
(1988) 03 KAR CK 0035
In the Karnataka High Court

Shri Balaji Textile Mills Pvt. Ltd. and Another	APPELLANT
Vs	
Ashok Kavle and Others	RESPONDENT

Date of Decision : 03-03-1988

Acts Referred:

Companies Act, 1956 — Section 2 (27), 397, 398, 399, 41

Citation : (1989) 66 CompCas 654 : (1988) ILR (Kar) 1213 : (1988) 2 KarLJ 50

Hon'ble Judges : P.P. Bopanna, J;M. Ramakrishna, J

Bench : Division Bench

Judgement

Bopanna, J.—This appeal arises against the order of the learned company judge in Company Petition No. 8 of 1982, on a preliminary objection raised by the appellants based on the provisions of section 41 of the Companies Act, 1956 (for short "the Act"). The parties are referred to in this appeal by the position assigned to them in the company petition.

2. The petitioners who are shareholders of respondent No. 1-company had filed a petition under the provisions of sections 397 and 398 of the Act against respondent No. 1, the company had respondent No. 2, the ex-director of the first respondent-company. The Registrar of Companies and also the chartered accountants, Messrs M. R. Narayan and Company, were arrayed as respondents Nos. 3 and 4 in view of certain allegation made against them by the petitioners. It is not necessary to go into the various acts of oppression and mismanagement alleged by the petitioners in the company petition since they are not the subject-matter for consideration in this appeal.

3. In the statement of objections filed by the respondents, a plea was taken that the petition is not maintainable in view of the fact that the membership of the petitioners in the first respondent-company is not in accordance with the requirements of section 41 of the Act. It should be noticed at this stage that, in the statement of objections filed by respondents Nos. 1 and 2, they have stated amongst other things:

"The respondents herein dispute and deny that the petitioners or any of them is/ are members/shareholders of respondent No. 1 and therefore, the answering respondents are advised that all valid and available defences open to them in regard to the challenged to the petitioners as members/shareholders of respondent No. 1 need not be placed in extenso in these proceedings but they reserve their right to plead by way of defence in any other appropriate proceedings that may be initiated for rectification in the register of registered members under the Companies Act or by way of suit in an appropriate court of law."

4. But, no specific defence was taken in the statement of objections repudiating the rights of the petitioners who claim to be shareholders of the first respondent-company on the ground that their membership was violative of the requirement of section 41(2) of the Act. However, on the preliminary objections raised by respondents Nos. 1 to 3, the learned company judge framed the following two issues for consideration:

"(1) Whether the petitioners in Company Petition No. 8 of 1982 are members of the first respondent-company? If they are members, whether they constitute minority shareholders?

(2) Alternatively, whether respondents Nos. 2 and 3 and their associates hold shares in excess of two shares and if so to what extent?

5. The learned judge answered the first part of first issue in favour of the petitioners and hence this appeal by the contesting respondents, namely, respondents Nos. 1 and 2. The learned judge recorded the evidence of the petitioners on the first issue. Petitioner No. 1 examined himself and through him as many as 24 documents were marked. In addition to this witness, some other witness, some other witnesses were examined including respondent No. 4, the chartered accountant. Respondents Nos. 1 to 3 did not examine any witnesses but entirely relied on the interpretation of section 41 of the Act.

6. Section 41 of the Act, though not specifically pleaded as a defence to the case of the petitioners, was brought into play by respondents Nos. 1 to 3 in the light of certain answers given by PW-1 in the course of his cross- examination. In answer to one of the questions put in the cross-examination of PW-1, he has stated as follows:

"I did not make an application for allotment of shares. There was no agreement in writing for allotment of shares. M/s. Joth Textiles and Ashok Textiles..."

7. Further, in his re-examination (at page 20 of the paper book), he has stated thus:

"I have stated earlier that I did not make an application for allotment of shares. By that I only meant that I did not file any printed application form. With the permission of the court, the following question was put:

Question.-On what basis were the shares allotted to the members of your family in Balaji Textiles and in regard to which proportion?

Answer.-It had been allotted in proportion to the profit and loss account of Ashok Textiles."

8. On this evidence of P.W.-1 in the company petition, an argument was constructed by learned counsel for the contesting respondents that the petition was not maintainable on the ground that the requirement of section 41(2) of the Act was not complied with by the petitioners before they obtained shares in their names and, therefore, the company petition was not maintainable. This plea was rejected by the learned company judge and hence this appeal.

9. The learned company judge observed in the course of his order that this point is not covered by any precedent, in that no decision of the Supreme Court or any other High Court on this point is found. But, after consideration of the language of section 41(2) of the Act, he came to the conclusion that:

"Public interest would greatly suffer and share transfers particularly in public companies become very difficulty if the first part of sub-section (1) of section 41 of the Act should be held to be a condition precedent. In any event, nothing in the language of sub-section (2) is suggestive that consent in writing cannot be given after the allotment of shares. In the instant case, apart from the pleadings, there are the balance-sheets for the relevant years and the returns filed under the signatures of the 1st petitioner which do constitute consent in writing."

10. He further observed:

"Equally commendable is the view that any form of writing from which it is possible to infer that a member has consented to be a member should be sufficient compliance with the requirement of the said sub-section."

11. This finding of the learned judge was based on some of the documents produced by the petitioners whose authenticity was not impeached by the learned judge. They are the balance-sheets for the periods commencing from August 31, 1979 and August 31, 1980- exhibits P-5 and P-6, exhibit P-70-the minutes of the annual general meeting, exhibits P-23 and P-26 which are the shares scrips signed by one of the petitioners and the annual returns filed by respondent No. 2, exhibits P-13 to P-16. So, on the basis of these documents, the learned judge came to the conclusion that the petitioners had given their consent to become members though the consent which is a condition precedent u/s 41(2) came into existence only after the allotment of shares.

12. On these findings of the learned judge, the short point for consideration in this appeal is:

"Whether compliance with section 41(2) of the Act is necessary to establish that a person is a shareholder of a company?

Whether a person who has been admittedly treated as a member of the company

could be precluded from invoking the jurisdiction of the company court under sections 397 and 398 of the Act?"

13. It should be noticed at this stage that though on the application made by the petitioners, the learned judge has made an order directing respondent No. 1 to produce the register of members, that book was not produced by respondent No. 1. Whether an adverse inference should be drawn against respondents Nos. 1 to 3 for the non-production of the register of members is also another matter for consideration in this appeal.

14. Mr. Raghavan, learned counsel for respondents Nos. 1 and 2, submitted that on the plain language of section 41(2) of the Act, the construction put by the learned judge on that sub-section is not correct and, therefore, the finding of the learned judge that the company petition was maintainable requires to be considered in this appeal. He read certain passages from the English law on the Companies Act to drive home the point that unless the condition precedent as stipulated under sub-section (2) of section 41 of the Act is satisfied, there could not be any valid membership of the company. But, in this case, P.W. 1 having admitted that he had not made any application in writing before he became a member of the company, has not satisfied the condition precedent and, therefore, his petition under sections 397 and 398 is not maintainable. Whatever may be said about P.W. 1 in the light of his deposition in cross-examination, the same cannot be stated with regard to the 2nd petitioner and petitioners Nos. 3 and 4. Petitioner No. 2 holds 1,500 shares, the 3rd petitioner holds 750 shares and the 4th petitioner holds 750 shares. Nothing is suggested either in the statement of objections or in the cross-examination of P.W. 1 that petitioners Nos. 2 to 4 had obtained shares allotted to them without complying with the first requirement of sub-section (2) of section 41 of the Act. Therefore, the petition, in so far as it relates to petitioners Nos. 2 to 4 is maintainable without going into the question whether they have complied with the requirement of section 41(2) of the Act. However, the learned judge having given a finding against the contesting respondents on the requirement of section 41(2) of the Act, that finding may operate against respondents Nos. 1 to 3 if the matter were to go for trial on the merits on the case. Therefore, we have to deal with this appeal on merits.

15. We will first consider the provisions of section 41 of the Act which read as follows:

"41. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members.

(2) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the company."

16. The setting of this section should be noticed. This section comes under Part

II and Part II deals with the incorporation of a company and matters incidental thereto though the marginal note to section 41 reads:

"Definition of `member'".

17. In our view, that by itself does not throw any light on the scope of section 41 of the Act. The word "member" is also defined under sub-section (27) of section 2 of the Act. Sub-section (27) of section 2 of the Act reads as follows:

"`member", in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114."

18. The difference in the language of section 2(27) of the Act which comes under the definition clause in the Act and section 41 dealing with the membership of the company should be noticed. In section 2(27), the word "member" is defined in a very comprehensive manner and in relation to a company includes every type of member but excludes a bearer of a share-warrant of a company issued u/s 114 of the Act. But, in section 41 of the Act, under the heading "membership of company", what is provided is that, in the case of subscribers to the company, they should be deemed to have been members of the company and their names shall be entered in the register of members. u/s 41(2) of the Act, every other person who agrees in writing to become a member of the company and whose name is entered in the register of members shall be a member of the company. So, the first part of section 41 deals with deemed membership and the second part of it deals with persons other than subscribers to the memorandum of the company.

19. Now, the point for consideration is whether this definition of "member" in section 41(2) of the Act would, in any manner, control the meaning of the word "member" in the other provisions of the Act which confer on these member certain substantive rights as shareholders of the company, e.g., sections 397 and 398 of the Act under which this petition is filed. Chapter VI of the Act provides for prevention of oppression and mismanagement of the minority shareholders of a company. u/s 397 of the Act, the minority shareholders can approach this court for relief against acts of oppression. u/s 398 of the Act, they can approach this court for reliefs against acts of mismanagement. The right to apply under sections 397 and 398 is controlled by section 399 of the Act. So, for the purpose of considering whether an application under sections 397 and 398 of the Act is maintainable, the line of enquiry should be as to whether the persons who claim relief under sections 397 and 398 of the Act come within the scope of the provision of section 399 of the Act. Section 399 of the Act reads as under:

"(1) The following members of a company shall have the right to apply u/s 397 or 398:

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than

one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them."

20. A combined reading of sections 397, 398 and 399 of the Act makes it clear that the meaning of the word "member" of a company should be understood in the context in which it is used and that meaning cannot be tagged on to the membership clause in section 41(2) of the Act. The clause which is applicable to test whether a member satisfies the requirement of section 397 and 398 of the Act would be section 2(27) of the Act and not the provision of section 41(2) of the Act. The language of section 41(2) of the Act as it existed prior to the amendment would throw some light on the scope of this provision. Before section 41(2) was amended, the language of that sub-section was "every other person who agrees to become a member of the company.." But, after the amendment, the words "in writing" were incorporated. Where these words were introduced in the Amendment Act of 1960 is found in the report of the Companies Act Amendment Committee which reads thus:

"It has been brought to our notice that in some cases, on the verge of liquidation, entries are made in the register of members of the names of persons who never applied for shares, in order to fasten liability on these persons as contributories. To avoid this contingency, we suggest the addition of the words 'in writing' after the word 'agrees' in section 41(2)." (para 38 of the report).

21. So, this amendment was designed to protect the interests of persons who would have been otherwise fastened with liabilities as contributories, even in the absence of any request for allotment of shares of them. Perhaps there had been innumerable cases where such liabilities have been passed on even in the absence of a request for allotment. To avoid such a contingency, the committee made a recommendation that in case of any dispute about allotment, that dispute could be satisfactorily resolved by insisting on an application in writing for allotment of shares. So, this amendment has a limited scope and has to be interpreted by applying the rule of mischief as understood in the law relating to the interpretation of statutes.

22. What is the effect of section 41(2) of the Act on shareholders whose names are found in the register of members, who have been allotted shares, who have participated in the annual general meeting of shareholders and who have also

been issued share scrips by the company pursuant to a valid resolution? Whether such allotments made to the shareholders are void or voidable, all because they have not applied in writing for allotment of shares as provided u/s 41(2) of the Act?

23. Mr. Raghavan, for the contesting respondents, submits that the language of section 41(2) is plain and does not admit of any doubt and, therefore, the condition precedent for becoming a member of a company is that he should make an application, in writing, and if that condition precedent is not satisfied, subsequent ratification or issue of share scrips in his favour or the entering of his name in the register of members would not validate his membership and if that view is taken, petitioner No. 1 would not be a member of the company who would be entitled to make an application under sections 397 and 398 of the Act. The scheme of the Act does not support his contention and that is clear from the other sections in the Act in so far as they are necessary for the purpose of this appeal, namely, sections 150 and 164 of the Act. Section 150 of the Act enjoins every company to keep in one or more books a register of members entering therein the particulars regarding the name and address of each member, the shares held by each member distinguishing each share by its number and the amount paid or agreed to be considered as paid on those shares, the date at which each person was entered in the register as a member and the date at which any person ceased to be a member. The proviso to the section is not necessary for the purpose of this case. If default is made in complying with sub-section (1) of section 150 of the Act, under the sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which may extend to fifty rupees for every day during which the default continues. Section 150 of the Act is a statutory requirement which enjoins every company to maintain a register of members and in default the company and every officer of the company who is in default would be punishable u/s 150(2) of the Act. In this case, admittedly, the register of members was maintained by the company but the same was not produced by the company before the court in spite of the order of the court. It is not the case of the contesting respondents that in the register of members, the names of the petitioners are not found. So, by their own conduct, they have treated the petitioners as shareholders of the company. u/s 164 of the Act, the register of members, the register of debenture-holders, and the annual returns, certificates and statements referred to in sections 159, 160 and 161 shall be prima facie evidence of any matters directed or authorised to be inserted therein by the Act. As noticed earlier, exhibits P-13 to P-16, P-23, P-26, P-17 and 1- 5 were all documents maintained by the company under the various provisions of the Act. They contain the names of the petitioners in one way or the other as members of the company and, therefore, the entry of their names as shareholders shall be prima facie evidence of their membership of the company. One more document which requires to be noticed is the report of the Registrar of Companies, exhibit P-71. This report of the Assistant Registrar of Companies indicates that petitioners Nos. 1 and 2 were directors of respondent

No. 1 company at the relevant time and this report was made u/s 209A of the Act. In the face of these provisions and the other provisions of the Act in regard to the membership of petitioner No. 1 in respondent No. 1 company, could it be said that merely because petitioner No. 1 had not complied with the requirement of section 41(2) of the Act, his membership should be treated as null and void and, therefore, the petition is not maintainable?

24. In our view, the line of enquiry in a matter like this is to find out as to what extent section 41(2) of the Act controls the other provisions of the Act in respect of rights of members under the Act, and is there any indication in section 41(2) of the Act to take the view that unless the first part of section 41(2) is complied with, a member does not get any right at all under any of the provisions of the Act to enforce his rights as a member of the company.

25. We have already excerpted section 41(2) of the Act. The headnote to section 41 and 42 reads "membership of the company". But the marginal note to section 41(2) reads "definition of member". Mr. Raghavan has placed reliance on this marginal note to drive home the point that unless petitioner No. 1 satisfied the requirement of section 41(2) of the Act, he cannot be treated as a member of the company and consequently he cannot file a petition under sections 397 and 398 of the Act. Now, the scope of a marginal note to a section for the purpose of interpreting the section is well-settled. In *Maxwell on the Interpretation of Statutes*, 12th Edition, by P. St. J. Langan at page 9:

"The notes often found printed at the side of sections in an Act, which purport to summarize the effect of the sections, have sometimes been used as an aid to construction. But the weight of the authorities is to be effect that they are not part of the statute and so should not be considered, for they are inserted not by Parliament nor under the authority of Parliament, but by irresponsible persons."

26. Lord Reid, while commenting on similar marginal notes in *Chandler v. Director of Public Prosecutions* [1964] AC 763, where the side note ("penalties for spying") to section 1 of the Official Secrets Act, 1911, which came up for consideration, observed at p. 789:

"In my view, side notes cannot be used as an aid to construction. They are mere catchwords and I have never heard of it being supposed in recent times and an amendment to alter a side note could be proposed in either House of Parliament. Side notes in the original Bill are inserted by the draftsman. During the passage of the Bill through its various stages, amendments to it or other reasons may make it desirable to alter a side-note. In that event, I have reason to believe that alteration is made by the appropriate officer of the House-no doubt in consultation with the draftsman. So, side notes cannot be said to be enacted in the same sense as the long title or any part of the body of the Act."

27. Sometimes, a marginal note will in any case be inaccurate, and it will then be "on its own merits and of no assistance whatever."

28. Likewise, the headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute, but they may explain ambiguous words, a rule which, whatever the assistance which it may render in construction, cannot stand logically with the exclusion of marginal notes, for headings alike marginal notes are, as Avory J., pointed out in *R. v. Hare* [1934] 1 KB 354, "not voted on or passed by Parliament, but are inserted after the Bill has become law."

29. If this canon of interpretation is kept in view, in our opinion, the marginal note to section 41(1), viz., definition of "member", does not bring out the true scope of section 41(2) of the Act. It appears to us that the marginal note does not in any way control the true scope and effect of section 41(2). The Legislature obviously would not have created a conflict in the meaning of the word "member" by defining it in one way u/s 41(2) and in another way u/s 2(27). Therefore, neither the marginal note to section 41 nor the headnote to section 41 has any implication or bearing on the interpretation of the word "member". Viewed from this angle, it is clear that the word "member" under sections 397 and 398 of the Act will have to be construed in the light of section 2(27) of the Act and the other various provisions of the Act which deal with the rights of members and not with reference to section 41(2) of the Act, and, therefore, it is unnecessary to consider whether petitioner No. 1 has complied with the condition precedent for becoming a member. We have noticed earlier the rule of mischief which was in the mind of the Legislature when section 41(2) was amended. To quote Maxwell again-

"(1st) What was the common law before the making of the Act. (2nd) What was the mischief or defect for which the common law did not provide. (3rd) What remedy Parliament hath resolved and appointed to cure the disease of the commonwealth. And (4th) The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and propriva to commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bona publico."

30. So, the limited purpose of amending section 41(2) of the Act by the incorporation of the words "in writing" was to protect innocent persons from the demands of companies on the verge of going into liquidation. Beside, none of the commentaries which were read out by learned counsel for the contesting respondents excepting the Commentary on the Companies Act by M. S. Ramaiah support the contention of learned counsel. In Palmer's Company Law, Volume I, 23rd Edition, at page 683, the learned author has observed as follows:

"In the case of members other than the subscribes to the memorandum, two essential conditions have to be satisfied to constitute a person a member:

(1) an agreement to become a member; and

(2) entry on the register.

31. These two conditions are cumulative: unless they are both satisfied, the person in question has not acquired the status of member.

32. Thus, an agreement to become a member alone does not create the status of membership; it is a condition precedent to the acquisition of such status that the shareholder's name should be entered on the register. Conversely, the company is not entitled to place a person's name on the register without his having agreed to become a member; a person improperly registered without his assent is not bound thereby and may have his name removed from the register.

33. The agreement to take shares in the case of allotment and of transfer.

34. A person desirous of acquiring shares may express his agreement to do so in one of two forms. He may apply to the company for shares and may have them allotted to him, or he may have the shares transferred to him in pursuance of a contract of sale or other transaction. There is no difference, as Chitty J. said in Nicol's case [1885] 29 Ch. D. 421, between a contract to take shares and any other contract. A formal contract is not necessary. If, in substance, an agreement is made, the form is not material." (underlined* by us)

35. If this commentary is read as a whole, the emphasis is that there should be consent of the member before he is registered as a member. The underlying purpose of section 41(2) is that a person must give his consent in unequivocal terms by applying in writing for allotment of shares. But it does not mean that the company cannot allot the shares even when a person has not complied with the requirement of section 41(2) of the Act. That apart, what is the effect of an allotment made in violation of section 41(2) is considered in the other commentaries on the English Companies Act. In Gore-Browne on Companies, 43rd Edition, it is said: "But it is not absolutely necessary to have a printed form, as a letter applying for shares, or even a verbal application, is sufficient. In para 9.2 in the same book, it is said: "The usual practice in the case of allotments of shares by private companies is to dispense with the letter of allotment and, on allotment, to proceed at once to the issue of a share certificate and entry of the allottee's name in the register of members". This observation goes to show that even compliance with section 41(2) of the Act would not be a mandatory requirement but only directory. It could be further seen in para. 9.3 of that book "If shares are allotted in contravention of the provisions of section 47, the allotment is not void, but only voidable, and then only if the applicant applies within one month after the holding of the statutory meeting, or if the allotment was made after the statutory meeting within one month after the date of the allotment."

36. In Pennington's Company Law, Fourth Edition, it is observed at page 289 under the heading "Membership":

"Although a company will not be compelled to register a transfer which has not

been executed by the transferee, except where the simplified form of transfer now authorised by statute has been used, execution of the transfer is not the only way by which the transferee may signify his agreement to become a member, and he will become one if the company registers the transfer and he either recognises the validity of the registration or acts in the capacity of a member, for example, by attending shareholder's meetings or receiving and retaining dividends."

37. In Charlesworth and Cain on Company Law, 12th Edition, at page 167, it is observed:

"The ordinary law of contract, which usually requires an offer and an acceptance if there is to be an agreement, applies to agreements to take shares in a company. Where a prospectus is issued by the company, otherwise than on a rights issue, the prospectus is not an offer-it is merely an invitation to the public to make offers. An offer is made by the applicant in sending a form of application for shares to the company and it is accepted by the allotment of shares to the applicant. Under normal articles, the power to allot shares is vested in the board of directors."

38. In all these commentaries, the uniform view taken that the allotment of shares is a matter of contract between the parties and that contract could either be express or implied and if a person is treated as a shareholder of the company either by entering his name in the register of members or treating him as a member by any subsequent conduct, his right of membership cannot be questioned by the company on the ground that he has not complied with section 41(2) of the Act.

39. The view that we have taken on the interpretation of section 41(2) finds support from the observations made by Cross on Statutory Interpretation at page 50. The learned author has quoted the following observations of Lord Denning in *Engineering Industry Training Board v. Samuel Talbot (Engineers) Ltd.* [1969] 2 QB 270, at page 274:

"...we no longer construe Acts of Parliament according to their literal meaning. We construe them according to their object and intent."

40. So, having taken the view that section 41(2) was amended primarily for the benefit of the shareholders against the claim of unscrupulous companies, the procedure for becoming a member of a company as provided u/s 41(2) cannot be extended to the other provisions of the Act so as to defeat the rights of the shareholders who have been recognised as shareholders by the company in the register for members, in the return of allotment, in the share scrips and in the balance-sheets.

41. In *Sri Gopal Jalan and Company Vs. Calcutta Stock Exchange Association Ltd.*, the question that came up before the Supreme Court was whether the re-issue of forfeited shares is not an allotment of shares within the meaning of

section 75 of the Act. The Supreme Court has observed as follows (p. 864 of 33 Comp Cas):

"The word `allotment' has not been defined in the Companies Act either in our country or in England. But we think that the meaning of that word is well understood and no decision has been brought to our notice to indicate that any doubt has ever been entertained as to it. As Chitty J. put it in *In re Florence Sand and Public Works Co.* [1885] LR 29 Ch. D. 421 at p. 426:

"What is termed `allotment' is generally neither more nor less than the acceptance by the company of the offer to take shares. To take the common case, the offer is to take a certain number of shares or such a lesser number of shares as may be allotted. That offer is accepted by the allotment either of the total number mentioned in the offer or a less number, to be taken by the person who made the offer. This constitutes a binding contract to take that number according to the offer and acceptance. To my mind there is no magic whatever in the term `allotment' as used in these circumstances. It is said that the allotment is an appropriation of a specific number of shares. It is an appropriation, not of specific shares, but of a certain number of shares.

The process described by Chitty J. is very familiar in company law. Under the Act, a company having share capital is required to state in its memorandum the amount of that capital and the division thereof into shares of a fixed amount: see section 13(4). This is what is called the authorised capital of the company. Then the company proceeds to issue the shares depending on the condition of the market. That only means inviting applications for these shares. When the applications are received, it accepts them and this is what is generally called allotment. No doubt there may be an allotment of shares without an application but no instance exists where that word is used to describe a transaction whereby one becomes a shareholder otherwise than by appropriation to him of a share out of the previously unappropriated share capital."

42. These observations will go to show that if a shareholder who claims relief under sections 397 and 398 of the Act satisfies the company court that he is a shareholder of a company by virtue of allotment of shares in his favour which is evidenced not only by the register of members maintained by the company but also by the statutory returns and documents maintained and filed by the company, it is not open to the contesting respondents to content that for the purpose of sections 397 and 398 of the Act, a shareholder must comply with the condition precedent stipulated in section 41(2) of the Act.

43. For these reasons, this appeal has to fail and is dismissed.

44. As the matter is pending before the learned company judge since 1982 and serious allegations of mismanagement against the company are made in the petition, it is desirable that the company petition is disposed of as expeditiously as possible as also the other preliminary issues.

45. In the circumstances of the case, parties to bear their own costs.