

(2011) 06 DEL CK 0050

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 45 of 2009 and CM No. 7043 of 2009

Ravi Raj Gupta and Another

APPELLANT

Vs

Hansraj Gupta and Company and Others

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 91, 92
Companies Act, 1956 — Section 299, 299(3)
Constitution of India, 1950 — Article 100
Specific Relief Act, 1963 — Section 34

Citation : (2012) 106 CLA 310 : (2011) 168 CompCas 322 : (2011) 124 DRJ 22

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Vijay Jhahji, G.K. Mishra and P.N. Singh, for the Appellant; Vikas Dhawan, Abhimanyu Mahajan, Vaibhav Kumar and Virender Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The present appeal lays a challenge to an order dated 17th February, 2009 whereby the learned Single Judge has held that the suit filed by the Plaintiffs is not maintainable being frivolous and dismissed the same with costs of Rs. 50,000/- to be paid to the Defendants equally.

2. The facts giving rise to the suit are in a narrow compass. CS (OS) No. 1944/2003 was filed on or about 10th November, 2003 by the Appellants seeking the following prayers:

(a) Issue an order of permanent injunction in favour of the Plaintiffs and against the Defendants herein restraining the Defendants from acting upon the Board Resolution dated 12/01/02.

(b) issue an order of permanent injunction restraining the Defendants 2-4 from dispossessing the Plaintiffs from the said premises.

(c) issue an order of permanent injunction restraining Defendant No. 5 from taking any steps pursuant to any directions issued by the Defendants in accordance to the said Board Resolution to the said premises;

(d) A declaration declaring that the Board Resolution dated 12/01/02 is null and void,

(e) Issue such other orders or directions as the Hon"ble Court may deem fit, proper and appropriate and considering the facts and circumstances of the present case.

3. It appears that Late Hansraj Gupta and his four sons, namely, Shri Desh Raj Gupta-Appellant No. 2 herein; Shri Shiv Raj Gupta-Respondent No. 2; Shri Rajender Kumar Gupta-Respondent No. 3 and Shri Mahendra Kumar Gupta-Respondent No. 4, constituted Hansraj Gupta & Sons, a Hindu Undivided Family (HUF). Shri Ravi Raj Gupta-Appellant No. 1 herein is the son of Shri Desh Raj Gupta, the Appellant No. 2.

4. A perpetual lease for a property bearing No. 39, Block 1, Ratendon Road, New Delhi - 110 003, (now known as 3, Amrita Shergil Marg, New Delhi - 110 003) was granted to Late Lala Hansraj Gupta vide a registered deed dated 6th May, 1936. On or about 1st July, 1972, this property was brought into the hotch-potch of the said Hindu Undivided Family.

5. Late Shri Hansraj Gupta and six other shareholders incorporated "Hansraj Gupta & Company Private Limited"-Respondent No. 1 herein as a company under the provisions of the Companies Act, 1956 by a resolution dated 23rd of July, 1947.

6. An Extraordinary General Meeting of the shareholders of this Company was held on 27th February, 1974. In this meeting, the company resolved to take on rent the premises 3, Amrita Shergil Marg, New Delhi (then described as 39, Block 1, Ratendon Road, New Delhi - 110 003) for the use and occupation of the officers/staff and guests of the company at a monthly rental of Rs. 495A per annum. The amount of Rs. 495/- included "Rs. 450/- per month rent plus Rs. 45/- per month or as may be revised by the Municipal Corporation from time to time as house tax with effect from 1st March, 1974";

7. The plaint as well as the appeal states that by the special resolution dated 27th February, 1974, it was also resolved that these premises would be occupied by the Chairman of the Company, Late Lala Hansraj Gupta, for his residence. The relevant portion of the minutes of the Extraordinary General Meeting of the Company held on 27th February, 1974, placed with the appeal reads, as follows:

Present:

1. Shri Hansraj Gupta

2. Shri Shivraj Gupta

3. Shri R.K. Gupta

4. Shri M.K. Gupta

xxx

3. Resolved as a special resolution to take on lease rent the premises known as No. 3, Ratendone Road, New Delhi from M/s Hansraj Gupta & Sons at Ajmeri Gate, Delhi at a rental at Rs. 495/- (Rs. 450/- per month rent plus Rs. 45/- PM or as may be revised by the Municipal Corporation from time to time as House Tax) with effect from 1.3.74 as the company require for the residence of its officers, staff and guests etc. In this connection a draft lease agreement prepared was placed before the meeting and the terms and conditions mentioned therein were approved and confirmed.

4. Resolved a special resolution to allot the premises No. 3, Ratendone Road, New Delhi to Sh. Hansraj Gupta, Director and Chairman of the company or to any other officer, as the Board may determine from time to time free of costs Charges for residence purpose; The premises 3 Ratendone shall be maintained by the company at its cost and rent, House Tax, Electricity, water charges, Telephone facility, while washing, repairs, sanitary installation and fitting shall be borne by the company. The company shall also maintain the lawn and gardens at its cost.

8. So far as the occupation of these premises is concerned, Late Lala Hansraj Gupta was residing therein in his lifetime under the authority of the said special resolution of the company which was the tenant. The Appellant No. 2-as the son of late Hansraj Gupta and the Appellant No. 1 as his grandson, were residing with him as part of his family.

9. The plaint avers that during the lifetime of Late Lala Hansraj Gupta, the Appellant No. 1 on 25th August, 1981 was appointed as the Chief Executive Officer (hereinafter "CEO") of the Respondent No. 1 company.

10. On 9th October, 2000, a meeting was held of the Board of Directors of the Company. The Appellant No. 1 was removed from the post of the Chief Executive Officer (CEO), on 20th July, 2000. The Appellant No. 1 has submitted that he has assailed his removal as director of the company by way of Company Petition No. 115/1986 before the Company Law Board and various orders have been passed in his favour. These proceedings are stated to be pending.

11. The company is stated to have filed a criminal complaint under the provisions of the Companies Act, 1956 before the court of the Additional Chief Metropolitan Magistrate complaining that the Appellant No. 1 was in unauthorised occupation of the company property and had failed to vacate the said property which had been leased to the company, despite notices to" this effect.

12. It also appears that a resolution dated 12th January, 2002 was passed by the Board of Directors of the Respondent No. 1 whereby a decision was taken to

surrender the tenancy of the said property to its owner. The Appellants filed CS (OS) No. 1944/2003, the suit in question challenging the validity of the above resolution. For the purposes of the present consideration, this resolution may usefully be extracted and reads as follows:

A meeting of Directors held on 12.1.2002 at 11 a.m. at 20, Netaji Subhash Marg, Darya Ganj, New Delhi.

1.

Shri Shiv Raj Gupta

Sd/

2.

Shri Rajendra Gupta

Sd/

3.

Shri Mahendra Gupta

Sd/

4.

Shri Ravi Raj Gupta

Sd/

1. Shri Shiv Raj Gupta was elected to be the Chairman of the meeting.

2. The minutes of the meeting held on 13.10.2001 were read and confirmed.

3. Properties: -- The properties not being utilized by the company were discussed. The matter was differed to give some more thought on what to do with such properties.

4. Kohlu Division: -- The current estimate of this year hiring is about Rs. 85 lacs (eighty five Lacs), Though this is higher than Rs. 64 Lacs (Sixty four Lacs) in the previous year, it is still not satisfactory and the company is not likely to make much profit from this scale of operation. The company is in the process of rationalizing the cost of operations to increase the profit margin of hiring.

5. Preference shares: -- Resolved that Mr. Mahendra Gupta is authorized to take steps to redeem the preference shares of Rs. 2 Lacs (Two lacs) and pay the divided payable thereon from 1987 to 31.3.2001 of approximately Rs. 1,35,000/-

6. Payment of capital gains: -- (Kosi Property). Resolved that Mr. Mahendra Gupta be and are hereby authorized to make investment in 250 Bond of Rs. 10,000/- each bond of Rs. 25,00,000/- (Rs. Twenty Five Lacs) only in rural Electrification Corporation Ltd, for the purpose of 54EC of the Income Tax Act. He

is also authorized to sign necessary forms and other documents to apply for the said bonds.

7.3 Amrita Shergill Marg: -- On 15.2.1974 the company took on lease property bearing No. 3. Amrita Shergill Marg from the owners Hansraj Gupta & Sons. On 21.1.1974 Board of Directors of the company resolved that Lala Hansraj Gupta use the house for his residence, Pursuant thereto, Lala Hansraj Gupta occupied the said property and resided therein until his demise on 3.7.1985.

After his demise the eldest son of Lala Hansraj Gupta, viz. Shri Desh Raj Gupta and the later son Shri Ravi Raj Gupta have occupied the property and despite demands of the company refused to vacate. They have claimed that they occupy the property in their own right.

The company never permitted Shri Desh Raj Gupta or Shri Ravi Raj Gupta to occupy the property. Also with the said person's occupation, the company can derive no benefit from the tenancy, though it has continued to pay rent @ Rs. 495/- per month. The said rent is an unnecessary liability and burden upon the company with no corresponding benefit. In view of the above it may be appropriate for the company to surrender tenancy to the owners. The Board of directors considered the matter of tenancy of 3. Amrita Shergill Marg at length considered the proposal before the Board and the relevant documents and papers including the claim of S/Shri Desh Raj Gupta and Sh. Ravi Raj Gupta in proceedings before the Hon"ble Delhi High Court. After deliberating the matter, the Board of Directors passed the following resolution.

Resolved that the company surrender the tenancy in respect of the property No. 3. Amrita Shergill Marg to the landlord/owners. Shri Mahendra Gupta is hereby authorized to take necessary action to implement the resolution and to sign or execute all documents and papers necessary therefore.

8. Any other matter:- it is resolved that Mr. Mahendra Gupta, Director of the company, is hereby authorized to operate the (CC Account No. 125) in Connaught Place, New Delhi. Further resolved that "he is also authorized to sign the cheque and relevant papers for operating the current account." The meeting was then adjourned with a vote of thanks to the chair.

(Emphasis supplied)

13. The challenge in the suit is premised on the ground that the resolution dated 12th January, 2002 was passed by Defendant Nos. 2 to 4 as directors of the Company. The submission is that the Respondent Nos. 2 to 4 had interest in the property being co-parceners of the HUF which is the owner thereof and as directors of the company. As such they were bound to disclose their interest in view of Section 299 of the Companies Act, 1956 which these Respondents failed to do so. It has been further averred that in passing the resolution, the Respondents were acting to further their own interest and were misusing their authority as directors to cause injury to the interest of the Appellants/Plaintiffs as

well as the company. It has been submitted that the company was holding leasehold rights in the said property at a notional rent of Rs. 495/- per month amounting to only Rs. 5940/- per annum which does not cause any financial burden on Respondent No. 1 and that the retention of the premises was in the financial interest of the company.

14. It is noteworthy that when the suit came up for the first time for hearing on 12th November, 2003, the following order was passed by the learned Single Judge:

The short question for consideration is whether the suit is maintainable. Let a short notice be issued to the Defendants for hearing on 18.11.2003.

15. The matter remained pending for consideration on this issue till hearing thereof and the judgment dated 17th February, 2009 by the learned Single Judge holding that there was no violation of Section 299 of the Companies Act, 1956 and that the suit filed by the Plaintiff was not maintainable being a frivolous suit which has been dragged unnecessarily. As a result, dismissal of the suit was directed.

16. We have heard learned senior counsel for the Appellants and counsel for the Respondents at length.

17. We may now examine the findings returned by the learned Single Judge in the impugned order dated 17th February, 2009. The primary ground of challenge of the Appellants/Plaintiffs is premised on their reading of Section 299 of the Companies Act, 1956. This statutory provision envisages that in the event of a director of any company having any personal interest in a contract or arrangement which has been or proposed to be entered into, he would be required to disclose the same to the other directors of the company.

18. Before us, Mr. Jhanji, learned senior counsel for the Appellants has urged that the resolution dated 12th January, 2002 is also in violation of Article 100 of the Articles of Association of the company. We find that Article 100 similarly refers to disclosure by the director.

19. It is undisputed that the Appellant No. 2 as well the Respondent Nos. 2 to 4 are members of the HUF-Respondent No. 1 herein which holds the perpetual leasehold rights of the property from the superior lessee. The Appellants have placed reliance on the resolution dated 27th February, 1974 whereby the property was leased to the company. This resolution was accompanied by the following background note:

Explanatory Note:

The premises known as 3, Ratendon Road, New Delhi belong to M/s. Hansraj Gupta & Sons, Ajmere Gate, Delhi which is a HUF firm. Shri Hansraj Gupta, Shri Deshraj Gupta, Shri Shivraj Gupta, Shri Rajendra Kumar Gupta and Shri Mahendra Kumar Gupta are its members and Shri Hansraj Gupta is the Karta.

Shri Hansraj Gupta, Shri Shivraj Gupta and Shri Rajendra Kumar Gupta are also Directors in M/s. Hasraj Gupta & Company Pvt. Ltd. and Shri Mahendra Kumar Gupta is Administrative Officer of the Company. The above premises are being allotted at the present moment to Shri Hansraj Gupta for his residence. Therefore under provisions of the Companies Act, it is essential to pass the above resolution as a Special Resolution and the approval of the shareholders is necessary.

Sd/-

Chairman

27.2.1974

The Appellants cannot and do not deny knowledge of this resolution.

20. The entire narration of the factual position with regard to the ownership of the property and the interest of all the directors including that of the present Respondents as well as that of the Appellant No. 2, is thus contained in the resolution and the background note to this resolution whereby the lease was created in favour of the company. The meeting was attended by and the resolution dated 27th February, 1974 was passed in the presence of Respondent No. 2, Respondent No. 3, Respondent No. 4 and chaired by Lala Hansraj Gupta as Chairperson.

The challenge in the instant appeal can be summed up as follows:

- (i) Whether the resolution passed by the board of directors of the company incorporated under the provisions of the Companies Act can be voided on the sole ground that the directors did not re-disclose personal interest in a contract or arrangement which was discussed in the meeting even though admittedly such disclosure in the previous meetings was on record?
- (ii) Whether persons having no right, title or interest in the property or authority to occupy a property leased to a company can bring or maintain a challenge to the actions/resolutions of the company with regard thereto?
- (iii) Whether the Plaintiffs (Appellants) concealed material facts in the plaint? If so, consequences thereof.
- (iv) Whether the resolution passed by the board of directors of the company incorporated under the provisions of the Companies Act can be voided on the sole ground that the directors did not re-disclose personal interest in a contract or arrangement which was discussed in the meeting even though admittedly such disclosure in the previous meetings was on record?

21. It needs no elaboration that the spirit, intendment and purpose of the requirement mandated by Section 299 of the Companies Act, 1956 is only so as to put other directors and the company to notice of the interest held by any of the directors in the matter under consideration.

22. In this regard, our attention is drawn to the pronouncement of the High Court of Mysore reported at (1970) 40 Comp Cas 674 (Mys) Ramakrishna Rao v. Bangalore Race Club wherein it was held that if the board was aware of the interest of a director in a particular transaction, it would not be necessary for such a director to further disclose his interest. Learned Counsel for the Respondents submit that this pronouncement has been relied upon by the Company Law Board in the pronouncement reported at 1995 (83) CC 141, A. Sivasailam v. Registrar of Companies.

23. It is inherent in the statutory provision and under the Articles of Association that the disclosure of the interest or rights in the subject matter under consideration of director who is participating in the Board of meeting, is necessarily of such interest or rights which the other directors are not aware.

24. The company in hand has paid rent to the HUF-owner of the subject premises. The accounts of the company would have been disclosed and passed by the board of directors. Statutory compliances would have been effected. The Board of Directors at the relevant time included of the Appellant No. 1 and the Respondents.

25. The Appellant No. 1 is the son of the Appellant No. 2 who is a member of the HUF, which owns the property.

26. We find that the resolution dated 27th of February, 1974 was relied upon by the Appellants in the plaint and the background note thereto reproduced above contains sufficient disclosure of the interest of all directors in the subject property. This resolution was very much a part of the record of the company available to all.

27. The information of the interest held by the directors in the subject matter of the resolution was admittedly available in the aforesaid background note and the resolution dated 27th February, 1974.

28. The Appellant No. 1 was also the CEO of the company since 25th of August, 1981 and would be expected to know the affairs of the company. Admittedly, the company was paying rent to the owners of the property and the Appellants were residing therein with late Lala Hansraj Gupta.

All the directors of the company were therefore fully aware of the ownership of the property and the interest of the Appellant No. 2 and the Respondents therein. For this reason, reiteration of the information already on the record of the company or Repetition of the disclosure in the format of a formal disclosure as used in Section 299 of the Companies Act, 1956 was clearly in the nature of an empty formality. This is more so as, other than the demise of Lala Hansraj Gupta, the other directors of the company appear to have remained the same.

29. In any case Sub-Section 3 of Section 299 deems a general notice given to the Board by a director that he is a director or member of a specified body corporate or a member of a specified firm and is to be regarded as concerned or

interested in any contract or arrangement and he may after the date of the notice be entered into with that body corporate or firm shall be deemed to be a sufficient disclosure or concerned or interested in relation to any contract or arrangement so made.

30. Looked at from any angle, it has to be held that the Respondents are deemed to have sufficiently disclosed their interest in the property to the board of directors of the company for the purposes of Section 299 of the Companies Act, 1956 and the Articles of Association of the Company.

31. Interestingly, the Appellants also do not contend at all that they were unaware of the interest of the other directors. For this reason, the resolution dated 12th January, 2002 cannot be voided for the sole reason that it does not contain specific reference to the interest of the directors, or because the directors did not re-disclose interest which was brought on record earlier.

32. We may note that the Appellants have raised no objection at all to the resolution dated 12th January, 2002. The Appellant No, 1 was present in the meeting on 12th of January, 2002 when the resolution was passed. Not a single communication has been addressed objecting to the resolution at any time to the company or any authority. The objection which has been taken in the plaint has surfaced for the first time almost twenty two months after the passing of the resolution when the suit was filed on or about the 10th of November, 2003 in this Court.

33. The Respondents have stated that the resolution dated 12th January, 2002 was confirmed in the meeting of the board of directors held on 23rd June, 2002. The Appellant No. 1 had participated in the meeting as well-without any objection.

34. It is noteworthy that in the reply dated 24th February, 2004 filed by the Defendants, these facts including the ratification of the earlier resolution in the meeting held on 21st June, 2002 were placed on the suit record.

35. We find that despite the admitted knowledge thereof, the plaint does not contain even a whisper of a mention of the resolution dated 21st June, 2002.

36. We are noticing this fact for the sole reason that Mr. Jhanji, learned senior counsel for the Appellants has contended that the Appellants have challenged the resolution dated 21st June, 2002 as well by way of an additional affidavit which was filed in the proceedings in the suit. Perusal of this affidavit, which also has been dated 24th February, 2004, would show that the same has been filed as an after thought when the Appellants realised that the Respondents would disclose the second resolution in defence of the suit.

37. The filing of the affidavit dated the 24th of February, 2004 cannot supply the concealment of the material fact in the plaint that the Appellant No. 1 had been a party to the meeting of the board of directors of 21st June, 2002 in which the minutes of the meeting of the board of directors of 12th January, 2002 were

confirmed. No explanation for this material omission in the plaint could be suggested before this Court.

38. We also notice that the affidavit dated 24th February, 2004 refers to mere oral objections in the meeting held on 21st June, 2002 without anything more. These bald assertions in the affidavit are again unsupported by any objections to the company in writing. We find that the deposition in the affidavit is belied also by the complete silence in "the plaint on this aspect.

39. It also needs no elaboration that parties to a suit are bound by the strict rules of pleadings. Issues in a suit are struck on pleadings of parties on which a suit proceeds to trial. So far as civil litigation is concerned, mere deposition in an affidavit filed long after the filing of a suit, without there being any challenge thereto in the suit is of no consequence.

40. We, therefore, also find that there is no challenge by Appellant No. 1 to the subsequent resolution dated 21st June, 2002 ratifying the resolution dated 12th February, 2002. It has to be held that Plaintiff No. 1 would therefore stand estopped from laying a challenge to the resolution dated 12th February, 2002.

41. We are in agreement with the findings of the learned Single Judge to the effect that in the instant case, the Appellant No. 1 as well as the other parties were all fully aware of the right, title and interest of each of them so far as the subject property was concerned.

42. In the facts of the present case, there was thus substantial compliance with the spirit, intendment and object of the statutory provision and nothing further was required to be done.

(ii) Whether persons having no right, title or interest in the property or authority to occupy a property leased to a company can bring or maintain a challenge to the actions/resolutions of the company with regard thereto?

43. It is now necessary to examine this matter from another aspect. What is the nature of rights involved? and whether persons having no right, title or interest/ authority to occupy the property of a company can bring or maintain a challenge to the actions/resolutions of the company with regard thereto.

44. So far as the ownership and interest in the subject property is concerned, it is admitted that it has not changed since 1974.

45. The tenancy of the property was in favour of the company and not any individual. Late Lala Hansraj Gupta was, permitted residence in the property by the said resolution of the shareholders of the company on 27th February, 1974. As per the resolution dated 27th February, 1974, in case occupation of any other person in premises was to be authorised on behalf of the company, it had to be by a specific resolution of the board of directors.

46. As per the assailed resolution, Shri Hansraj Gupta unfortunately expired on 3rd July, 1985. Other than the permissive residence and occupation as members

of the family of Late Lala Hansraj Gupta during his lifetime, the Appellants do not plead any authorisation by the company to support their occupation. There is also no document to support the same. The Appellants do not assert any plea of payment of rent or any use and occupation charges by them, to the owner of the premises.

The Appellants have stated that Appellant No. 1 was appointed as the Chief Executive Officer of Respondent No. 1-company during the lifetime of Late Lala Hansraj Gupta. It is not Appellants' claim in the plaint that allotment of the premises has ever made in his favour by the company.

47. We also find that upon demise of Late Lala Hansraj Gupta, his widow Smt. Angira Devi continued to reside in the premises besides the Appellants. Shri Ravi Raj Gupta-Appellant No. 1 is the son of Shri Desh Raj Gupta and was so residing with him.

48. It is well settled so far as a suit is concerned, its filing and maintainability has to rest on the adjudication and enforcement of legally tenable rights. The only exception to this first principle of civil litigation is to be found in the permissibility of filing representative suits u/s 91 of the CPC in the case of public nuisance or u/s 92 with regard to public charities. Certainly, the suit under consideration is not litigation of the kind envisaged in these provisions of the Code of Civil Procedure. Therefore, looked at from any angle, the Plaintiffs have no right at all to bring or maintain the present suit.

49. It has been asserted that upon the demise of Shri Hansraj Gupta, Appellant No. 2 became the Karta of the HUF which is the owner of the property. In the plaint, there is no assertion that the occupation of the premises is in such capacity. No authorisation from the members of the HUF to this effect has been pleaded or placed on record. The suit also makes no such claim to support the occupancy.

50. The suit as well as the present appeal have not been filed by the Appellants in the capacity of directors/shareholders of Respondent No: 1 Company. The Appellants have also not been authorised by the company to file a suit or the present appeal on its behalf.

51. The plaint also does not disclose as to how continued occupation of the property by the Appellants would be in the interest of the company or of Hansraj & Sons, the Hindu Undivided Family of which Shri Desh Raj Gupta, Appellant No. 2 claims to be the Karta. It is clearly evident that the suit was filed with the sole and mala fide intention of simply perpetrating occupation of the valuable property which admittedly is in the occupation of the Plaintiffs/Appellants.

52. It is an admitted position that no right, title or interest was created in favour of the Appellants in the subject property No. 3, Amrita Shergil Marg, New Delhi by the resolution dated 27th February, 1974 which has been placed on record.

53. The Respondents have pointed out that the resolution dated 12th January,

2002 was necessitated for the reason that the company has not gained any advantage, profit, income or benefit on account of the lease of the subject property because of the unauthorised and illegal occupation thereof by the Appellants.

54. It has also been submitted that upon removal as Chief Executive Officer of the company by the resolution dated 9th October, 2000, the Appellant No. 1 has no relationship with the company of any kind. The legality of this resolution would of course be decided in the other litigation which has been initiated by the Appellant No. 1. Nothing herein said is an expression of opinion on this aspect of the matter.

55. The decision making by a Board of Directors of a company incorporated under the provisions of the Companies Act, 1956 is necessarily to be concerned with furthering the interest of the company and not of any individual director. For the same reason, no director can compel a company to take any particular decision on the sole ground that his interest would stand protected thereby,

56. The Appellants cannot take the shelter of the lease which was created by the HUF in favour of the company and its permission to the Chairperson of the company to occupy the same, in order to perpetuate their occupation which admittedly is not even authorised or permitted by or on behalf of the company. There can be no manner of doubt at all that the suit was motivated by pure self interest without any concerns of the property or interest of the company.

57. The contours within which a party can file a declaratory suit are prescribed in Section 34 of the Specific Relief Act, 1963. The suit raises no issue or claim of title. We have our doubts about the maintainability of the suit, as it does not fall within the stipulated categories. However, this aspect is not being examined herein for the reason that the same was not considered before the learned Single Judge.

58. In answer to a direct question by the court as to what was the enforceable right, if any, of the Plaintiffs so far as the occupation of the property was concerned, Mr. Jhanji, learned senior counsel for the Appellants very fairly stated that there was none. No challenge is laid before us to the finding of the learned Single Judge that the Appellant No. 2 was only a shareholder in the company and had no right to challenge the same. The suit is not maintainable for this reason as well.

(iii) Whether the Plaintiff (Appellants) concealed material facts? If so, consequences thereof.

59. The above discussion would show that the resolution dated 12th of January, 2002 was ratified in the meeting of the board held on 23rd of June, 2007.

60. The plaint does not contain even a mention of the meeting of the board of directors and the resolution passed on 21st June, 2002 ratifying the earlier minutes dated 12th January, 2002. It certainly cannot be denied that the same

was a material fact for complete and effective adjudication of the suit.

61. In the pronouncement reported at Rajappa Hanamantha Ranoji Vs. Sri Mahadev Channabasappa and Others, , the Supreme Court held that such tendency deserves to be taken serious note of and curbed by passing appropriate orders including imposition of exemplary costs. In this behalf, the court observed thus:

12. The Appellant had admittedly knowledge of the eviction petition filed by Respondent No. 1 against his brother Respondent No. 1 (sic). On the facts of the case, it was over implication for the first appellate court to observe that what transpired between the Appellant and his brother was of no consequence in so far as the Appellant is concerned. It is evident that the Appellant was set-up by his brother after having lost in the eviction petition upto High Court and the suit was filed in the year 1976 during the pendency of the execution proceedings of the eviction order. We fail to understand what Appellant was doing from 1968 upto 1976. The net result of all this has been that despite lapse of nearly 30 years since filing of the eviction petition, Respondent No. 1 was unable to recover the possession and that is despite the Respondent No. 1 having succeeded up to High Court in the eviction case nearly a quarter century ago. For the aforesaid reasons we dismiss the appeal with costs.

13. It is distressing to note that many unscrupulous litigants in order to circumvent orders of Courts adopt dubious ways and take recourse to ingenious methods including filing of fraudulent litigation to defeat the orders of Courts. Such tendency deserves to be taken serious notices of and curbed by passing appropriate orders and issuing necessary directions including imposition of exemplary Costs. As noticed, despite eviction order having become final nearly a quarter century ago, Respondent No. 1 still could not enjoy the benefit of the said order and get possession because of the filing of the present suit by the brother of the person who had suffered the eviction order. Under these circumstances, we quantify the costs payable by the Appellant to Respondent No. 1 at Rs. 25,000/-.

62. In this regard, reference deserves to be made also to the pronouncements of the Apex Court reported at Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, and S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,

63. In Advocate General, State of Bihar (supra) the court has held that apart from the power to punish for misuse of the courts process, the court has extensive alternative powers to prevent the abuse of process by striking out or staying proceedings or by prohibiting taking of further proceedings without leave.

64. In the judgment reported at Chengalvaraya Naidu (Dead) by L.Rs v. Jagannath (Dead) by L.Rs. and Ors. (supra), the Plaintiff was guilty of concealment of a material document and it was held that more often than not the process of the court is being abused and is utilised as a convenient lever to

retain illegal gains indefinitely. It was held that a person whose case is based on falsehood has no right to approach the court and deserves to be summarily thrown out at any stage of the litigation. The Supreme Court observed as follows:

7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the Plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-1S) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the Appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the Appellants-Defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the Plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

65. We are of the view that valuable judicial time has been caused to be expended on this matter without factual or legal merit.

66. For all these reasons, we find no merits in the appeal and application which are hereby dismissed with punitive costs which are assessed at rupees seventy

five thousand payable to each of the Respondents.

67. The record of the present case shows that the Appellants have deposited a sum of Rs. 50,000/- in terms of the order dated 17th September, 2009 in this appeal. We direct the registry to release the amount deposited by the Appellants with the accrual thereon to the Respondent No. 1. The Appellants shall pay the balance costs awarded by the learned single Judge to the remaining Respondents as well as the costs awarded by us to each of the Respondents within a period of four weeks from today.