

(2020) 10 DEL CK 0072

In the Delhi High Court

Case No : Miscellaneous Application No. 4570 Of 2014 In Civil Suit (OS) No.
1451 Of 2012

Shaheed Memorial Society (Regd) & Ors

APPELLANT

Vs

Promila Kishore & Ors.

RESPONDENT

Date of Decision : 12-10-2020

Acts Referred:

Limitation Act, 1963 — Article 59

Code Of Civil Procedure, 1908 — Section 11, 48, 48(2), 151, Order 23 Rule 1, Order 2
Rule 2, Order 6 Rule 4, Order 39 Rule 4, Order VII Rule 11, Order VI Rule 17

Companies Act, 1956 — Section 108, 111(4)

Limitation Act, 1963 — Section 17

Limitation Act, 1908 — Section 18, 18(2)

Indian Partnership Act, 1932 — Section 42(c)

Citation : (2020) 10 DEL CK 0072

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Prateek Jalan, J

Bench : Division Bench

Advocate : Ashish Mohan, Hem Kumar, Arjun Choudhary, T.K. Ganju, B. Tripathy

Judgement

Rajiv Shakdher, J

I.A. No. 4570/2014

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Preface: -

1. This is an application filed under the provisions of Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 [in short "CPC"] by defendant no. 8 i.e. Capital Land Builders Pvt. Ltd. [hereafter referred to as "Company"].

2. The Company seeks rejection of the plaint on the ground that it is barred by limitation and under the provisions of Order II Rule 2 read with Section 11 of the CPC.

3. The controversy both, in the suit and the captioned application, swirls around the ownership of 500 shares, which, the Company allotted to one, Ch. Bham Prakash [hereafter referred to as "CBP"]. The Company, while not denying that 500 shares were issued to CBP and, thereafter, transferred to the plaintiff i.e. Shaheed Memorial Society [hereafter referred to as "Society"] takes the plea that, thenceforth, these shares changed hands leaving the Society with no shares to its credit.

3.1 The Society claims otherwise and, hence, the dispute. Via this application, the Company seeks striking out of the suit albeit without a trial based on the legal provisions adverted to hereinabove.

3.2 Thus, the application is pivoted on the purported knowledge attributed to the Society concerning the alleged wrong.

4. Therefore, to appreciate the various submissions raised on behalf of the parties by their respective counsel qua this application, certain dates, events and facts are required to be noticed.

Background facts: -

5. The Company was incorporated on 19.06.1959 with an authorized capital of Rs. 1, 00,000/- divided into 1, 000 shares of Rs. 100/- each. The issue and paid-up capital was, however, restricted to Rs. 1, 500/- comprising 15 shares of Rs. 100/- each. Out of the 15 shares, 10 shares were issued to Smt. Satya Chowdhry, the wife of CBP, who was also the first Chief Minister of Delhi. The remaining 5 shares were issued to one, Shri Kishori Lal Sachdeva.

5.1 In course of time, the Company made further allotment of shares. Consequently, on 20.05.1962 the Company allotted 500 shares [as noticed above] in favour of CBP bearing distinctive numbers 61 to 560.

5.2 CBP, in turn, transferred the 500 shares allotted to him in favour of the Society. This is how the Society became the owner of the disputed 500 shares.

6. After the death of CBP on 11.08.1993, an uneasy calm prevailed between the Company and its significant [or so it thought] stakeholder i.e. the Society for about 4 years. In and about April 1997, there was a change of guard in the Society inasmuch as its secretary one, Mr. R.R. Kashyap demitted office and the same was taken up by Mr. Sidharth Chowdhry, one of the sons of the deceased CBP.

6.1 Mr. Sidharth Chowdhry's enquiry about the original share certificates concerning shares held by the Society in the Company led him to inspect the record of the Registrar of Companies [in short "ROC"].

6.2 The inspection revealed a whole lot of deficiencies concerning compliance with the statutory provisions of the Companies Act, 1956 [in short "1956 Act"]. Inter alia, Mr. Sidharth Chowdhry discovered that the Company had not filed its annual returns and resultantly had failed to provide information about the register of members and the details of its shareholders.

6.3 This led to the institution of a company petition under Section 108 and 111(4) of the 1956 Act for rectification of the register of members. The petition was instituted on 04.06.1997, in the Company Law Board [in short "CLB"], and was numbered as C.P. 15/111/97. Importantly, the relief of rectification of the register of members was pivoted on the following broad grounds.

i. The directors of the Company had illegally omitted the name of the Society from its register of members and had transferred the shares owned by it to themselves or their nominees and/or their friends.

ii. The transfer of shares was irregular as conditions precedent, as provided in Section 108 of the 1956 Act, were not complied with.

iii. A properly stamped instrument of transfer was not executed.

iv. The decision concerning the transfer of shares owned by the Society could only be taken by its governing body.

v. The transfer of shares could not be brought about without the Society's consent.

vi. The Society's name was excluded from the register of members only to wrest control of the Company.

7. It is important to bear in mind that apart from the Company which was arrayed as the first respondent in the company petition, the only other respondent was Mr. Janardhan Rai who was arrayed as respondent no. 2 albeit in his capacity as the director of the Company.

8. Insofar as the Company was concerned, in its reply, it denied the assertions made by the Society. Significantly, according to the Company, the Society had ceased to be its shareholder since 1990.

8.1 One of the major planks of the Company's defence was that the transferees of the shares had not been arrayed as parties to the company petition and, hence, it was not maintainable.

8.2 It is important to note that the reply on behalf of the Company was signed by Mr. Janardhan Rai, who, as indicated above, was arrayed as respondent no. 2 in the company petition.

9. The CLB, however, via an order dated 16.03.1998, passed in the aforementioned company petition, directed the Company to produce its register of members for inspection by the authorized representative of the Society. Furthermore, the Company was also directed to furnish a copy of the register of members so that the Society could implead relevant persons as parties to the said proceedings.

10. The record filed seems to suggest that the original register of members was not produced by the Company and, therefore, vide order dated 20.04.1998, the CLB directed the Company to reconstruct the register of members with information already submitted. The CLB further directed the Company to offer inspection to the Society on 14.05.1998.

10.1 Pertinently, on behalf of the Company, Mr. Janardhan Rai filed an affidavit dated 14.05.1998, which inter alia stated as follows.

"... After noting that the Register of Members maintained by the Respondent company was destroyed in a fire accident at its Registered office in the year 1975, the Hon'ble Board directed the respondent company to reconstruct the register of members based on information already furnished and produce the same for inspection to the petitioners on 14.05.98 at 10:30 AM before Bench officer, Northern Bench.

The respondent respectfully submits that finalisation of the complete list of members along with inter-se transfers would take some time because of the fact that these matters pertain to more than 20 years and the information has to be cross checked before incorporating them in the register. Meanwhile, with a view to petitioners to more appropriate applications in terms of the order dated 20.04.98 the respondent furnishes the full details of the 500 shares in question by way of annexure."

11. The Company, thus, having failed to produce the register of members, instead, placed before the CLB, a typed sheet, ostensibly based on its annual returns, which sought to convey that over the years, the Society had transferred its shares to various persons.

12. Given this situation, on 31.05.2002, the CLB directed the Company to produce "transfer instruments" concerning the splitting of the subject shares [i.e. the original 500 shares], which, it claimed, had been transferred by the Society to other persons.

13. While the tussle before the CLB was on, on 10.03.2006, the Society convened an Extraordinary General Meeting [in short "EGM"] through its then-president Mr. Ajay Chowdhry and Smt. Satya Choudhary, the promoter member of the Company. At this EGM, three (3) directors of the Company i.e. Promila Kishore/defendant no. 1, Ankur Sachdeva/defendant no. 6, and O.P. Sachdeva/defendant no. 7 were removed from the board of directors of the Company and replaced with four (4) new appointees i.e. Arjun Chowdhry, Ajay Yadav, Surender

Pal and Abdul Haq Farhan.

14. Once the new management was in place, the Company, initiated steps to rectify the register of members. Assurance, in this behalf, was given by the Company's then-director one, Mr. Ajay Yadav. Mr. Ajay Yadav, as indicated above, was part of the new management which controlled the affairs of the Company.

14.1 This fact was communicated, by the Company to the Society vide letter dated 26.05.2006, wherein, in the operative part, the following was noted.

"Conclusion:

The board of directors shall take on record the shares of the society in the register of members after adhering to the procedures and provisions of the Companies Act, 1956, applicable rules, regulations and/pr department clarification/notification so far as applicable in this situation.

Sd/-

Ajay Yadav

Director"

14.2 As a result of the change in circumstances, the Society on 29.05.2006, informed the CLB, through its advocates that it wished to withdraw the company petition.

14.3 At this hearing, the Company was represented by its chartered accountant one, Mr. T.S.V. Panduranga Sarma. Mr. Sarma not only appeared for the Company and its director in the previous hearing held before the CLB but also signed pleadings in his capacity as its attorney.

15. However, within a few weeks, the then-secretary of the Society Mr. Siddharth Chowdhry moved an application before the CLB on 20.06.2006 for recall of the order dated 29.05.2006, whereby, the company petition had been dismissed as withdrawn.

15.1 A perusal of the application would show that Mr. Siddharth Chowdhry had made allegations against his brother Mr. Ajay Chowdhry. It was inter alia alleged that he had illegally donned the mantle of the president of the Society which, otherwise, belonged to their mother Smt. Satya Chowdhry.

16. Based on Siddharth Chowdhry's application, the CLB, vide order dated 29.06.2006, recalled its earlier order dated 29.05.2006 and restored the company petition to its original position.

17. This shifted the battle for the control of the Company and the subject shares to this Court.

18. On 04.10.2006, Promila Kishore, Ankur Sachdeva and O.P. Sachdeva i.e. defendant no. 1, 6 and 7 herein instituted a suit for injunction and damages in

this Court both, against the Society and the newly appointed directors. This suit is numbered as CS (OS) 1906/2006 [hereafter referred to as the "2006 suit"].

18.1 Pertinently, in paragraph 1.6 of the plaint filed in the 2006 suit, it is averred that both, the register of members as well as the minute books from 1974 onwards, are available with the Company. Furthermore, in paragraph 2.1 of the very same plaint, details have been set forth concerning the transfer of 500 shares, purportedly, carried out by the Society.

"1.6 The Company has been duly maintaining its statutory records including Register of Members, Minutes Books of Director's Meetings and Members Meetings etc. and these old records are still in the possession of the company as follows: (a) Members Register since inception, (b) Minutes Books for the period 1974 onwards."

19. Based on these assertions, on 06.10.2006, the Court, by an ex-parte order passed in the 2006 suit, restrained the defendants who were otherwise on the board of directors of the Company from acting as its shareholders as well as directors.

20. However, by a subsequent order i.e. order dated 20.09.2007, the Court directed plaintiff nos. 2, 3, and 4 in the 2006 suit i.e. Promila Kishore, Ankur Sachdeva and O.P. Sachdeva to place before the Court a complete record of the Company including the transfer deeds concerning the subject 500 shares, backed by an affidavit. The plaintiffs in the 2006 suit were directed to state in the affidavit the details of the transfer of shares brought about by the Society in favour of third parties.

21. Pursuant to this order, O.P. Sachdeva filed an affidavit dated 11.12.2007 wherein he stated in paragraph 12.1 that 9 transfer deeds concerning 230 shares had been executed, in his presence, on 29.01.1974. It is important to note, that, admittedly, O.P. Sachdeva had become a shareholder in the Company on 29.01.1974 and was appointed as a director on the board of the Company on 08.08.1982. Despite which, this crucial information was not articulated by the Company in its reply to the company petition filed before the CLB.

22. On 18.12.2007, counsel for Promila Kishore, Ankur Sachdeva and O.P. Sachdeva, informed the Court hearing the 2006 suit that they did not have, in their possession, any other document apart from the ones which had been filed with affidavit dated 11.12.2007 in conformance with the order dated 20.09.2007.

23. The record shows that transfer deeds were filed on 01.08.2008 qua 260 shares out of a total of 500 shares. The details of transfer, as captured in these documents and as adverted to in the plaint filed in the instant suit action, reveal the following.

S. No.

Transferor

No. of Shares Transferred

Transferee

Date of Transfer

i.

Society

150

CBP

26.02.1968

ii.

Society

30

Susheel Khera [D-4]

29.01.1974

iii.

Society

30

Promila Kishore/D-1

29.01.1974

iv.

Society

30

Sharda Devi

29.01.1974

v.

Society

30

Usha Kiran

29.01.1974

24. In the interregnum, against the order of the CLB dated 29.06.2006, whereby the company petition was restored, a writ petition was filed being W.P. (C)

3544/2007. This writ petition, I was told, was converted into a company appeal C.O.A (S.B) 9 of 2007 vide order dated 14.05.2007.

24.1 This company appeal was allowed on 30.04.2009 with the observation that the company petition shall stand dismissed as withdrawn. The order dated 30.04.2009 was modified on 26.11.2010.

25. On 06.08.2009, the Court set aside its earlier ex-parte order dated 06.10.2006 whereby Arun Chowdhry, Surender Yadav and Abdul Haq Farhan were restrained from acting as the shareholders/directors of the Company. The interlocutory application of Promila Kishore, Ankur Sachdeva and O.P. Sachdeva, in the 2006 suit, was, thus, dismissed.

26. Being aggrieved, an appeal was preferred both, by the Company and the Society, i.e. FAO (OS) No. 337/2009 and FAO (OS) No. 423/2009 respectively. The Division Bench restored the injunction vide order dated 06.11.2009. Consequently, FAO (OS) No. 337/2009 was allowed and FAO (OS) No. 423/2009 was dismissed.

26.1 The restoration of the injunction was ordered inter alia on the ground that the appellants had been able to produce before the Court the original documents which included 5 share transfer deeds concerning 260 shares and the original register of members.

27. The Special Leave Petition [i.e. SLP (C) No. 1277/2010] preferred against the order of the Division Bench was dismissed in limine vide order dated 19.03.2010.

28. On 27.08.2010 and 22.10.2010, Ajay Chowdhry and Arjun Chowdhry i.e. defendant no. 2 and 3 respectively in the 2006 suit preferred RTI applications with the Indian Security Press located at Nashik.

28.1 The RTI applications were filed with the view to ascertain as to when the stamps affixed on the 5 transfer deeds [which concerned the 260 shares filed in the 2006 suit] were printed.

28.2 Replies, were received from the Indian Security Press vide two separate communications dated 27.09.2010 and 22.11.2010. The replies revealed that 50 paise, 25 paise, and Rs. 2 stamps affixed on the transfer deeds were printed, for the first time, in 1978-1979.

29. Since this information did not square-up with the stand that transfer of 260 shares was effected between 1969-1974, the Society decided to file the instant suit action. The present suit was, accordingly, instituted on 18.05.2012.

30. In the written statement filed by defendant no. 6 and 7 [i.e. Ankur Sachdeva and O.P. Sachdeva] on 20.11.2012, the stance adopted was one of complete denial. The accusation of forgery/fabrication was refuted.

31. Two years hence i.e. on 07.05.2014, the Company filed the captioned application.

32. On that very date i.e. 07.05.2014, defendant nos. 4 to 6 in the 2006 suit [i.e. Ajay Yadav, Abdul Haq Farhan and Surender Pal respectively] moved an application i.e. I.A. No. 9315/2014 under Order VI Rule 17 of the CPC to amend their written statement. The amendment sought was to incorporate the factum of forgery and fabrication of the transfer deeds.

32.1 Furthermore, Ajay Yadav, Abdul Haq Farhan and Surender Pal, i.e. defendants nos. 4 to 6 in the 2006 suit, preferred an application under Order XXXIX Rule 4 of the CPC to seek a modification of the order dated 06.11.2009, passed by the Division Bench, in FAO (OS) No. 337/2009. This application was filed on 15.04.2015.

33. In the meanwhile, on account of the pecuniary jurisdiction of this Court being enhanced, the 2006 suit was transferred to the District Court in Patiala House. This direction was issued on 06.01.2016.

34. It appears that Ajay Yadav [i.e. defendant no. 4 in the 2006 suit] filed a criminal complaint concerning the purported forgery of the transfer deeds which morphed into FIR No. 158/2007.

35. Upon a request being made by the Investigating Officer [I.O.], the 5 original transfer deeds were obtained from the District Court record on 01.03.2007 and sent for verification to the Indian Security Press.

35.1 The Indian Security Press vide its report dated 23.05.2017 prepared by its forgery detection cell, indicated, in no uncertain terms, that 25 paisa, 50 paisa and Rs. 2 Stamps were printed, for the first time, only in 1979.

36. Via order dated 03.04.2018, the District Court allowed amendment in the written statement of defendant nos. 4 to 6 in the 2006 suit [i.e. Ajay Yadav, Abdul Haq Farhan and Surender Pal respectively] to the extent incorporated in paragraphs 7, 8, 9 of the preliminary objections of the amendment application.

37. Against this order, CM (M) No. 822/2018 was preferred by Promila Kishore, Ankur Sachdeva and the Company. This Court dismissed the said petition on 08.08.2018 and directed the District Court to endeavour to complete the trial of the 2006 suit by 06.12.2018.

38. Besides this, Promila Kishore, Ankur Sachdeva and O.P. Sachdeva, it appears, had also filed an application, in the 2006 suit, to seek amendment of the plaint. This application was dismissed by the District Court on 14.09.2018.

39. Against the order of dismissal, CM (M) 1157/2018 was filed which was allowed on 24.09.2018 subject to payment of costs of Rs. 80, 000/- to the respondents therein which included the Society.

40. As there was, once again, a change in the pecuniary jurisdiction of this Court, the 2006 suit was transferred to this Court.

41. Promila Kishore, Ankur Sachdeva and O.P. Sachdeva, being aggrieved by the

order of this Court [whereby the decision of the District Court allowing the amendment to the written statement filed on behalf of defendants nos. 4 to 6 in the 2006 suit (i.e. Ajay Yadav, Abdul Haq Farhan and Surender Pal respectively) was sustained], preferred a Special Leave Petition i.e. SLP (C) No. 29564/2018.

41.1 This SLP was dismissed on 19.11.2018, resulting in the order dated 08.08.2018, passed by this Court, being upheld.

42. Likewise, the SLP filed by defendant nos. 4 to 6 in 2006 suit [i.e. Ajay Yadav, Abdul Haq Farhan and Surender Pal respectively] against the order dated 24.09.2018, passed in CM (M) No. 1157/2018 was dismissed on 21.01.2019. Liberty was, however, given to seek expeditious hearing of the 2006 suit.

43. On 07.03.2019, the Single Judge disposed of the application [i.e. I.A. No. 4334/2019] filed by defendant nos. 4 to 6 [i.e. Ajay Yadav, Abdul Haq Farhan and Surender Pal respectively] under Order XXXIX Rule 4 of the CPC in the 2006 suit. The Court, via this order, restrained both the plaintiffs and the defendants in the 2006 suit from selling the properties of the Company till the disposal of the suit. Besides this, the Court directed transfer of another suit pending between the parties in the District Court i.e. CS No. 50/2017 to this Court, albeit with their consent. The rationale for the decision is contained in paragraph 15 and 17 of the order dated 07.03.2019. 43.1 In addition, thereto, it was also directed that the present suit should be heard along with the 2006 suit.

"15. Thus, the applications are disposed of by making absolute till the decision of the suit the order dated 4th February, 2019, insofar as restraining all parties including the plaintiffs and the defendants, from dealing, alienating, encumbering and/or parting with any of the assets or properties of plaintiff no. 1 company.

xxx xxx xxx

17. The counsel for the plaintiffs has no objection subject to the clarification that the Revision Petition already pending is not made infructuous and / or application under Order VII Rule 11 of the CPC in the said suit is considered afresh by this Court."

44. Against the order dated 07.03.2019, passed in the 2006 suit, the Company has preferred an appeal to the Division Bench. This appeal is numbered as FAO (OS) No. 90/2019.

44.1 The said appeal is pending adjudication before the Division Bench. However, vide order dated 29.04.2019, the Division Bench has stayed the operation of that part of the order dated 07.03.2019 whereby the Company was restrained from dealing with its properties. The Division Bench has also indicated, in the very same order, that in case Company decides to sell any of its "landed assets" information, in that behalf, will be furnished both, to the Court as well as to the respondents in the appeal at least two weeks in advance.

Submissions of counsel: -

45. On behalf of the Company i.e. the applicant, arguments were advanced by Mr. T.K. Ganju, Senior Advocate, instructed by Mr. B. Tripathy, while submissions on behalf of the Society i.e. the respondent were advanced by Mr. Ashish Mohan, Advocate.

46. In support of his submission that the suit was barred by limitation, the following facts were alluded to by Mr. Ganju to emphasize the point that the right to sue inured to the Society [on account of its knowledge] much before 25.04.2012, that is, the date when the instant suit was filed.

(i) The company petition i.e. C.P. 111/97 was filed in 1997 based on the fact that inspection of the records of the ROC had revealed that the petitioner's name i.e. the Society's name was not reflected in the returns filed with the ROC's office by the Company. In this behalf, reference was made to paragraph 8(D), (E) and (G) of the plaint. Via this petition, rectification was sought of the register of members. Reliance, in this context, was placed on averments made in paragraphs 14 and 16 of the company petition.

(ii) Thus, even though the Society was made aware, in June 1997, or even prior to that date that the subject 500 shares had already been transferred [including 260 shares qua which transfer deeds are placed on record], no suit was filed.

(iii) The cause of action arose, for the first time, when the Society filed the suit bearing no. 141/1986 against the Company seeking cancellation of the sale deed executed by it.

(iv) The filing of annual returns by the Company constituted constructive notice to the Society about the status of subject 500 shares. Reference, in this regard, was made to annual returns filed by Company between 1968 and 1990.

(v) The Division Bench, in its order dated 06.11.2009, passed in FAO (OS) 337/2009, had also referred to the factum of the Society instituting suit no. 141/1986 in the District Court to claim cancellation of the sale deed.

(vi) The issued and paid-up capital of the Company was increased from time to time. In this context, it was stated that the Company, on the following dates, had issued shares as referred to hereafter.

S. No.

Date

Shares issued by Company

1.

31.07.1959

15

2.

1962

560

3.

1975

815

4.

1983

965

5.

1985

2515

6.

1998

24920

(vi)(a) In 1983, 150 shares, in the form of a rights issue, were allotted to the Society. However, the Society in 1989, transferred not only the balance 5 shares available with it out of an original lot of the subject 500 shares but also 150 shares which came to be allotted to it in the form of rights shares. Resultantly, after 1989, the Society was left with no shares to its credit. This fact is reflected in not only the annual returns of the Company but also in ROC's letter dated 15.05.2007 addressed to the CLB. The annual return dated 30.12.1979 adverts to the fact that the Society on that particular date held only 5 shares. Likewise, the annual return for 2005 is indicative of the fact that the Society did not hold any shares in the Company.

(vii) In the instant suit, it has been averred by the Society in paragraph 4(H) that inter alia the cause of action arose when the 2006 suit was filed. A perusal of the plaint filed in the 2006 suit would show that the case set up was that after 1989, the Society was left with no shares in the Company. In this behalf, reference was made to paragraph 1.9 and 2.1 of the plaint filed in 2006 suit.

(viii) Neither the Society nor Siddharth Chowdhry, Ajay Chowdhry, Arjun Chowdhry and Satya Chowdhry, have filed their written statements in the 2006 suit although they were the only persons connected or related to CBP i.e. the founder of the Society. In the 2006 suit, written statements were filed by defendant nos. 4 to 6 [i.e. Ajay Yadav, Abdul Haq Farhan and Surender Pal respectively] who have nothing to do with the Society or the Company.

(ix) There is an assertion in the instant suit that the cause of action arose when

the transfer deeds concerning 260 shares were produced before the Court in January 2008 pursuant to an order passed in the 2006 suit. Even if limitation were to commence from this date, the instant suit would be time-barred.

(ix)(a) In other words, the cause of action, if any, for filing the instant suit arose both, before and in about June 1997, when the company petition was filed. It arose, according to the Society, when the 2006 suit was filed and it arose, once again, according to the Society, in January 2008, when the transfer deeds concerning 260 shares were produced. If any of these dates are taken as the starting date for limitation, the instant suit has been instituted, clearly, beyond the prescribed period.

(x) The period of limitation commences from the date when the right to sue first accrues. Successive violations do not give rise to a fresh cause of action. [See: Razia Begum vs. Delhi Development Authority, 2013 (139) DRJ 340]

(xi) To ascertain as to when the real cause of action arises, the Court has to carry out a meaningful reading of the plaint. [See: Hardesh Ores vs. Sociedade De Fomento Industrial Pvt. Ltd., 2007 (5) SCC 614]

(xii) The supposed discovery of fraud in September 2010, pursuant to a response received to an RTI application from Indian Security Service, cannot extend the period of limitation. The Society's case is that it did not execute the transfer deed; an aspect which it articulated right since 1997 when the company petition was filed before the CLB.

(xiii) The annual returns filed with the ROC by the Company constituted constructive notice insofar as the Society was concerned. Society could have discovered the transfer of shares if it had exercised due diligence in the ordinary course.

(xiv) The response received by the Society to its RTI application, at best, could only be considered as evidence of the alleged fraud. The RTI application could have been made by the Society in 1997 as well when it discovered that it ceased to be a shareholder in the Company. [See: Yeswant Deorao Deshmukh vs. Walchand Ramchand Kothari, AIR 1951 SC 16]

(xv) The transfer deeds are stamped by the ROC with a date endorsed upon it. The deeds have to be executed within 3 months of the issuance of the transfer form. The transfer of shares is relatable to the annual returns filed from time to time and, hence, the allegation that fraud was perpetrated on the Society is completely baseless.

(xvi) It is not the Society's case that the signature on the transfer deeds is not genuine or that the stamp is not genuine.

(xvii) The Society does not make out the case that the alleged fraud that was discovered in 2010 could not have been discovered earlier. Assuming without admitting that there was no transfer of shares, the original share certificates

should have been available with the Society. The Division Bench, in its order dated 06.11.2009, also referred to this aspect of the matter.

(xviii) Once the right to sue is triggered, the period of limitation commences and the same cannot be suspended. [See: Babulal Vaktaji Shah vs. Chandabai, AIR 1989 Karnataka 221]

(xix) The suit is barred under Order XXIII Rule 1 read with Section 11 of the CPC. Since the plaintiff had already lodged a challenge by way of a company petition qua the transfer of subject 500 shares, which was withdrawn, the present suit will not lie. In this context, it was emphasized though the company petition was restored, the company appeal filed in this Court was allowed and the company petition was dismissed as withdrawn. [See: Judgement dated 09.11.2009, passed in FAO (OS) No. 337/2009, and Ammonia Suppliers Corporation (P) Ltd. vs. Modern Plastic Containers Pvt. Ltd. & Ors., (1998) 94 CC 310.

(xx) The jurisdiction of civil courts is impliedly barred. The Society itself had approached the CLB, therefore, it cannot now file a suit on the same cause of action. [See: HB Stockholdings Ltd. vs. DCM Shriram Industries Ltd., (2010) 156 Company Cases 54]

(xxi) The Society, having withdrawn the company petition, cannot file a suit on the same cause. [See: Sargula Transport Service vs. State Transport Appellate Tribunal Gwalior and Ors., AIR 1989 SC 88]

(xxii) Order II Rule 2 of the CPC would also come in the way of the Society in pressing the reliefs claimed for in the instant suit as they arise from the same cause of action which was articulated in the company petition by the Society.

47. Mr. Mohan, on the other hand, emphasized the fact that at every stage, defendant nos. 1, 6, 7 and the Company chose to keep back correct facts till such time, specific orders were passed by the concerned forum. In this behalf, Mr. Mohan drew my attention to the order of the CLB dated 16.03.1998 whereby the Company was directed to furnish the register of members and order of the CLB dated 31.05.2002 whereby the Company was directed to produce transfer deeds concerning the subject 500 shares.

47.1 Likewise, reference was made to order dated 20.09.2007, passed in the 2006 suit, whereby defendant nos. 1, 6 and 7 i.e. Promila Kishore, Ankur Sachdeva and O.P. Sachdeva were directed to place on record the original transfer deeds.

47.2 This resulted in Mr. O.P. Sachdeva i.e. defendant no. 7 filing an affidavit dated 11.12.2007. In the affidavit, Mr. O.P. Sachdeva claimed that 9 transfer deeds relating to 230 shares were executed in his presence on 29.01.1974 [See: paragraph 12.1 of the affidavit]

47.3 Besides this, O.P. Sachdeva also averred in paragraph 5 of this affidavit that

register of members, since its inception, was in possession of the Company.

47.4 This information, according to Mr. Mohan, was at variance with the stand taken by the Company via affidavits dated 06.04.1998 and 14.05.1998. In these affidavits, the Company took the stand that all its vital documents were destroyed in a fire accident and amongst others, it included the register of members.

47.5 Mr. Mohan also referred to the stand of the Company when it was under the control of defendant nos. 6 and 7 i.e. the Sachdevas. In this behalf, reliance was placed on the affidavit of one, Mr. Janardhan Rai dated 06.04.1998 wherein he took the stand that the records including the minute books of the Company had been destroyed. This affidavit was filed before the CLB. The said affidavit was followed by another affidavit dated 14.05.1998 which was also filed on behalf of the Company wherein a specific stand was taken that the register of members was destroyed in a fire accident.

47.6 Mr. Mohan submitted that in 2006, when CS (OS) 1906/2006 was filed, a contrary stand was taken by the Sachdevas i.e. defendant nos. 6 and 7 as also defendant no. 1/Promila Kishore as would be evident upon reading paragraph 1.6 and 2.1 of the plaint.

47.7 In a nutshell, it was averred that the register of members and minute books after 1974 were available with the Company. Furthermore, the details of the transfer of subject 500 shares were also provided in the plaint.

47.8 Apart from the inconsistent stand of defendant nos. 1, 6, 7 and the Company, the Court ought to be concerned also by the fact that there is no information provided concerning the balance 240 shares. For this purpose, my attention was drawn to the affidavit of O.P. Sachdeva dated 11.12.2007, filed in the 2006 suit.

47.9 It was emphasized by Mr. Mohan that defendant no. 7 i.e. O.P. Sachdeva had falsely averred that 110 shares out of the subject 500 shares were transferred via 4 transfer deeds, executed in his presence on 29.01.1974. The contention was that since the stamps affixed on the transfer deeds pertain to the period spanning between December 1978 and March 1979, the transfer deeds produced were, obviously, forged and fabricated.

48. In respect of the purported fraud alleged to have been committed in the generation of the transfer deeds concerning 260 shares, reference was made to the replies dated 27.09.2010 and 22.11.2010 furnished by the Indian Security Press in response to the RTI applications of the Society dated 27.08.2010 and 22.10.2010.

49. It was submitted, that the Society discovered the fraud only when the responses were received from the Indian Security Press on 27.09.2010 and 22.11.2010. It was, thus, contended that the Society's case fell within Article 59 and Section 17 of the Limitation Act, 1963 [in short "1963 Limitation Act"]. It

was also contended, that if fraud had to be alleged by the Society, it could only be done once it was discovered.

50. The submission was that without material particulars, fraud could neither be alleged [as required under Order VI Rule 4 of the CPC] nor established. Therefore, the contention advanced on behalf of the Company was untenable since the transactions-in-issue which are assailed on the ground of fraud could be assailed only when the material particulars of the fraud were discovered. Thus, the starting point of limitation would be the date when the fraud is discovered. [See M.D. Noorul Hoda vs. Bibi Raifunissa, (1996) 7 SCC 767; Pallav Seth vs. Custodian, (2001) 7 SCC 549; and Syed Shah Mohiuddin vs. Syed Shah Ahmed, AIR 1974 SC 2184.]

50.1 The issue concerning fraud and limitation is a mixed question of law and fact which cannot be decided in an application under Order VII Rule 11 of the CPC. [See Ramesh Desai vs. Vipin Vadilal Mehta, (2006) 5 SCC 638; and Chhotanben vs. Kiritbhai Thakkar, AIR 2018 SC 2447]

50.2 The application preferred under Order VII Rule 11 of the CPC can only be adjudicated upon the basis of averments made in the plaint and the documents appended to it.

50.3 Furthermore, in support of his plea that the instant suit is not barred by the provisions of Order II Rule 2 of the CPC, reliance was placed on the following judgements. [See: Jayantilal Patel vs Vadilal Patel, (2017) 13 SCC 409; and Raju Jhurani vs. Germinda Pvt. Ltd., 2012 AIR SC 3191]. 50.4 It was also emphasized that the submission advanced on behalf of the Company that the civil court could not grant the relief of declaration and that power was conferred on the CLB was untenable. In this context, reliance was placed on the judgement dated 07.08.2008, passed in RFA (OS) No. 444/2006, titled Harsh Malhotra vs. Lal Chand Malhotra and Ammonia Suppliers Corporation case.

50.5 An attempt was also made by Mr. Mohan to distinguish, cause of action from the right to sue in the context of the 1963 Limitation Act. In this behalf, reliance was placed on the judgement dated 31.07.2015, passed in RFA (OS) 107/2017.

51. In sum, the argument was that the application under Order VII Rule 11 preferred by the Company was not tenable and, hence, ought to be dismissed.

Analysis and reasons: -

52. Having heard learned counsel for the parties and examined the record, what has emerged is that there is a tussle between the family members of CBP and the Sachdevas over who would control the affairs and, perhaps, the fortunes of the Company. Apparently, at stake, are valuable immovable properties which are owned by the Company.

52.1 That being said, there doesn't appear to be any dispute that CBP was the founder of the Society and his wife one, Satya Devi, along with Kishore Sachdeva

i.e. the husband of Promila Kishore/defendant no. 1, were the promoter-directors of the Company which was incorporated on 10.07.1959.

52.2 There, is also no dispute about the fact that on 20.05.1962, the Company allotted 500 shares to CBP.

52.3 It, is also an accepted fact that on 24.07.1963, CBP transferred the 500 shares allotted to him to the Society.

53. The disputes between Choudhary's and Sachdeva's, erupted within a couple of years of the demise of CBP who died on 11.08.1993.

54. The Society, it appears, discovered, in and about April-June 1997, that its name, as the shareholder of the Company, does not find mention in the annual return filed by the Company with the ROC. This propelled the Society to file a company petition, in the CLB, under Section 108 and 111(4) of the 1956 Act, on 04.06.1997, for rectification of the record.

55. At that juncture i.e. when the company petition was filed, the Company was, perhaps, under the sway of Sachdevas, therefore, in the reply filed on 21.10.1997 the stand taken was that the shares of the Society had already been transferred. However, the CLB did not let the matter rest at that and vide order dated 16.03.1998 directed production of the register of members of the Company for inspection by the Society.

55.1 Consequently, two affidavits were filed on behalf of the Company dated 06.04.1998 and 14.05.1998 which inter alia alluded to the fact that the records of the Company, which included the register of members, had been destroyed in a fire accident. The affidavit dated 06.04.1998 also adverted to the fact that the share certificate no. 3 bearing distinctive numbers 61-560, which concerned the subject 500 shares, in 1968, was split into 100 scripts comprising 5 shares each.

55.2 Thereafter, despite the order of the CLB dated 31.05.2002, directing the production of the instruments by which the original script was split, the same was not produced before the CLB.

56. In the interregnum, for a brief period, the control of the Company purportedly vested in the Chowdhrys' which is when the Company took the stand, as reflected in the letter dated 26.05.2006, that it would rectify the register of members. This led to the company petition being withdrawn on 29.05.2006.

57. However, on an application being moved by Siddharth Chaudhary, the then-secretary of the Society, the CLB recalled its order and restored the petition via order dated 29.06.2006.

58. It is only thereafter that the Sachdevas filed the 2006 suit wherein an order came to be passed on 20.09.2007 for production of the original transfer deeds concerning the subject 500 shares.

59. It is not in dispute that transfer deeds have been placed on record and details have been furnished by the Sachdevas, in particular, defendant no. 7, via affidavit dated 11.07.2007 with regard to only 260 shares. There is nothing on record concerning the remaining 240 shares.

60. There is also no dispute about the fact the company petition was dismissed as withdrawn via order dated 30.04.2009 [as corrected by order dated 26.11.2010] passed by the Company Judge of this Court.

61. The circumstances of withdrawal of the company petition and its restoration are referred to in the Division Bench order dated 06.11.2009, passed in FAO (OS) 337/2009. The Division Bench was inter alia of the view that since the Society had not pressed its company petition, the injunction order passed by the learned Single Judge dated 06.01.2006 should be restored. It is important to note that in passing the aforementioned order, the Division Bench was impressed by the fact that the Company had produced, if not the entire record, a part of the original record, whereas, the Society, even though it claimed it had the original share certificates in its possession, had not produced the same.

62. The fact that the Society did not produce the original script which referred to the subject 500 shares had significance, to my mind, when the conduct of the parties was being examined at the stage of grant of interim injunction in the 2006 suit. This aspect lost relevance after the Company, via

its affidavit dated 06.04.1998, took the stand that it had split the single share certificate concerning 500 shares into 100 scripts comprising 5 shares each in 1968 and that over time these shares had been transferred to other persons leaving no shares to the credit of the Society after 1989-1990.

63. This stand of the Company and the Sachdevas, at least at this juncture, seems to be facially dented given the report dated 23.05.2017 prepared by the forgery detection cell of the Indian Security Press.

64. As noted above, the position changed when the Indian Security Press, in response to the RTI applications filed on behalf of the Society, reported that the stamps affixed on transfer deeds were printed in 1979; a fact which is evident not only from the replies filed by the Indian Security Press but also from the report dated 23.05.2017 prepared by its forgery detection cell.

64.1 It is because of these subsequent events that vide order dated 03.04.2018 amendments to the written statement of defendant nos. 4 to 6 in the 2006 suit were allowed and the order was sustained right up till the Supreme Court with the dismissal of the SLP on 19.11.2018.

64.2 By this amendment, defendant nos. 4 to 6 were allowed to plead in their defence that the transfer deeds were forged and fabricated documents. It is also on account of this reason that the Single Judge vide order dated 07.03.2019, restrained the parties in the 2006 suit, which includes the Company and the Society, from dealing, alienating, encumbering and/or parting with any of the

assets or properties of the Company.

65. Although, in the appeal filed against the said order of the Single Judge, the interim order is stayed, to the extent it injuncted the Company from dealing with its assets. The Company has been directed to give prior notice of at least two weeks to both the Court and the opposite party if it intends to sell its landed assets.

66. In my opinion, the aforesaid aspect concerning alleged forgery of transfer deeds would require trial as it would bring to fore as to whether or not the said 260 shares out of the total number of 500 shares stood transferred as claimed by the Company and Sachdevas.

67. Therefore, the issue which arises for consideration is: whether the plaintiff could have filed a suit for declaration claiming a right in the subject 500 shares, based on the allegation that it was defrauded, given the aforementioned events?

68. A meaningful reading of the pleadings filed in the company petition instituted before the CLB would show that while the Society was aware of the fact that it no longer was shown as a shareholder in the public records of the Company filed with the ROC, it was unaware of the fact that recourse had been taken to fraudulent means to deprive it of its rights in the property i.e. the subject shares.

68.1 The Society, appeared to be under an impression at the relevant point in time i.e. when the company petition was pending adjudication, that the person who was instrumental in transferring the shares i.e. Raghunath Singh Thakur had acted irregularly and illegally and perhaps beyond the authority conferred upon him. What was concealed from the Society was that the very documents i.e. the transfer deeds which were produced before this Court pursuant to order dated 20.09.2007 were a product of fraud.

68.2 This assertion, made on behalf of the Society, has a ring of credibility in it given the affidavits filed before the CLB on behalf of the Company that its records including the register of members had been destroyed in a fire accident, coupled with the fact, that the split share scripts were not produced despite a specific order of CLB dated 31.05.2002. The U-turn of the Sachdevas' in bringing to fore details of transfer concerning 260 shares out of 500 shares only lend credence to Society's stand that it was unaware of the fraud being employed by them. As a matter of fact, the Society rightly contends that the fraud has not been unravelled to the full extent as even now it is not known as to what happened to the remaining 240 shares.

69. Thus, when the issue is examined from this perspective, Mr. Mohan's contention that Section 17 of the 1963 Limitation Act gives leeway to the party seeking to institute an action to count the period of limitation from the date the fraud is discovered, has merit.

70. The fraud, insofar as the execution of the transfer deeds is concerned, only got discovered once the original transfer deeds were produced by the Sachdevas'

in 2006 suit pursuant to order dated 20.09.2007. It is only thereafter the Society filed RTI applications with the Indian Security Press which led to the discovery of the fraud in August - September 2010.

71. The argument advanced on behalf of the Company that the Society could have filed its RTI applications earlier has no merit as Section 17 of the 1963 Limitation Act, in no uncertain terms, says that the period of limitation shall not begin to run until the plaintiff or the applicant has discovered the fraud or, could with reasonable diligence have discovered the same.

71.1 The expression reasonable diligence, in the context of Section 17 of the 1963 Limitation Act, cannot be meant to convey as to when the exercise for the discovery of fraud was commenced but could only mean when the fraud came to fore after steps were taken to glean and gather the information.

71.2 Thus, the period of limitation provided in Article 59 of the 1963 Limitation Act [which is 3 years] can commence only when the fraud was discovered in line with the provisions of Section 17 of the said Act. The expression "first become known to him" appearing in Article 59 in the context of an action filed based on a fraud employed by the defendant could only mean when the fraud was first discovered or could have been discovered by the plaintiff by employing reasonable diligence.

71.3 That being said, it is important to bear in mind as to whether fraud in actuality has been committed or not can only be known after a pleading, in that behalf, is made which is tested, based on evidence led by parties.

71.4 Therefore, Mr. Mohan, to my mind, is right that it is only when the fraud got unravelled in August-September 2010 could the material particulars as to how the fraud was employed have been pleaded as is the requirement under Order VI Rule 4 of the CPC.

72. A bald averment that fraud had been employed in the generation of the transfer deeds concerning 260 shares without material particulars would not have not cut-ice with the Court at the stage of trial of the suit. The material particulars could not have been pleaded until it was known, firstly, fraud had been committed and secondly, the modus operandi employed to execute the same.

73. The date concerning the discovery of fraud is crucial as the limitation under Article 59 in line with Section 17 of the 1963 Limitation Act would commence only from that date. The argument that fraud with reasonable diligence could have been discovered earlier is untenable in the instant case as there nothing on record to demonstrate that the plaintiffs were aware of the fact that the stamps affixed on the transfer deeds produced in Court were not printed around the same time when the transfer deeds were purportedly executed.

74. It has to be borne in mind that striking out a claim on the ground of limitation prevents adjudication of the claim on merits. Being a statute of repose,

the benefit of interpretation should inure to the claimant where the provision is amenable more than one outcome.

75. Therefore, to my mind, the suit is prima facie within limitation. The plaint cannot be rejected on the ground of limitation without testing the averments made in the plaint and the documents appended thereto at the trial.

76. It is trite to say that to adjudicate upon an application under Order VII Rule 11 of the CPC all that the Court has to look at is the averments made in the plaint and the documents appended thereto. At this stage, the defence lodged qua the action is to be ignored. [See: Dahiben vs. Arvindhbai Kalyanji Bhanusali (Gajra) (D) Thr. LRs and Others, 2020 SCC OnLine SC 562].

"41. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

42. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.³

43. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I,4* which reads as :

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.""

77. The other argument advanced on behalf of the Company that the suit was barred under the provisions of Order XXIII Rule 1 of the CPC has no merit as the emergence of subsequent circumstances concerning the transfer deeds pertaining to 260 shares provided a fresh cause of action to the Society. Therefore, the withdrawal of the company petition in the earlier round would have no bearing on the present suit.

78. One of the crucial issues, which arises for consideration in the present suit is whether or not the transfer deeds concerning 260 shares are genuine documents?

78.1 With the alleged fraud being discovered by the Society, the only avenue, perhaps, which was available to the Society was to approach the civil court and seek a declaration of its rights in the subject shares and cancellation of the transfer deeds concerning 260 shares. This relief could neither have been given at the relevant time by the CLB for reasons of lack of jurisdiction nor could the

Society have ventured to claim any such relief as it was [as it appears, at least at this stage] unaware of the fraud employed on it.

79. Likewise, the argument that there is a bar under Section 11 of the CPC in the continuation of the suit, to my mind, is also untenable for the same reason that discovery of fraud upon unravelling of a concealed document i.e. the transfer deeds gave rise to a fresh cause of action.

80. The other argument advanced on behalf of the Company that the suit is barred under the provisions of Order II Rule 2 of the CPC is also untenable as the Society could not have made a claim for cancellation of the transfer deeds unless the same were produced. The production of the transfer deeds led to the discovery of fraud which, in turn, triggered the period for commencement of limitation for filing the instant action when the purported fraud was brought to light i.e. August - September 2010.

81. Mr. Ganju, in support of the application, has argued that limitation commenced, in this case, when the cause of action first arose in favour of the Society when it discovered that it was not included in the list of shareholders which formed part of the public record. Thus, the argument was that once the limitation commences, it cannot be stalled or put in abeyance. By itself, one can find no fault with this proposition articulated by Mr. Ganju.

82. The 1963 Limitation Act has, however, carved out an exception in the case of a concealed fraud. If a document which impacts the rights of a person in a property is concealed from him, its discovery provides a fresh cause of action for the institution of a suit. This principle has found articulation in a Privy Council judgement rendered in the matter of Punchi Hamine vs. Ukku Menika, LEX/SLCA/0033/1926.

82.1 Briefly, the facts obtaining in this case were as follows.

i. One, Punchirala who was the owner of the land in question had gifted the same in 1883 in equal measure to his 3 sons Appuhamy, Kiri Banda and Punchi Appuhamy. This deed was unregistered. In 1884, that very land was sold and transferred to his 3 sons who were minors.

ii. Subsequently, one of his sons Appuhamy died. At the time of his death, Appuhamy was a bachelor. His other son Kiri Banda married the plaintiff i.e. Punchi Hamine. Kiri Banda died leaving behind Punchi Hamine and their son Sirisena.

iii. In 1913, Punchirala gifted the entire land to his sole surviving son i.e. Punchi Appuhamy. While doing so Punchirala sought to revoke the gift made of the very same land in favour of his 3 children in 1883. However, in the gift deed of 1913, Punchirala did not advert to the sale deed executed by him in 1884 in favour of his 3 sons.

iv. In the same year i.e. 1913, Punchirala instituted a suit against Punchi Hamine

[the widow of Kiri Banda]. This suit was followed by another suit in which Punchirala had, arrayed as defendants, Punchi Appuhamy, Punchi Hamine and her son i.e. Srisena who was represented by Punchi Hamine as his guardian-ad-litem. In this suit, the case set up by Punchirala was via the gift deed of 1913 [whereby land was given exclusively to Punchi Appuhamy], the earlier gift deed of 1883 was revoked. The grievance, thus, articulated by Punchirala was that Punchi Hamine and her son i.e. Srisena were disputing his title to the land and were wrongfully occupying the house which was built on it. According to Punchirala, Punchi Appuhamy was arrayed as the first defendant in the suit only for complete adjudication of the case.

v. The relief sought in the suit was declaration of title, ejectment and damages. Pertinently, even in the suit, Punchirala did not disclose the fact that he had sold the land to his 3 children in 1884 which included Kiri Banda [the husband of Punchi Hamine]. Punchi Hamine, in defence, had stated that the gift deed of 1883 was irrevocable and that the house built on the land was funded by her deceased husband i.e. Kiri Banda. Since Punchi Hamine was not aware of the sale deed of 1884 it was not relied upon to defend the suit.

vi. At the trial of both suits, a settlement was reached whereby Punchi Hamine gave up her claims to the 1983 gift deed against compensation for the house built by her husband on the said land. The suit was thus decreed based on a compromise. Punchi Appuhamy who had been gifted the land by his father Punchirala in 1913 died in 1923. It is at his funeral that Punchi Hamine became aware of the sale deed of 1884 which entitled her as the legal heir of Kiri Banda 1/3rd share in the subject land. Upon discovery of this fact, she filed a suit in her name and as the administrator of the estate of her son who had died in the meanwhile for setting aside the compromise decree on the ground that it had been obtained by fraud and collusion. Consequential relief by way of share in the land was also sought.

vii. The defendant in the suit was the widow of Punchi Appuhamy. The defence raised was that the land had been gifted to her husband Punchi Appuhamy based on which a compromise decree was passed and therefore the suit was barred by res judicata and limitation.

82.2 The Privy Council while dealing with the issue of limitation ruled that discovery of a concealed fraud gave rise to a fresh cause of action and, hence, the limitation would run only when the fraud became known to Punchi Hamine.

83. Interestingly, in this case, it was sought to be argued that the sale deed of 1884 could have been discovered by Punchi Hamine had she searched the register of deeds.

83.1 This argument is very similar to the submission made before me that the alleged fraud could have been discovered had an enquiry been made with the Indian Security Press immediately after the transfer deeds concerning 260 shares were produced in Court by Sachdevas/Company.

83.2 The relevant observations made, in the Privy Council judgement, are extracted hereafter for the sake of convenience.

Observations of Jayewardene, A. J.

"17. ... The present case, in my opinion, falls within that definition of "concealed fraud." The failure of Punchirala to disclose the sale of 1884, which was known to him and was, as the District Judge finds, designedly concealed by him, defrauded the real owners, the widow and the child of Kiri Banda, who were induced to believe that they were not the real owners and that he, Punchirala, was the owner and entitled to possession. Then it is said that the existence of the sale of 1884 could have been discovered with reasonable diligence as the deed had been duly registered. But, as the learned District Judge says, the widow had no reason to suspect that her deceased husband had any other title than the deed of gift of 1883 and no duty was cast on her to examine the register of encumbrances. Registration under our law is not notice to all the world. ... In the present case, there was no occasion for the plaintiff to search the register of deeds, and it was only after she became aware of the existence of the deed of sale in the year 1923, and discovered the fraud, that she obtained a copy of the register. She was entitled to regard the title set out by Punchirala in his plaint in 22,536 as correctly and truly set forth, and to act accordingly. ...

xxx xxx xxx

20. When did the cause of action to have the fraudulent decree set aside accrue? Did it accrue when the decree was entered, or when the concealed fraud was first discovered? It is conceded that the claim would be prescribed unless the action is brought within three years of its accrual, under section 11 of the Prescription Ordinance of 1871. If the rule of law be as contended for by learned Counsel for the appellant, that is, that under our law the cause of action accrues and prescription commences to run from the date of a concealed fraud unless some fresh act is done (which is absent in this case) to prevent the detection of the fraud which would give rise to a fresh cause of action, plaintiff's right to bring the action personally would have become prescribed after three years from 1913, the date of the decree, and after three years from the date of Sirisena's death which took place in 1919, in respect of her claim as successor in title to Sirisena.

As the action was only brought in 1924, both causes of action would, therefore, be barred by prescription. But, in my opinion, the rule under our law in the case of concealed fraud is not as contended for by learned Counsel. A cause of action arises on the discovery of the concealed fraud. It is conceded that under the English Law, as administered by the Courts of Equity, this is so: Thus in *Ralfe v. Gregory*, (1865) 4 D.J. & S. 576 (579). Westbury L.C. said: " As the remedy is given on the ground of fraud, it is governed by this important principle that the right of the party defrauded is not affected by lapse of time, or generally speaking, by anything done or omitted to be done, so long as he remains, without any fault of his own, in ignorance of the fraud that has been committed,

" and in *Bullicol Mining Co. v. Osborne*, (1899) A.C. 351. Lord James of Hereford delivering the judgment of the Judicial Committee said: " The contention on behalf of the appellants that the statute is a bar unless the wrongdoer is proved to have taken active measures in order to prevent detection (of a concealed fraud) is opposed to common sense as well as to the principles of equity." See also *Oolkers v. Ellis* (1914) 2. K.B. 139, where the above cases and others are referred to and followed. But it is said that our Prescription Ordinance applies to all actions whether at law or in equity indifferently and time begins to run from the moment the cause of action accrues, that is on the commission of the fraud, but a fresh cause of action might accrue not on the discovery of the fraud, but on the commission of a positive act in ended fraudulently to conceal the original fraud and the cause of action it gave rise to. This contention, it was strenuously submitted, is supported by the judgment of the Privy Council in the local case of *Dodwell & Co. v. E. John & Co.* (1918) 20 N.L.R. 206; (1918) A. C.563. In this case the Agent and Manager of the Plaintiff Company had paid to the defendants large sums of money which he personally owed the defendants with cheques drawn by him as Agent for the plaintiff. The Agent was held to have committed and concealed a fraud. To properly understand the judgment of the Privy Council it is necessary to state that in the judgments of this Court in appeal, reported in 1915, 18 N.L.R., 133, the Court (Pereira, Ennis, and Shaw J J.- Ennis J. diss.) applied the equitable principle laid down by the English Courts without qualification, and Pereira J. said: " This Court has often pointed out that our Courts (in Ceylon) are Courts of Law and Equity, and it would be quite in order to give here the same relief as is given in English in cases of fraud. The point has hardly been contested. ... In my opinion, the term of prescription should be deemed to have commenced in this case, at the time of the actual detection off the fraud...."

21. But this Court also held that the concealed fraud need not be the fraud of the person who seeks the protection of the Statute of Limitation, but might be that of any person through whom he claims. ... The passages I have cited from the Judgment of Lord Haldane show that the discovery for the first time of a concealed fraud would constitute a cause of action arising later than the cause of action arising at the date of the commission of the fraud. If it were otherwise, it is difficult to understand why His Lordship should have considered the second question, that is, whether the fraud should have been committed by the defendant personally or by some one for whose action he was directly responsible. This question would not have arisen if the discovery of the fraud did not give a cause of action. ... The English principle, which I have stated above, therefore, applies to this case, and the cause of action must be regarded as having accrued on the discovery of the fraud and the cause of action to have the decree set aside is not barred by prescription. I have thought it necessary to discuss the effect of the judgment in *Dodwell's* case, as section 118 of the Trust Ordinance was not referred to at the argument, and its application to the present case was not discussed. But I have little doubt that it applies and must be given

effect to."

83. I must here refer to the judgement of the Supreme Court rendered in *Yeswant Deorao Deshmukh vs. Watchand Ramachandd Kothari*, MANU/SC/0033/1950 which was cited by Mr. Ganju to buttress his argument that the starting point of limitation on the ground of fraud gets shifted only when the fraud committed prevents the revelation of the knowledge of the right available to the litigant to institute an action.

83.1 A close perusal of the facts obtaining in *Yeswant Deorao* case would show that the decree holder's application for execution was rejected on the ground that its execution was sought beyond the period of limitation [i.e. 3 years] which commenced from the date when the earlier application for execution was rejected. In the appeal before the Supreme Court, several grounds were raised by the decree holder to assail the judgement of the Bombay High Court, one of which was, as indicated above, that the judgement debtor had prevented execution of the decree by suppressing the fact that he was the owner of "Prabhat newspaper".

83.2 In other words, the argument advanced was that a discovery of this fact, which, according to the decree holder, was a fraudulent act of deliberate omission by the judgement debtor, gave a fresh starting point of limitation for execution of the decree. The Supreme Court on the first point agreed with the decree holder that the conduct of the judgement debtor was fraudulent within the meaning of Section 48 (2) of the CPC and, therefore, escaped the bar of the 12 years period provided in the said provision for execution of the decree. The relevant observations, in this behalf, are contained in paragraph 15 of the judgement which read as follows.

"48. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 years from

(a) the date of the decree sought to be executed, or,

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed -

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has by fraud or force prevented the execution of the decree at some time within twelve years immediately before the date of the application; or

(b) to limit or otherwise affect the operation of article 183 of the first Schedule to

the Indian Limitation Act, 1908."

"15. The appellant thus escapes the bar of the 12 years' period and he has a fresh starting point of limitation from the date of the fraud for section 48 of the Civil Procedure Code. In other words, the decree-holder has another 12 years within which he can execute his decree."

83.3 On the aspect of applicability of Section 18 of the 1908 Limitation Act [which is *pari materia* with Section 17 of the 1963 Limitation Act], the Supreme Court noted that in the court's below, no such ground had been taken. The Court did not grant the benefit of Section 18 of the 1908 Limitation Act to the decree holder, principally, on the ground that nothing prevented him from taking recourse to execution proceedings as he was aware that the judgement debtor owned properties other than Prabhat newspapers qua which action could have been taken. It is in this context that the Court noted in paragraph 22 of the judgement [based on the language of subsection (2) of Section 18 of the 1908 Limitation Act] that only when the fraud employed prevents the decree holder from making an application to execute the decree that the said provision can come to his aid for triggering a fresh limitation period.

83.4 Clearly, the said judgement is distinguishable on facts and insofar as the first aspect is concerned, to which I have made a reference above, it supports the case of the Society.

84. Likewise, the judgement of the Karnataka High Court in the matter of Babulal Vaktaji Shah and Ors. vs. Chandabai, MANU/KA/0121/1989 is distinguishable on facts. This was a case where the respondent/plaintiff had filed a suit for rendition of accounts qua a partnership firm in which her husband was a partner. Upon the death of her husband, the remaining partners, according to the respondent/plaintiff, assured her that she had been included as a partner in the newly constituted firm - a fact which, later on, proved to be false. This propelled institution of a suit for rendering accounts. 84.1 The courts below, while rejecting her claim in the new firm, sustained her claim for accounts to the extent of the share of her deceased husband. The objection taken by the appellant/defendant that the suit was barred by limitation was rejected by the courts below by taking recourse to Section 17 of the 1963 Limitation Act. The High Court reversed the view of the courts below on the ground that the fraud employed by the erstwhile partners did not prevent the respondent/plaintiff to file a suit for accounts and share in profits upon automatic dissolution of the firm with the death of her husband under the provisions of Section 42 (c) of the Partnership Act.

84.1 In reaching this conclusion, the Single Judge of the Karnataka High Court relied upon Yeswant Deorao case which, as noted above, is distinguishable on facts. A close reading of paragraph 8 of the judgement would show that the respondent/plaintiff had not "alleged or established" that the "machinations" of the defendant had prevented her from seeking accounts. The Court also observed that the respondent/plaintiff had not pleaded or deposed that she could

not ask for accounts or that defendants had, in any manner, prevented her from seeking accounts concerning the former firm. In the instant case, the split share certificate were never produced by the Company/Sachdevas till after this Court, in the 2006 suit, passed the order dated 20.09.2007. As noted above, the judgement is not applicable to the fact situation obtaining in the instant case.

85. In a nutshell, Section 17 of the 1963 Limitation Act [which is *pari materia* to Section 18 of the 1908 Limitation Act], embody the fundamental principles of justice and equity, whereby, a party should not be prevented, from taking recourse to legal proceedings, when certain facts and materials are deliberately concealed from it. The opposite party, which has acted fraudulently, should not be allowed to use the statute of limitation as a shield where fraud is employed. [See: Pallav Sheth vs. Custodian and Others, (2001) 7 SCC 549 at paragraphs 38 to 48]

86. The matter can be looked at from another point of view which has a bearing on the conduct of the parties which filed, in the 2006 suit, the transfer deeds concerning 260 shares which became the subject matter of forensic examination by the forgery detection cell of the Indian Security Press. If, at the trial, it ultimately emerges that a fraud had been employed in the execution of documents-in-issue i.e. the transfer deeds it would have consequences in law for the persons involved in introducing the documents in Court. The principle that "fraud unravels everything" would get triggered at that juncture. [See *Lazarus Estate Ltd. vs. Beasley*, (1956) 1 QB 702. (Cited with approval in *Bhaurao Dagdu Paralkar vs. State of Maharashtra and Ors.*, MANU/SC/0495/2005)]

"13. ... In *Lazarus Estate Ltd. v. Beasley* (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker L J observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722)"

87. Therefore, to close the instant suit, at this juncture, by allowing the captioned application, would cause, to my mind, serious impediment in the examination that the Court would be called upon to conduct about the genuineness of the documents-in-issue i.e. the transfer deeds.

Conclusion: -

88. Thus, given the foregoing discussion, I am of the view that the prayer made in the captioned application lacks merit and hence deserves to be dismissed. It is ordered accordingly.

89. It is, however, made clear that observations made hereinabove will not impact the trial of the suit on merits.