dalmia, wife of Sh. Pawan Kumar Dalmia, making Sh. Pawan Kumar Dalmia as plaintiff

No. 2 claiming that the premises belonging to the wife - Mrs. Manju Dalmia were taken on self-lease, and since the services of Sh. Pawan Kumar Dalmia are not terminated or not legally terminated, liability to pay the rental charges for the premises taken on self-lease of house No. F-106, Prashant Vihar, Delhi-85 continues. I am using the expression "self-lease" because the plaintiff No. 1/ appellant No. 1 is the wife of plaintiff No. 2/appellant No. 2/employee and for whom the premises were taken on lease by the defendant No. 1/respondent No. 1. The impugned judgment which is the subject matter of RFA No. 239/2004 dismissed the suit of the wife of Sh. Pawan Kumar Dalmia wherein she claimed that since the services were not validly terminated, the Maruti Zen Car continued to be on hire and thus the hire charges for such car were liable to be paid as Sh. Pawan Kumar Dalmia continued to be legally employed and for which employment the car was taken on hire by the defendant No. 1/respondent No. 1.

2. For the sake of convenience, reference is made to the facts which are subject matter of RFA No. 180/2004, and which is the main suit filed by the employee - Sh. Pawan Kumar Dalmia. The facts of the case are that the employee - Sh. Pawan Kumar Dalmia was appointed as a Company Secretary-cum-Manager (legal) by the defendant No. 1/respondent No. 1-company under an appointment letter dated 1.2.1993 (Ex. PW1/1). The appellant was appointed as a Company Secretary-cum-Manager (Legal) on the terms and conditions of this appointment letter dated 1.2.1993. Some of the relevant terms of this appointment letter are contained in para 20 of the impugned judgment. Besides other terms, one term of appointment is clause No. 11 which provides that services of the appellant can be terminated by serving a two months'' notice or without any notice if the appellant is found guilty of misconduct. The appellant pleaded that in February, 1999, he was told that he would be given a special assignment by the company and therefore he was not required to attend the office on day to day basis. It was further stated in the plaint by the appellant that his new assignment will be told to him in due course and the legal and secretarial work assigned to him was withdrawn. The payment of salary of the appellant/plaintiff was stopped from May, 1999. The appellant/plaintiff claimed that his services were not terminated by the defendant No. 1/respondent No. 1-company and he continued to be in employment with the defendant No. 1/respondent No. 1-company. It was pleaded by the appellant that his appointment was a ''statutory appointment'' and therefore unless the same is statutorily terminated, he continued to be in service. The appellant/plaintiff claims to have served a legal notice dated 9.6.2001 and thereafter filed the subject suit for recovery of Rs. 12,80,036/- alongwith the claim of interest. I may state that in the suit which is the subject matter of RFA No. 239/2004, the amount claimed is Rs. 3,23,795/- alongwith interest for use of the Maruti Zen Car. The amount claimed in the suit which is the subject matter of RFA No. 235/04 is Rs. 4,22,943/- towards the rental charges.

3. The defence of the defendant No. 1/respondent No. 1-company was that the services of the plaintiff/appellant had been terminated w.e.f. 15.6.1999 vide

resolution of the company dated 9.3.1999. It was pleaded that the appellant/ plaintiff was communicated about the resolution dated 9.3.1999 vide a letter dated 5.4.1999 and the full and final settlement of the accounts was forwarded to the plaintiff/appellant by the letter dated 15.7.1999. It may be noted that the termination was thus by a two months notice period as the resolution is of March, 1999, and the termination is w.e.f. June, 1999.

4. After completion of pleadings, the trial Court framed the following issues:-

1. Whether the suit of the plaintiff is not maintainable for want of registration of the lease agreement? OPD

2. Whether the plaintiff no.2 was removed from the post of the company secretary and removed from the services of the defendant as alleged in para no.1 of the WS. If so, its effect? OPD.

3. Whether the plaintiff is entitled to the suit amount as claimed? OPD.

4. Whether the plaintiff is entitled to the interest. If so at what rate? OPP.

5. Relief.

5. The main issue which was argued before the trial Court, and which is also the only issue argued before me, was issue No. 2. Under this head, various sub-issues have also been argued. The arguments as raised on behalf of the appellant in this Court can be crystallized as under:-

(i) The resolution of the defendant No. 1/respondent No. 1 company dated 9.3.1999 was a fabricated resolution inasmuch as the said resolution was not signed by Mr. Shiv Nadar, Chairman of the defendant No. 1-company and since the appellant - Sh. Pawan Kumar Dalmia was appointed by the Chairman of the company pursuant to Article 124 of the Articles of Association, his services could only be terminated by the Chairman. As per Section 383A of the Companies Act, 1956, the appointment of Sh. Pawan Kumar Dalmia was a statutory appointment, and such statutory appointment could only be terminated statutorily i.e. only by the Chairman of the defendant No. 1/respondent No. 1-company. Since Sh. Pawan Kumar Dalmia was appointed by the Chairman, his services could not be terminated by a person in rank less than the Chairman i.e. the services of Sh. Pawan Kumar Dalmia could not be terminated by the Board of Directors of the defendant No. 1/respondent No. 1-company.

(ii) The written statement was not filed by the duly authorized person and therefore the same could not be looked into.

(iii) There was no authority in the witness, who appeared on behalf of the defendant No. 1/respondent No. 1-company and therefore his evidence has to be discarded.

6. Before proceeding to discuss and decide the issues as have been urged on behalf of the appellant, I find that all these issues which were raised before the

Trial Court, and which were decided against the appellant by the Trial court, were really in a manner of speaking wholly unnecessary. This I say so because the appointment of Sh. Pawan Kumar Dalmia/appellant is a contractual appointment. Merely because Section 383A of the Companies Act, 1956 requires appointment of a secretary, the appointment of a secretary of a company, so appointed, cannot be a statutory appointment. The expression "statutory appointment" has a specific connotation, i.e. appointed person''s appointment is governed by the terms and conditions of the statute itself. It is not disputed by the appellant that his appointment is pursuant to the Ex. PW1/1 dated 1.2.1993 and which contains the terms and conditions of the appointment. The entire case therefore as argued on behalf of the appellant, of statutory appointment, is wholly misconceived and was liable to be rejected as such.

7. Another reason for the Trial Court to have dismissed the suit without much ado, was that the appointment letter dated 1.2.1993 specifically provides for termination of services of the appellant/Sh. Pawan Kumar Dalmia by serving of a two months'' notice, i.e. the services could be terminated on a no fault basis by giving two months'' salary or a two months'' notice. The contract for employment therefore was determinable in nature. As per Section 14(1)(c) of the Specific Relief Act, 1963, contracts which are in their nature determinable cannot be specifically enforced. Though the reliefs which have been claimed in the suit are for recovery of monies, effectively, the reliefs if granted would mean continuation of employment of Sh. Pawan Kumar Dalmia even though the defendant no.1/ respondent no.1-company has pleaded that his services were terminated. Since the services could be determined by a two months'' notice period or a two months'' pay, the subject suits in fact which effectively seek continuation of employment or re-employment would be barred by Section 14(1)(c) of the Specific Relief Act, 1963. Making of a claim therefore for salary of three years as also the claim towards rental charges and the hire charges of the car on the basis of alleged continuity of employment were clearly misconceived and barred by law.

8. Let me now turn to each of the arguments as urged on behalf of the appellant.

9. One of the arguments urged on behalf of the appellant is that the written statement was not signed by a duly authorized person and therefore the same could not have been looked into. This argument is a wholly frivolous argument because the legal position in this regard is well settled after the decision of the Supreme Court in the case of United Bank of India Vs. Naresh Kumar and others, and which is that suits which are filed by companies should not be dismissed on technical grounds, once those suits are contested to the hilt, i.e. right till the end. The ratio of the judgment in the case of United Bank of India (supra) will also squarely apply even where a company is a defendant i.e. to the facts of the present case as the defences contained in the written statement of a company cannot be ignored on a mere technical plea of lack of authority in the person inasmuch as all the suits have been contested to the hilt, evidence led by both

the parties, witnesses of both the parties have been extensively cross examined and thereafter the matter was argued in detail resulting in passing of the final judgments in these suits. I may for the sake of completeness state that there is an original power of attorney available in the file, and so also noted by the trial Court, which allows the contesting of the suits by one Mr. H. N.Mathur and the written statement bears the signature of said Mr. H. N. Mathur.

10. One other argument urged on behalf of the appellant was that the witness who deposed on behalf of the defendant no.1/respondent no.1-company was not authorized by any board resolution to give evidence. This argument is misconceived inasmuch as evidence of a person is governed by the Evidence Act, 1872, and any person who is aware of the facts of the case and whose evidence would be a relevant evidence in terms of the Evidence Act, 1872, is competent to depose. A witness can Sh. Pawan depose as per facts in his knowledge or as per records. There is no provision in the Companies Act, 1956 or in the Evidence Act, 1872 which requires that a witness who appears on behalf of the company can only depose if there is a resolution of the Board of Directors of the company permitting him to depose on behalf of the company. This argument of the appellant is therefore rejected.

11. The main argument raised on behalf of the appellant is with respect to the fact that Sh.Pawan Kumar Dalmia was not terminated from services under the resolution dated 9.3.1999 inasmuch as the language of the resolution does not talk of termination of services. Another reason for disputing the termination of services is that the appointment of Sh. Pawan Kumar Dalmia was by the Chairman of the defendant no.1/respondent no.1-company, Sh. Shiv Nadar and since Sh. Shiv Nadar was not present in the 83rd Board meeting on 9.3.1999, the termination of services, assuming the same to have been brought about by the resolution dated 9.3.1999, is illegal. It is also argued that the appointment of Sh. Pawan Kumar Dalmia being by a Chairman, a person lesser in rank than the Chairman cannot terminate the services of Sh. Pawan Kumar Dalmia, i.e. even the Board of Directors of the respondent no.1/defendant no.1-company cannot terminate the services of Sh. Pawan Kumar Dalmia which could be terminated only by the Chairman, Sh. Shiv Nadar. It is also argued that the letter dated 15.7.1999 mentioning the factum of termination of services and making a full and final settlement was never received by Sh. Pawan Kumar Dalmia. Reliance has been placed on behalf of the appellant on the following judgments:

i) Haryana Seeds Development Corporation Ltd. & Ors. Vs. J.K. Aggarwal, 1989 (65) Comp Cases (P&H) 95 - for the proposition that since the appointment was by a Chairman, termination could also be only by the Chairman.

ii) Municipal Corporation of Delhi vs. Chattarbhuj Bhushan Sharma, 133 (2006) DLT 581 - for the proposition that an inferior authority cannot terminate the services of a person.

iii) Jyotsna Raina Vs. Tamilnadu Handicrafts Development Corporation Ltd. and

Another, - for the proposition of lack of powers in an inferior authority to terminate the employment. iv) Amal Kumar Mukherjee and Another vs. Clarian Advertising Service Ltd. & Ors., 1982 (52) Company Cases 315 - for the proposition that unless the minute book containing the resolution of the Board of Directors is bound and handwritten, the same cannot be relied upon.

v) Union of India and Others Vs. Dinanath Shantaram Karekar and Others, and M/s. Green View Radio Service Vs. Laxmibai Ramji and another, - for the proposition that where the document is sent by registered post, it is to be taken as service only when the postal article is tendered to the addressee and the presumption of service is rebuttable.

12. Before I would give my conclusions, I would like to reproduce the findings, reasoning and conclusions of the Trial Court, inasmuch as, I generally agree with the same, besides giving my additional reasons. The relevant portions of the impugned judgment dealing with the arguments of the appellant in this regard read as under:-

8. The plaintiff tendered his affidavit Ex. PW1/A and reiterated the facts as contained in the plaint. He proved the letter of appointment Ex. PW1/1, letter of defendant dt. 20.2.95 Ex. PW1/2, letter dt. 1.10.99 (Ex. PW1/3) and the postal receipt Ex. PW1/4, letter dt. 8.5.01 (Ex. PW 1/5) and the receipt Ex. PW1/6, notice dt. 9.5.01 (Ex. PW1/7) and the postal receipt Ex. PW1/8 & Ex. PW1/9, the letter dt. 10.5.99 (Ex. PW1/10) and the postal receipt Ex. PW1/11, Letter dt. 31.3.98 (Ex. PW1/12), letter dt. 5.10.99 (Ex. PW1/13) and letter dt. 15.10.99 (Ex. PW1/14). The copy of Board Agenda of the meeting held on 9.3.99 was proved as Ex. PW1/15.

8(repeat). In the cross-examination, the plaintiff admitted that in the month of Feb. 1999, the Secretarial and legal work were withdrawn from him as he was to be given some special assignment. The company did not disclose as to what was the special assignment. He was not relieved from the post of company secretary w.e.f. Feb. 1999. There were more than 4 company secretaries with the defendant. As a company secretary he used to attend the meeting of Board of Director of the defendant. He was delivered the agenda of the Board meeting No. 92. He had attended that board meeting. He being the company secretary had prepared the agenda for the next meeting i.e. 83rd meeting. Ex. PW1/15 was the copy of the agenda. It was prepared by him. The plaintiff denied the suggestion that he was relieved w.e.f. 9.3.99 by the defendant from the post of company secretary and DGM (legal). He had not received any letter from the defendants about his having relieved from the post of company secretary and DGM (Legal) working with the defendants. He was not able to attend the office of the defendants as he was not allowed to attend the office. From July 199, the defendant is not allowing him, to attend the office. During the period of May, June and July 1999, he had attended the office of the defendant. Mr. Taneja had intimated him that his secretarial work had been given to Mr. Radha Krishanan. He (Plaintiff) had received the salary till April 1999. He had not been delivered the copy of 83rd meeting of the Board of defendant No. 1. The plaintiff admitted that for the removal of the company secretary, the company i.e. defendant in the present case, needs to file a form 32 prescribed under the company Act alongwith the copy of the Board resolution passed by the Board, with the Registrar of the company. The witness denied the suggestion that this procedure had been complied with by the company (defendant). During the period of three years, he had been pursuing the defendants to release his salary and to give his special assignment. He had not taken any loan from the defendants. He was given advance. He had taken the housing advance amounting to Rs. 7 lacs. This advance was too deducted from his salary and it was deducted upto April 1999. He had appeared before the Arbitrator in the proceedings with regard to the Housing Advance filed by the defendant. He has not received any letter dt. 5.4.99 from the defendants. He denied the suggestion that vide letter dt. 3.5.99, he had been informed by Mr. Taneja that he (witness) had been relieved from the service w.e.f. 15.5.99. He did not receive any letter dt. 15.7.99. The witness was then suggested the defence.

9. The defendants have examined G.P. Kalra DW1. He tendered his affidavit Ex. DW1/A. Vide resolution Ex. DW1/1, he was authorized to depose. He also proved the postal receipt dt. 7.4.99 (Ex. DW1/2), the letter dt. 3.5.99 (Ex. DW1/3), copy of the full and final settlement of the accounts (Ex. DW1/4), copy of the form 32 (Ex. DW1/5), copy of letter of intimation dt. 16.4.99 to the Delhi Stock Exchange Ex. DW1/6 & Ex. DW1/7 is the reply of the legal notice. The resolution dt. 9.3.99 was signed by Mr. Shiv Nadar, chairman of the meeting.

10. In the cross-examination, it was suggested to him that the resolution dt. 9.3.9 had been fabricated. The witness had brought the original minute book containing the 83rd resolution dt. 9.3.99. Photostat copy of the resolution is Ex. DW1/1. The witness was directed to file Photostat copies of the pages from 939 to 943 of the original minute book. That was collectively marked as Mark ''A''. The witness had not brought any authority letter or resolution passed by the defendants authorizing him to depose in this case. He deposed that he had been authorized by Mr. M.L. Taneja the Vice President. The witness denied that the documents placed on record by him are forged one.

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12. Arguments had been concluded on 27.11.03. However, since it had been argued on behalf of the plaintiff that the resolution dt. 9.3.99 is a forged one, therefore, I had directed counsel for the defendants to produce the original minute book. Here I would like to mention that the evidence was not recorded in my presence and, therefore, I had not opportunity to see the original minute book or 4 original minute book was produced before me 13.12.03. I had signed the pages of Resolution No. 83 & 84. I directed the counsel for the defendants to place on record photocopies of the proceedings of 83 & 84 meetings. The copies were then placed on record. A complete set was also given to the counsel for the plaintiff.

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24. Ex. PW 1/1 is the appointment letter. It bears the signature of managing director and contains terms and conditions of the appointment. It is not in dispute that on the basis of Ex. PW 1/1, the plaintiff had joined the service. One of the conditions of Ex. PW 1/1 was that the company was entitled to take disciplinary action which may result in termination of the plaintiff with or without notice or compensation.

25. Article 124 of Memorandum & Article of Association lays down that the appointment was to be made by the Chairman with the approval of the board. Sec. 193 Companies Act provides as to in what manner the minutes of the proceedings are to be maintained. It had been vehemently argued by counsel for the plaintiff that since Mr. Shiv Nadar was not present in the 83rd meeting, therefore, the 83rd meeting had not been presided over by him as chairman and in such a situation the removal of the plaintiff was not as per law. This argument, on the fact of it, appeared to be formidable but when analysed in view of Sec. 193 Companies Act, it fall to the ground. In order to satisfy myself I had directed the defendants to place on record the correct photo stat copies of the resolutions bearing No. 83 and 84. The copies of both these resolutions were placed on record on 13.12.03. In fact the photo stat copy of 83rd resolution was already on record as it was ordered to be filed at the time of recording of statement of DW 1 and it was exhibited as Ext. DW 1/1 (Mark A). Sec. 193(1A)(a) of Company Act makes it clear that each page of the minute book is to be initialed or signed and the last page of the record of proceedings of each meeting in such book is to be dated and signed in case of minutes or proceedings of a meeting of Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting. Ld. counsel for the plaintiff has tried to make mountain out of a mole hill in view of the photo stat copy Ex. DW 1/1 (mark A) of the resolution dated 9.3.1999 i.e. the 83rd resolution. In this document (mark A) Ex. DW 1/1 Ajay Chaudhary was mentioned as the chairman. Ld. Counsel for the plaintiff wanted to take this particular fact to be sufficient to conclude that this resolution was fabricated as Shiv Nadar was not present on 9.3.99 and he had later on signed the same. It is not in dispute that Shiv Nadar was the chairman of the company. Therefore in view of Sec. 193(1A)(a) Companies Act he had signed the 83rd resolution at the time of the meeting dated 20.4.99 on which date 84th meeting of the board of director had been convened. The photo stat copy of the 84th meeting of Board of Directors shows that it was attended by Shiv Nadar. Therefore, in view of Sec. 193(1A)(a) of Companies Act, he was entitled to sign the minutes of the 83rd meeting. Thus, there is no material to hold that the minute book had been fabricated later on. The original minute book had been produced at the time of recording of statement of G.P. Kalra DW 1. The evidence had been recorded by my ld. predecessor. When the defendants were directed to produce the photo stat copy of the minute book containing the entries of 83rd and 84th meeting, the same had been produced before on 13.12.2003. I had also perused the original minute book containing the minutes of 83rd and

84th meeting. The minute book appeared to be properly maintained in accordance with Sec. 193 of Companies Act and there did not appear anything to raise suspicion.

26. Resolution 82 of Table A of Schedule 1 of the regulations for management of a company limited by shares lays down that a manager of secretary may be appointed by the board for such term, at such remuneration upon such condition as it may think fit and any manager or secretary so appointed may be removed by the board. It was argued by ld. counsel for the plaintiff that the plaintiff could not have been removed without approval of the share holders of which a general body meeting should have been convened. I do not agree with him. The plaintiff had been appointed by the board of the company. The board had convened its meeting on 9.3.99. The appointment of the plaintiff and his removal was by board of directors. It was as per the law. No fault whatsoever can be found. Since the appointment of the plaintiff was by the board of director of the company, therefore, in view of regulation 82 he could have been removed by the board of directors. Here I would like to refer the judgment Haryana Seeds Development Corporation (Supra) which has been pressed into service by counsel for the plaintiff. In that case the termination orders were passed by the managing director and not by the board of directors. However, this judgment is distinguishable on the facts. In the present case, the plaintiff had been removed by board of directors in the 83rd meeting dated 9.3.99

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28. One of the arguments of counsel for the plaintiff was that the written statement had not been filed by an authorized person. A perusal of the file reveals that a power of attorney had been executed by K.R. Radhakrishanan, company secretary for and on behalf of defendant no. 1 by order of the board of defendant no. 1 in favour of H.N. Mathu8r, D.K. Singh and Sanjiv Sharma. The W.S. bears signature of H.N. Mathur. Therefore, the W.S. had been filed by a duly authorized person.

(emphasis added)

13. A reference to the resolution dated 9.3.1999, Ex. DW1/1 shows that the same could have been better worded, however, it is clear from the resolution that the services of the appellant/Sh. Pawan Kumar Dalmia were indeed terminated. No doubt, the expression "was being assigned different responsibilities" can be read in a manner as if the services were not terminated, however, it can also be interpreted to mean that the services were terminated but he would be given different employment i.e. different responsibilities. This I say so because the actual resolution specifically states that the appointment of Sh. Pawan Kumar Dalmia was rescinded with immediate effect. The relevant part of this resolution reads as under:-

5. CONSIDERATION OF APPOINTMENT OF MR. K.R. RADHAKRISHNAN AS COMPANY SECRETARY

The chairman informed the Board that Mr. Pawan Dalmia, DGM (Legal) and Company Secretary was being assigned different responsibilities. As such he shall not longer hold office of the Company Secretary of the Organisation with effect from March 9, 1999.

It was therefore, proposed to appoint Mr. K.R. Radhakrishnan, a qualified Company Secretary, having the requisite experience, as Secretary of the Company with effect from 9th March, 1999. The Board considered and passed the following resolution:

RESOLVED that the appointment of Mr. Pawan K. Dalmia as Secretary of the Company be and is hereby rescinded with immediate effect." RESOLVED further that Mr. S. Bhattacharya, Director be and is hereby authorised to communicate to Mr. Pawan Dalmia, the rescission of his appointment as Company Secretary."

"RESOLVED further that pursuant to Article 124 of the Articles of Association of the Company read with Section 383A of the Companies Act, 1956, Mr. K.R. Radhakrishnan be and is hereby appointed as Secretary of the Company with effect from 9th March, 1999.

14. Further, this 83rd resolution has been confirmed by the 84th resolution which is signed by Mr. Shiv Nadar, the Chairman of the defendant No. 1/respondent No. 1-company. Though Mr. Shiv Nadar was not present when the 83rd resolution was passed, however, he has also confirmed the 83rd resolution of Board of Directors by being present at the 84th resolution when the 83rd resolution came up for confirmation and signatures i.e. the Chairman has confirmed the termination of services of the plaintiff/appellant. of course, I am referring to the argument of the appellant/plaintiff that Sh. Pawan Kumar Dalmia could only be terminated by the Chairman, only out of deference to the arguments inasmuch as there is no provision of Company Law or the Contract Act, 1872 which requires that an employee of a company cannot be terminated by a person lesser in authority than by whom he was appointed. A company operates through Board of Directors and the Board of Directors had passed a resolution terminating the employment. It cannot therefore be argued that there is no termination of services of Sh. Pawan Kumar Dalmia. The trial Court has also accordingly held as per para 26 of the impugned judgment reproduced above. Also, even as per Article 124, the appointment is by the Chairman with the approval of Board of Directors i.e. the Board of Directors is supreme, and therefore the Board of Directors cannot be argued as lacking in authority to terminate the services of a Secretary.

In fact, in my opinion, it is not open to Sh. Pawan Kumar Dalmia to raise an issue with respect to lack of presence of Sh. Shiv Nadar or lack of authority in Board of Directors to terminate his services inasmuch as the present is not a case where there is a dispute with respect to shareholders inter se or Directors of a Board of a company inter se. Admittedly, there has never been a subsequent Board of Directors'' resolution or a General Body Meeting of the defendant No. 1/

respondent No. 1-company challenging the termination of services of appellant - Sh. Pawan Kumar Dalmia. Therefore, the trial Court was justified in holding that services of the appellant - Sh. Pawan Kumar Dalmia were terminated, and further, in my opinion, the appellant had no locus standi to question the validity of resolution of Board of Directors of the defendant No. 1/respondent No. 1-company inasmuch as right to question such Board of Directors'' resolution with regard to its authenticity or contents is only of the Board of Directors itself or of the General Body of shareholders of such a company and admittedly there is no question to the 83rd resolution by the Board of Directors subsequently or by the General Body of shareholders of the defendant No. 1/respondent No. 1-company.

15. Finally, I must add that even at best if the termination of services of Sh. Pawan Kumar Dalmia was a breach of contract, parties admittedly being governed by contractual relations, the maximum effect of the so called illegal termination would have been an entitlement to salary of two months and admittedly the appellant - Sh. Pawan Kumar Dalmia on his own showing has received salary till May, 1999. In any case, the complete statement of account with respect to full and final settlement was given vide Ex. DW1/4 dated 15.7.1999. I cannot agree with the arguments as raised on behalf of the appellant that this letter dated 15.7.1999 was not served on the appellant/ plaintiff inasmuch as this letter is accompanied by the AD card which shows receipt of the postal article by a person one "Sarita". It is not disputed that the letter dated 15.7.1999 has been sent to the correct address by the postal department, and therefore, defendant No. 1/respondent No. 1 discharged the onus of proof by filing the AD card. If the appellant wanted to dispute the receipt of the letter dated 15.7.1999, onus of proof was upon him to summon the record from the post office to show that there was no delivery of article at the stated address, however, the appellant did not do so, and would not have done so inasmuch as the stand that the registered letter dated 15.7.1999 was not received was a stand which was false to his knowledge inasmuch as the letter dated 15.7.1999 has been sent to the admitted address of the appellant, and which is also the address being the self-leased premises. In view of the aforesaid, the judgments in the case of Green View Radio Service (supra) and Dinanath Shantaram (supra) therefore do not have application to the facts of the present case. Merely denying by the appellant/plaintiff that he has no family member of the name of ''Sarita'' is neither here nor there as such a person ''Sarita'' could have been a servant or any other person found or otherwise living at the address which is admittedly the address of the appellant/plaintiff.

16. The judgments cited on behalf of the appellant in the cases of Jyotsna Raina (supra) and Municipal Corporation of Delhi (supra) will not apply inasmuch as the employment in this case is a contractual employment and is not a statutory appointment or an employment under a statutory corporation or a company which is "state" under Article 12 of Constitution of India. The issue of a person being terminated by an authority inferior to the person who appointed such person is relevant in proceedings under Services Law or where there is an issue

of violation of Article 14 of the Constitution, but definitely not in employments which are contractual employments and governed by contractual terms and conditions. In any case, Board of Directors is a superior authority than a Chairman of a company and hence in the present facts it is not that termination can be said to be by an inferior authority to the appointing authority. The judgment in the case of Haryana Seeds Development Corporation (supra) also has no application to the facts of the present case inasmuch as in the said case, the Court was concerned with termination of services of a Company Secretary by a Managing Director and not by the Board of Directors as has been done in the present case. In fact, a reference to the judgment in the case of Haryana Seeds Development Corporation (supra) shows that Board of Directors of a company can surely terminate the services of a Company Secretary. Trial Court has also referred to and rightly distinguished this judgment in para 26 of the impugned judgment reproduced above. The judgment relied upon in the case of Amal Kumar Mukherjee (supra) with respect to the argument that the minute book of a company ought to be bound and written in hand, is to be read in the context of the facts of the said case wherein there were disputes inter se shareholders of a company and in such circumstances, the issue had arisen with respect to manipulation of the minute book of the company. In the present case, there is no dispute inter se shareholders or inter se Directors of the Board of the company and therefore the judgment in the case of Amal Kumar Mukherjee (supra) will have no application to the facts of the present case, especially for the reasons stated above that there is no subsequent resolution of the Board of Directors or any resolution in the General Body meeting of defendant No. 1/respondent No. 1-company questioning or rescinding the termination of services of the appellant - Sh. Pawan Kumar Dalmia.

17. The facts of the present cases show an unnecessary attempt by the appellants to pursue and file these frivolous cases. Either the appellants have not been correctly advised, or if they have been so advised, they were being unduly obdurate in seeking reliefs which were not justified either in facts or in law, considering the fact that Sh. Pawan Kumar Dalmia besides being the Secretary was also the Manager (legal) as per the appointment letter. Even after conclusion of arguments, when the appellants and their counsel were put to notice of Section 14(1)(c) of the Specific Relief Act, 1963, as also of the contractual nature of appointment and the maximum entitlement to the normal damages u/s 73 of the Contract Act, 1872 (even assuming the same could be claimed) being of only two months'' salary, however, the appellant insisted the appeals to be disposed of on merits. The Supreme Court in the recent judgment of Rameshwari Devi and Others Vs. Nirmala Devi and Others, has held that it is high time that Courts must impose actual costs to discourage frivolous litigations. The Supreme Court in the case of Ramrameshwari Devi (supra) has made reference in various paragraphs to actual costs incurred by the opposite party because of false and frivolous litigations. The Supreme Court has mandated that it is high time that actual costs be awarded. Earlier, a Division Bench of three Judges of the

Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), has also held that actual costs must now be imposed. I am also empowered to impose actual costs by virtue of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15.

18. In view of the facts as stated above, and the wholly frivolous nature of litigations which have no basis in facts and law, and also considering the costs incurred by the respondent No. 1/defendant No. 1-company, the appeals are dismissed with costs of Rs. 25,000/- for each of the appeals. Trial Court records be sent back.

