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(1985) 03 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Suit No''s. 1 and 2 of 1973

Surjit Malhan and B.K. Malhan APPELLANT

Vs

M/s. John Tinson and Corporation. and Others RESPONDENT

Date of Decision : 04-03-1985

Acts Referred:

Companies Act, 1956 — Section 159, 163(2), 227, 260, 270
Contract Act, 1872 — Section 10, 29
Trusts Act, 1882 — Section 94

Citation : (1985) 14 ILR HP 135

Hon'ble Judges : V.P. Gupta, J

Bench : Single Bench

Advocate : D.K. Khanna and D. Gupta, for the Appellant; B.R. Tuli, B.K. Talwar and Chhabil Dass, for the Respondent

Final Decision : Dismissed

Judgement

V.P.Gupta, J.—Both Civil Suit No. 1 of 1973 and 2 of 1973 are being disposed of by a single judgment because vide order dated 8-7-1976, these suits were consolidated.

2. In Civil Suit No. 1 of 1973 Mrs. Surjit Malhan while in Civil Suit No. 2 of 1973 Shri B.K. Malhan (husband of Mrs. Surjit Malhan) are the Plaintiffs. Both the suits are for declara tion, permanent injunction and mandatory injunction. In Civil Suit No. 1 of 1973, there are four Defendants, namely (1) M/s John Tinson and Company, (2) Shri R.D. Bhagat, (3) Mrs. Salochana Bhagat and (4) Shri B.K. Malhan while in Civil Suit No. 2 of 1973 there are three Defendants, namely, (1) M/s John Tinson and Company, (2) Shri R.D. Bhagat and (3) Mrs. Salochana Bhagat. To understand the dispute between the parties it is appropriate to narrate the facts so para toly.

C.S.No.l of 1973.

3. The Plaintiff alleges that Defendant No. 1 (M/s John Tinson & Company) is a

private limited company with its registered office at Solan. In 1946 there was a change in the share holders of Defendant No. 1. Defendant No. 4 (Shri B.K. Malhan) along with other members of the family and friends acquired the entire share holding in the company. In 1947 Defendant No. 4 became the Managing Director and continued working in that capacity till 15-1-1971. There was a set back in the business of the company and the company required additional working capital. Shri B.K. Malhan met Defendant No. 2 (Shri R.D. Bhagat) who offiered to make the financial investment in the company. After several meetings between Shri B.K. Malhan and Shri R.D. Bhagat, an agreement was arrived at on 11-9-1970 by which Shri R.D. Bhagat was to have an effective representation on the Board of Directors of the company. Shri R.D. Bhagat desired that the shares of the Plaintiff (Mrs. Surjit Malhan) and Defendant No. 4 (Shri B.K. Malhan) be handed over to him forthwith and the price and the terms and other conditions of the sale were to be fixed on 12-9-1970. Shri B.K. Malhan decided to hand over to Shri R.D. Bhagat the entire shares of the Plaintiff. The Plaintiff hold 1500 ordinary shares (900 shares in her own name and 600 shares jointly held by her with Ors. , her name being the first) and 10 preference shares. Shri B.K. Malhan told the Plaintiff that the Plaintiff would be securing good price for her shares, if these were sold to Shri R.D. Bhagat along with the controlling interest. The Plaintiff, upon this understanding handed over the blank transfer forms duly signed by her along with share scripts to Shri B.K. Malhan who informed the Plaintiff that the blank transfer forms along with share scripts were handed over to Shri R.D. Bhagat on 11-9-1970 and the terms and conditions of sale were to be settled on 12-9-1970. Thereafter the Plaintiff was informed that the fixing of the price and other terms and conditions cf the shares was postponed for some time. The Plaintiff alleges that Shri R.D. Bhagat failed to pay the price and there was no valid transfer/sale in favour of Shri R.D. Bhagat of the Plaintiff''s shares. In fact there was no concluded agreement between Shri R.D. Bhagat and Shri B.K. Malhan. In the alternative it is alleged that the aforesaid agreement of sale is void being without consideration.

4. The Plaintiff also alleges that after taking the possession of the share certificates and blank transfer forms, Shri R.D. Bhagat never settled the terms and conditions. She alleges that Shri B.K. Malhan had no authority to transfer her shares to Shri R.D. Bhagat without consideration and Shri R.D. Bhagat has no interest or title in the aforesaid shares of the Plaintiff. After obtaining the physical possession of the shares Shri R.D. Bhagat and his wife Mrs. Salochana Bhagat obtained the control of the company and became members of its Board of Directors. They are now manoeuvring to sell the immovable assets of the company and have leased out very valuable space in the building situated at 54 Janpath, New Delhi, which is an asset of the company. The Plaintiff asserted her rights but Defendants Nos. 1 to 3 have wrongfully refused to recognise her as a shareholder. On these allegations the Plaintiff has prayed for the relief of declaration to the effect that the Plaintiff is owner of 1500 ordinaryshare sand 10 preference shares with a mandatory injunction against Defendants Nos. 2 and 3

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directing them to hand over the share certificates which they took from Shri B.K. Malhan (Defendant No. 4) to her and also directing Defendant No. 1 to amend the register of share holders. The Plaintiff has also prayed for a decree for permanent injunction against Defendants Nos. 1 and 3 restraining them from disposing of by sale, lease ''mortgages or any other means any immovable property owned by the company.

G.S. No.2 of 1973.

5. The Plaintiff (Shri B.K. Malhan) has made similai allegations as in C.S. No. 1 of 1973 against the Defendants. He alleges that he handed over share certificates of 2230 ordinary shares and 64 preference shares of the company to Shri R.D. Bhagat. These shares were standing in his name. He received a token consideration of rupee one from Shri R.D. Bhagat for the physical handing over of the shares and the terms and conditions of sale were to be settled on 12-9-1970. It is alleged that rupee one was no consideration as these shares were of great value and the contract was void ab initio for lack of valuable consideration. A written contract was to be entered into between him and Shri R.D. Bhagat on 12-9-1970 and Shri R.D. Bhagat and Mrs. Salochana Bhagat wrongfully got the possession of the shares. He had no authority from his wife (Mrs. Surjit Malhan) for the handing over of the shares to Shri R.D. Bhagat. The Plaintiff alleges that he is entitled to the relief of a declaration as well as permanent and mandatory injunction.

6. Defendants Nos. 1 to 3 filed similar written statements in both the suits. They raised several preliminary objections, such as the suit is not maintainable and a suit for rectification of register of members can only be filed under the provisions of the Companies Act. They pleaded estoppel and allege that relief cannot be granted due to non-joinder of the brOrs. and sisters of the Plaintiff (Mrs. Surjit Malhan) who are the joint holders of :he shares with the Plaintiff (Mrs. Surjit Malhan). The suit for permanent injunction is not competent and this Court has no jurisdiction to try the suit.

7. On merits, the allegations in the piaint are denied. It is alleged that the shares were validly sold/transferred to Defendants Nos. 2 and 3 (Mr. and Mrs. Bhagat) by the Plaintiff. They further allege that the company was going from bad to woree and was suffering losses. Shri B.K. Malhan ani Mrs. Surjit Malhan were keen to sell all their shares in the company to Shri R.D. Bhagat to which proposal Shri R.D. Bhagat agreed. For a consolidated consideration of rupee on? Shri R.D. Bhagat agreed to purchase and in fact purchased all the shares of the company which included the shares of Mrs. Sunt Malhan and Shri B.K. Malhan. The necessary informa tion was given to the Registrar of the Companies and Shri R.D. Bhagat had initially to deposit a sum of rupees one lakh to meet the pressing demands of some of the creiditors of the company. No written agreement was to be executed on 12-9-1970 and the transaction of sale was a completed transaction. Mrs. Surjit Mathan (Plaintiff) was a consenting party to the sale and in fact with the express consont of Mrs. Surjit Malhan the sale of the

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shares was made in favour of Shri R.D. Bhagat. The sale transaction was completed on 11-9-1970. It is further alleged that Shri R.D. Bhagat took delivery of the share scripts lawfully and he paid a valuable consideration for the same. The allegation that Mrs. Salochana Bhagat and Shri R.D. Bhagal are keen to dispose of the building situated at 54, Janpath, New Delhi, is denied. The Defendants allege that this Court has no jurisdiction and the Plaintiff ceased to be a member in the company.

8. Replication was filed on behalf of the Plaintiff and in the replication, the allegations of the plaint are re-asserted and that of the written statement are denied.

9. Upon the pleadings of the parties, the following issues were framed on 15-3-1974, in C.S. No. 1 of 1973:

1. Whether there is any misjoinder of cause of action ?

2. Whether the Court has no jurisdiction because the relief of rectification of register of members can only be granted under the provisions of Companies Act, 1956?

3. Whether the suit is time barred, as alleged ?

4. Whether a suit for declaration slmplicitor is barred and no relief can bo granted ?

5. Whether the Court-fee paid is insufficient?

6. Whether the Plaintiff is the owner of the disputed shares ?

7. Whether the disputed shares were handed over to the Defendant No. 2 without consideration and there was no legal and complete transfer of such shares ?

8. Whether the Defendant No. 4 had no authority to hand over the share belonging to the Plaintiff to theDefendant No. 2 ?If so, its effect ?

9. Whether the Defendants Nos. 2 and 3 could not become members of the Board of Directors because they did not acquire qualifying shares within a period of two months ? If so, its effect ?

10. Whether the Defendants Nos. 2 and 3 are likely to sell or otherwise alienate the immovable assets of Defendant No. 1 ? If so, can the relief of permanent injunction be granted ?

11. Whether the Defendants Nos. 2 and 3 can be asked to hand over the share certificates to the Plaintiff and a mandatory injunction to that effect be passed in favour of the Plaintiff?

12. Whether the mandatory injunction can be granted directing the Defendant No. 1 to amend its register of share-holders by substituting the name of the

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Plaintiff for these shares ?

13. Whether for the reasons stated by the Defendants Nos. 1 and 2 the suit is barred by waiver, acquiescence and estoppel ?

14. Whether a fraud was practised by Defendant No. 2 for the reasons alleged by the Plaintiff? If so, its effect ?

15. To what relief, if any, is the Plaintiff entitled.

10. Two additional issues were framed on 4-12-1975:

1-A. Whether the Court has no jurisdiction as alleged?

OPD.

2-A. Whether the suit is bad for non-joinder of necessary

parties? OPD.

11. Thereafter two O.M.Ps. (O.M.P. No. 73 of 1976 in C.S. No. 1 of 1973 and O.M.P. No. 74 of 1976 in C.S. No. 2 of 1973) were filed and vide orders dated 14-7-1976, issue No. 8 was re-cast in two parts, that is:

8-A. Whether the transfer forms were handed over by Defendant No. 4 without any authority of the Plaintiff to Defendant No. 2 ? 8-B. Whether the Plaintiff was present when the blank transfer forms were handed over? If so, what is its effect?

12. In Civil Suit No. 2 of 1973 the following issues were framed on 15-3-1974:

1. Whether the suit is bad for misjoinder of causes of action?

2. Whether the Court has no jurisdiction because the relief of rectification of register of members can only be granted under the provisions of Companies Act, 1956?

3. Whether a suit for declaration simplicitor is barred and no relief can be granted ?

4. Whether the Court fee paid is insufficient ?

5. Whether the Plaintiff is the owner of the shares in dispuie and the Defendants ncs. 2 and 3 can be directed to hand over all the shares certificates to the Plaintiff?

6. Whether the alleged transaction for the sale of shares in favour of the Defendants Nos. 2 and 3 was not completed and the Plaintiff has not been divested of the ownership of such shares?

7. Whether the Plaintiff and his wife have transferred the disputed shares for a consolidated consideration of Re. 1/- to the Defendants Nos. 2 and 3 ? If so, its effect.

8. Whether the Plaintiff had no authority or power to hand over the share

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certificates owned by his wife and other relatives ? If so, did the Defendants Nos. 2 and 3 become the owners of such shares ?

9. Whether the Defendants Nos. 2 and 3 could not become members of the Board of Directors because they did not acquire qualifying shares within a period of two months ? If so, its effect.

10. Whether the control of the Defendant No. 1 was passed on to the Defendant No. 2 ? If so, its effect.

11. Whether the Plaintiff has resigned from the Managing Directorship of the Defendant No. 1 as alleged? If so, its effect ?

12. Whether the Defendant No. 1 be directed to amend its register of share-holders and the name of the plaint iffis to be substituted in place of the Defendants Nos. 2 and 3 ?

13. Whether the Defendants are disposing of by sale, lease, mortgage or in any other manner immovable property owned by the Defendant No. 1 ? Can the Plaintiff be granted permanent njunction to restrain such alienation ?

14. Whether for the reasons stated by the Defendants Nos. 2 and 3 the suit is barred by waiver, acquiescence and estoppel ?

15. Whether a fraud was practised by the Defendant No. 2 for the reasons alleged by the Plaintiff? If so, its effect?

16. To what relief, if any, is the Plaintiff entitled ?

13. Issue No. 8 was split in two parts, that is, 8-A and 8-B vide order dated 14-7-1976 on O.M.P. No. 74 of 1976:

8-A. Whether the transfer forms were handed over by Defendant No. 4 without any authority of the Plaintiff to Defendant No. 2 ?

8-B. Whether the Plaintiff was present when the blank transfer forms were handed over? If so, what is its effect ?

14. Similarly on 4-12-1975, the following two additional issues were framed:

1-A. Whether the Court has no jurisdiclion as alleged?

OPD.

2-A. Whether the suit is bad for non-joinder of necessary parties ? OPD.

15. On 29-4-1982, the learned Counsel for the parties agreed that the market value of the property in question, namely, 54, Janpath, New Delhi as in September 1970 for the purpose of the present litigation, if at all found relevant, be taken as 22 lakhs. It was further agreed that the evidence produced by either party on the point of valuation be completely ignored.

16. In view of the statement of the learned Counsel for the paities, the market

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value of the property, namely 54, Janpath, New Delhi, as in September 1970 will be taken to be 22 lakhs.

17. The parties led evidence in the case. Arguments were heard and records were perused. My findings on the various issues are as follows:

Issue No. 5 in C.S. No. 1/73 & Issue No. 4 in C.S. No. 2/73.

18. Vide my orders dated 15-5-1984, I observed that the Court-fee was insufficient. The Plaintiff was granted time to make good the deficiency. The deficiency in Court fee was made good by the Plaintiff. This issue was decided against the Plaintiff on 15-5-1984. Now the proper Court fee has been paid on the plaint.

Issue No. 2 in both the suits.

19. The learned Counsel for the Defendants did not press this issue. Vide my order dated 15-5-1984 this issue was decided against the Defendants.

Issue No. 4 in C.S. 1/73 &

Issue No. 3 in C.S. 2/73.

20. The Plaintiff has claimed a relief of declaration and also of injunction. The suit was not correctly valued earlier. Vide order dated 15-3-1984 I of served that the suit was for decoration with a consequential relief. In these circumstances, the learned Counsel for the Defendants did not press this issue. As such it is held that the present suit can proceed in this form. This issue is decided against the Defendants.

Issue No. 3 in C.S. No. 1/73.

21. This issue was not pressed by the learned Counsel for the Defendants. Even otherwise the disputed sale is of 11-9-1970. The present suit was filed on 9-1-1973, that is, within a period of three years. Hence the suit is not time barred. This issue is decided against the Defendants.

Issue No. 1-A in both the suits (framed on 4-12-1975).

22. This issue was not pressed by the learned Counsel for the Defendants. In para 16 of the written statement it is admitted that the cause of action arose to the Plaintiff within the jurisdiction of this Court. Hence this issue is decided against the Defendants.

Issue No. 2-A in both the suits (framed on 4-12-1975).

23. The learned Counsel for the Defendants contended that in C.S. No. 1 of 1973 (vide order dated 12-5-1975) the brOrs. and sisters and other family members of the Plaintiff (Mrs. Surjit Malhan) were the joint holders of 600 ordinary shares and as such they were necessary parties.

24. The learned Counsel for the Plaintiff sought permission to withdraw the suit

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with respect to the 600 ordinary shares jointly held by the Plaintiff along with Ors. and she was allowed permission to withdraw her suit with respect to 600 ordinary shares which were jointly held by her vide my order dated 1-6-1984. In view of these facts, the learned Counsel for the Defendants did not press this issue. This issue is decided against the Defendants.

Issue No. 13 in C.S. 1/73 &

Issue No. 14 in C.S. 2/73.

25. The learned Counsel for the Defendants contended that the Plaintiffs were barred from claiming the relief but could not convince me as to how the suits wore birred on the principle of waiver, acquiescence or estoppel. His only contention was that the Plaintiffs did not file the suits at the earliest and he only referred to the conduc. of the Plaintiffs and the circumstances which will be dealt with under issues Nos. 6, 7 and 8. It is, therefore, held that the Plaintiffs are not barred on the principle of waiver, acquiescence and estoppel. The conduct of the Plaintiffs shall be taken into consideration while deciding the main issues pertaining to the ownership of the shares orthe validity of the sale.

Issue No. 14 in C.S. No. 1/73 &

Issue No. 15 in C.S. No. 2/73.

26. The learned Counsel for the Defendants contended that the particulars of fraud had not been mentioned and for this reason no evidence could be looked into. It is correct that the particulars of fraud practised by the Defendant No. 2 have not been mentioned specifically in the plaint. The cumulative effect of the verious facts mentioned in the plaint can be consi dered while deciding the issues of ownership and sale of the shares. The learned Counsel for the Plaintiff also contended that the Plaintiffs in fact relied upon the various factors for proving that there was no valid transfer/sale of shares. This issue is therefore disposed of accordingly and will be treated to be disposed of along with the main issues Nos. 6 to 8 in C.S. No. 1 of 1973 or issues Nos. 5 to 8 in C.S. No. 2 of 1973.

Issue No. 1 in C.S. Nos. 1 and 2 of 1973.

27. The learned Counsel for the Defendants contended that the cause of actions for restraining the Defendants from selling, mortgaging, leasing or in any other way disposing of the buildings and for recision of the alleged contract dated 11-9-1970 could not be joined and injunction could not be granted. The company could not be restrained from dealing with its property.

28. The relief of permanent injunction is a consequential relief. The main relief is regarding the ownership of the shares. I am of the view that the Plaintiff cannot be non-suited and the suit is not bad for misjoinder of causes of action. Issue No. 1 is decided against the Defendants.

Issue No. 10 in C.S. No. 1 of 1973 and Issue No. 13 in C.S. No. 2 of 1973.

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29. The relief of permanent injunction is a consequential relief. This issue requires no decision, because if the Defendants arc held to be the owners of the shares then they will be having all the rights in the shares. In case they are not held to be the owners of the shares then no rights would be available to the Defendants for the transfer of these shares. This issue is disposed of accordingly.

Issues Nos. 6, 7, 8-A, 8-B, 11 and 12 in C.S. No. 1/73 &

Issues Nos. 5, 6, 7, 8-A, 8-B, 10, 11 & 12 in C.S. No. 2/73.

30. All these issues are inter-linked and are being decided together.

31. Mrs. Surjeet Malhan wife of Shri B.K. Malhan and Shri B.K. Malhan along with other members of their families and friends were holding the entire shares of the Company in 1947. Shri B.K. Malhan was the Managing Director of the Company. It is an admitted position that the Company was running into losses in the year 1970.

32. Shri R.D. Bhagat was having his business in Calcutta and required some accommodation in Delhi as the conditions in Calcutta were not good. He gave an advertisement in Hindustan Times dated 9th September, 1970 to the effect that the accommodation in suitable locality for a head office was required by him. Malhans had a company''s building at 54, Janpath, New Delhi and could provide the same for business to Bhagat. Some negotiations and meetings for this deal took place between the parties.

33. Both Plaintiffs and Defendants give different versions regarding their meetings and negotiations for this deal.

34. According to Shri B.K. Malhan (PW 6), Shri R.D. Bhagat (Defendant No. 2) wanted to get an area on lease in Ccnnaught Place, New Delhi for his business. As the Company building at 54, Janpath was lying vacant, therefore, he contacted Mr. Bhagat (Defendant No. 2) and during discussions, Mr. R.D. Bhagat offered to join the Company and invest finances. Shri B.K. Malhan had called the Branch Manager of the Company Shri UmaDutt Pathak (PW 7) and the incharge of the company Shri H.S. Bhalla (PW 8) to Delhi for explaining the Company''s affairs to Shri R.D. Bhagat (Defendant No. 2). Finally it was suggested by him (Shri B.K. Malhan) that Shri R.D. Bhagat and Mrs. Salochana Bhagat could be co-opted in the Board of Directors and Shri R.D. Bhagat should become the Chairman of the Board. A meeting was, therefore, held at 12 noon on 11-9-1970 at the residence of Shri B.K. Malhan and three sets of minutes (Ex. PW 6/3, DW 2/76 and DW 3/6) were prepared. Shri R.D. Bhagat wanted to accept Directorship and Chairmanship after Shri B.S. Malhan had resigned, therefore, Anr. meeting was held at 6 P.M. on 11-9-1970 in which Shri B.S. Malhan resigned from Directorship.

35. According to Shri R.D. Bhagat (DW 2), Shri B.K. Malhan contacted him on 9th September, 1970 and proposed that if he (Mr. Bhagat) was willing to join the Company and take over some shares, then he (Malhan) would offer

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accommodation. Mr. Malhan left the balance sheets etc. for his perusal. On 10th September, 1970 Malhan again met him. He (Bhagat) sought the advice of Shri V. Sagar (DW 4) who was his solicitor, and was advised not to accept the proposal of Mr. Malhan. He (Bhagat), however, went to the office of Shri V. Sagar on 11th September 1970 during morning hours with Mr. Malhan and Mr. V. Raman and told Shri V. Sagar that after considering the difficulties of Mr. Malhan, he had decided to go with the deal and accept the same. He further stated that terms and conditions were settled and a letter Ex. PW 5/1 was typed by Mr. V. Raman in the office of Shri V. Sagar. The receipt of consideration of rupee one (Ex. DW 2/1) was written by Mr. B.K. Malhan (P W 6) on the letter Ex. DW 5/1. After the execution of the documents (Ex. PW 5/1 and DW 2/1) and the payment of consideration of rupee one to Malhans both the Plaintiffs delivered their share scripts along wich transfer forms duly signed by them to him (Shri R.D. Bhagat). The transfer forms of the Plaintiffs are Ex. PW 5/2, PW 5/3 and DW 2/2, DW 2/3. After this at 12-noonon 11-9-1970 a meeting (Ex. PW 6/3) was held at the residence of Shri B. K. Malhan (PW 6). It was agreed to hold Anr. meeting in the after-noon in Company''s office at 54, Janpath, New Delhi. Thereafter Anr. meeting was held at 4.30 P. M. on 11-9-1970 (Ex. DW 2/7, which was attended by Shri B.K. Malhan (PW 6), Mrs. Salochana Bhagat and himself (R. D. Bhagat). He further stated that no meeting was held at 6 P.M. on 11-9-1970 as alleged by the Plaintiffs and no minutes of any such alleged meeting were ever prepared.

36. In the written statement, the Defendants have alleged that the Plaintiffs wanted the Defendants to take over the control of the company as ihey (Plaintiffs) were being constantly harassed by many depositors of the company, which was facing financial difficulties.

37. The cumulative effect of the parties statements and the pleadings is that some negotiations took placc between Shri B.K. Malhan and Shri R.D. Bhagat with respect to the transfer of the shares of the company from Malhans to Bhagats.

38. Shri V. Sagar (DW 4) also slated that he had given his legal advice to the effect that the consideration of shares should be only rupee one which was agreed upon by the parties. The other terms and conditions suggested by him were also agreed by the parties.

39. Now both the parties admit that a meeting was held at 12-Noon on 11-9-1970 at the residence of Shri B.K. Malhan and three iyped copies of the minutes of this meeting were prepared. These minutes are signed by Shri B.S. Malhan (father of Shri B.K. Malhan) as Chairman and the meeting was attended by Shri B.S. Malhan and Shri B. K. Malhan. The minutes of this meeting (Ex.PW 6/3) read as follows:

Present:

Shri B.S. Malhan (in the Chair) Shri B.K. Malhan.

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1. The minutes of the last meeting were read and approved.

2. Mr. B.K. Malhan reported that he had been able to pursuade Shri R.D. Bhagat, a prominant and well known businessman to join the company with a view to strengthen the company''s finances as also to improve the business all around and make it self-sufficient, and in the circumstances proposed that the following additions be made to the Board:

1. Shri Ripu Daman Bhagat, 9, Link Road, New Delhi, and

2. Shrimati Sulochana Bhagat, 9, Link Road, New Delhi.

Seconded duly by Shri B.S. Malhan, the following resolution was passed: RESOLVED that Shri Ripu Daman Bhagat and Shrimati Sulochana Bhagat of 9, Link Road, New Delhi be co-opted DIRECTORS of the company. Mr. B.K. Malhan further proposedihat Shri Ripu Daman Bhagat be invited to be the Chairman of the Company. Seconded duly by Shri B. S. Malhan, the following Resolution was passed: RESOLVED THAT Shri Ripu Daman Bhagat be and hereby appointed Chairman of the company. Mr. B.K. Malhan was asked to intimate to Mr. and Mrs. R.D. Bhagat these appointments and also asked to advise the necessary authorities.

3. Mr. B.K. Malhan then moved that the operation of the Bank accounts be changed in view of these additions to the Board and accordingly suggested that the bank accounts be hereinafter operated singly by Shri R.D. Bhagat or jointly by Shri R.D. Bhagat and Shri B.K. Malhan. Accordingly the following resolution was passed: RESOLVED that the Bank of India account at Janpath New Delhi hereinafter be operated singly by Shri Ripu Daman Bhagat or jointly by Shri Ripu Daman Bhagat and Shri B.K. Malhan for and on behalf of the company. RESOLVED that the Union Bank of India, Connaught Place, New Delhi, hereinafter be operated singly by Shri Ripu Daman Bhagat or jointly by Shri Ripu Daman Bhagat and Shri B.K. Malhan for and on behalf of the company. RESOLVED that the National and Grindlay''s Bank Limited, Parliament Street (Lloyds Branch) New Delhi hereinafter be operated singly by Shri Ripu Daman Bhagat or jointly by Shri Ripu Daman Bhagat and Shri B.K. Malhan, for and on behalf of th e company. RESOLVED further that the resolutions hereto before passed in this connection are hereby cancelled. Mr. B.K.Malhan was directed to forward these to the Banks conoerned and further requested to comply with any of the proced ures required by them for giving effect to these resolutions.

4. The meeting there after terminated with a vote of tha nks to the Chair.

Sd/

B.S. Malhan

Chairman

Thus Shri R.D. Bhagat and his wife Mrs. Sulochana Bhagat were co-opted as Directors and Shri R.D. Bhagat wa? appointed as a Chairman of the company.

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Necessary information was to be sent to the authorities/The Bank accounts of the company with the B?nk of India, Union Bank of India and National and Grindlay''s Bank Ltd. were to be operated by Shri R.D. Bhagat singly or by Shri R.D. Bhagat and B.K. Malhan jointly: Thr banks were to be informed about this resolution.

40. The minutes of the meeting clearly suggest that the real intention of the parties was to hand over the control of the company to Shri R.D. Bhagat and Mrs. Sulochana Bhagat.

41. The Plaintiffs'' version is that the share scripts along with transfer deeds were handed over to Shri R.D. Bhagat (DW 2) during the evening hours of 11th September, 1970, but the Defendants'' version is that these share scripts along with transfer deeds were handed over to Shri R. D. Bhagat (DW 2) by Shri B.K. Malhan (PW 6) before 12-noon meeting (Ex. PW 6/3).

42. The document (letter) Ex. PW 5/1 on which the receipt Ex. DW 2/A is scribed by Shri B.K. Malhan (PW 6) reads "as follows :

Ex.PW 5/1

54, Janpath, New Delhi.

September 11, 1970.

Dear Mr. Bhagat.

John Tinson & Co. Private Ltd.

This is to confirm that I have agreed to sell and have sold to you and/or your nominees all the ordinary and preference shares of John Tinson & Co-Private Ltd. for the price of Re.l/-(rupee one only). The terms and conditions of sale as agreed upon between ourselves will be signed by us tomorrow.

Yours sincerely, Sd/-

(B.K. Malhan)

Ex. DW 2/1

Shri R. D. Bhagat, 9, Link Road, New Delhi.

Reed. Re. 1/- (rupee one) only the consideration for the shares as mentioned above.

Sd/-

(B. K. Malhan)

11-9-1970.

43. It is admitted that Ex. PW 5/1 was typed in the office of Mr. V. Sagar (DW 4) on the 11th September, 1970 and the same was signed by Shri B. K. Malhan (PW 6). Similarly the receipt Ex. DW 2/1 was written and signed by Shri B. K. Malhan

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on 11-9-1370.

44. According to the Plaintiffs these documents were executed during the evening hours of 11-9-1970, while according to defendents these were executed during noon hours, that is, before the 12-noon meeting of 11-9-1970 (Ex. PW 6/3).

45. Now Ex. PW 5/1 and Ex. DW 2/1 mention that Shri B.K. Malhan had agreed to sell and had also sold to Shri R.D. Bhagat or his nominee all the ordinary and preference shares of the company for a price of Re. 1/- only. The terras and conditions of sale as agreed upon between the parties were to be signed by them on 12-9-1970. The consideration of rupee one for the aforesaid shares was received by Shri B.K. Malhan.

46. In Ex. PW 5/1 the language "the terms and conditions of sale as agreed upon between ourselves will be signed by us tomorrow" can only mean that the terms and conditions of sale were already settled between the parties and the same were only to be reduced to writing on 12-9-1970. It is also clear from the language cf Ex. PW 5/1 and Ex. DW 2/1 that the sale price of the shares was fixed at rupee one and the same was received by Shri B. K. Malhan.

47. Shri B.K. Malhan was holding 2230 equity shares and 64 preference-shares, and the share scripts along with blank transfer forms duly signed by him were handed over to Shri R.D. Bhagat. Mrs. Surjet Malhan was the owner of 900 equity shares and 10 preference shares and she had also handed over the blank transfer forms duly signed by her along with share scripts to her husband (Shri B.K. Malhan) for giving the same to Shri R.D. Bhagat. Thus Shri R.D. Bhagat came in possession of the blank transfer forms duly signed by Shri B.K. Malhan and Mrs. Surjit Malhan along with the shares scripts. The result was that Shri B.K. Malhan and Mrs. Surjit Malhan performed their part of the contract and completed all the formalities which they were required to do for the transfer of shares to Shri R. D. Bhagat.

48. The Plaintiffs, however, allege that Shri R D. Bhagat took possession of the blank transfer forms as well as the share scripts on an understanding that a document incorporating the terms and conditions of the sale was to be executed on 12-9-1970. It was contended that there was in fact no sale/ transfer of the shares in favour of the Defendants because the terms andconditions were nevtr reduced to writing on 12-9-1970 or thereafter. Ex. PW 5/1 was only an agreement to ssll and thsre was no completed sale/transfer. The Defendants failed to pay the consideration or the price of the shares. The Plaintiffs were the victims of a confidence trick and there was in fact no concluded contract between the parties. The learned Counsel also referred to the various sections of the Companies Act and contended that the transfer forms were never considered or approved in the meeting of the Company. The necessary changes in the names of the share-holders were not made in the statutory books of the company and the Registrar of the Company was never informed about these changes. He

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contended that the alleged meeting of 4.30 p.m. on 11-9-1970 (Ex. DW 2/4) was never held and the minutes of this meeting are forged. He also contended that a meeting was held at 6 p.m. on 11-9-1970 (Ex. DW 2/78) but because the entries in the minutes book were forged, therefore, no mention of this meeting was made in the minutes book. His main contention was that the entries in the minutes book were made in the year 1974 and were antedated. The minutes book was in possession of the Defendants from 15-1-1971 onwards and. prior to 15-1-1971 the minutes of the alleged meeting held on 11-9-1970 at 4.30 p.m. were not written in the minutes book. He contended that Mrs. Sulochana Bhagat did not appear in the witness box. The minutes of the meeting held at 4.30 p.m. on 11-9-1970 (Ex. DW 2/4) did not tally with the copy of the meeting which was produced with O.M.P. No. 117 of 1973 as Annexure ''Z'' According to Ex. PW 5/1 the terms and conditions of sale were to be settled and reduced to writing but the same were never reduced to writing. The oral evidence regarding the terms and conditions was vague and uncertain, therefore, such a contract became un-enforceable. He referred to sections 10 and 29 of the Contract Act and contended that there was no valid transfer of shares in favour of the Defendants. The learned Counsel also contended that the shares could not be transferred without the previous sanction of the Board of Diroctors and the Defendants had not become tte owners of the shares.

49. The learned Counsel for the Defendants contended that in the plaint, the Plaintiffs had admitted that the transaction of sale was a completed transaction. The dispute between the parties was with respect to the price only. The learned Counsel contended that the main grievance of the Plaintiffs was about the non-payment of the price or consideration for the sale of the shares, and for this reason the contract was alleged to be void. He contended that the only remedy available to the Plaintiffs could be for the recovery of the price. Without admitting that the price or the consideration for the transfer of the shares was not paid, the learned Counsel contended tha t the Plaintiffs had sold the shares to the Defendants for a consideration of rupee one and giving the possession of the share scripts along with the blank transfer forms was sufficient to prove a completed sale transaction. It was contended that in the meeting of 12-noon held on 11-9-1970 (Ex. PW 6/3) it was admitted that the share scripts were given to the Defendants and in Ex. PW 5/1 read with Ex. DW 2/1 it was further admitted that the sale consideration was rupee one which had been received by the Plaintiffs. The learned Counsel contended that the terms and conditions of the sale were already settled orally and the patties could dispense with the writing of any fresh documents because both the parties had performed their respective parts of the contract. It was contended that in the meeting of 4.30 p.m. on 11-9-1970 the transfer of the shares was recognized. The subsequent conduct of the parties also proved that the Defendants were the owners of the shares and were accepted as such by the Plaintiffs. It was contended that the company was running in great losses and there were heavy demands from various quarters upon the company. The Malhans (Plaintiffs) were perturbed and

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wanted to be relieved of their burden. They agreed to transfer all the shares to the Defendants for a nominal sum of rupee one. The nominal consideration had to be paid because without consideration the transfer could not be legal. It was contended that no meeting was held at 6 p.m. on 11-9-1970. He referred to the various seciions of the Sale of Goods Act and also contended that the dispute at the present moment was between ''Malhans'' and ''Bhagats'' only. The various provisions of the Companies Act were not attracted at this stage because between the transferer and the transferee, the transfer was a completed transaction. Even if some provisions of the Companies Act were infringed still the transfer of ownership of shares between the Plaintiffs and Bhagats was a completed transaction. The learned Counsel also contended that the entries in the minutes book were genuine.

50. According to the writing (Ex. PW 5/1) the parties had agreed to reduce the terms and conditions of sale as agreed upon between themselves to be signed by them on 12-9-1970, but the parties never executed or signed any further document on 12-9-1970. From the subsequent conduct of the parties, it is proved that the parties had in fact given up the idea of signing or drawing up a formal document on 12-9-1970. The condition of drawing up of an agreement can always be waived by the consent of both the parties and the conduct of the parties for waiver of such a condition can always be looked into.

51. In AIR 1968 S.C. 1028 (Kollipara Sriramulu v.T. Aswatha Narayana and Ors.), a suit for specific performance on tbe basis of an oral agreement had been filed on the grounds that on July 6, 1952, there was a meeting of all the malo partners of the firm at the house of Desu Virabhadrayya. In that meeting there was an agreement reached between all of them (except the Appellant) and himself that they should sell to him their shares (and the shares of those whom they represented) at the rate of Rs. 3375/- for 8 shares. The total number of shares was 160. A written agreement was to be drawn in two or three days and the mode of payment of the purchase money was to be settled later. It was further agreed that the sale deeds were to be executed in three months. In pursuance of the agreement all the co-sharers except Defendants 1 to 9 executed the sale deeds and the Plaintiff thereby became the owner of 98 shares. It was pleaded that as the formal agreement had not been executed as agreed upon, no concluded contract had been arrived at between the parties. The learned Judges of the Supreme Court in para No. 3 of their judgment held:

The question in the present appeals is whether the execution of a formal agreement was intended to be a condition of the bargain dated July 6, 1952, or whether it was a mere expression of the desire of the parties for a formal agreement which can be ignored. The evidence aduced on behalf of the Respondent No. 1 does not show that the drawing up of a written agreement was a pie-requisite to the coming into the effect of the oral agreement. It is, therefore, not possible to accept the contention of the Appellant that the oral agreement was ineffective in law because there is no execution of any formal

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written document. As regards the other point, it is true that there is no specific agreement with regard to the mode of payment but this does not necessarily make the agreement ineffective. The mere omission to settle the mode of payment does not affect the completeness of the contract because the vital terms of the contract like the price and area of the land and the time, for completion of the sale were all fixed.

It is also held:

that a mere reference to a future formal contract will not prevent a binding bargain between the parties. The fact that the parties refer to the preparation of agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract.

52. In 1916 AER 448 (Panaoutsos v. Raymond Hadley Corporation of New York) the seller had agreed to deliver goods by instalments to the buyer on the condition that he shall open a confirmed letter of credit in favour of the seller. The buyer opened an unconfirmed letter of credit and with full knowledge of that fact the seller supplied him the first instalment of the goods. He refused to supply further instalments for the reasons that confirmed letter of credit had not been opened. The learned Judges held that he waived that condition when he supplied the first instalment of goods and if he wanted to make that term the essence of the contract, he should have given a reasonable notice of his intention to insist upon the performance of that condition to the buyer to enable him to comply with that condition.

53. In the present case from the evidence it will be evident that the Defendants (Bhagats) had performed their obligations on 14-9-1970 when they opened a new account and deposited rupees one lakh in this new account. They also began operating this new account.

54. The parties in fact performed their respective obligations for the transfer of shares. They knew and understood the terms and conditions which were agreed upon between them as mentioned in Ex. PW 5/1. The price of rupee one for transfe of the shares had already been fixed and the Plaintiffs had deliver ed their share scripts with transfer forms after the receipt of this consideration. None of the parties had any time asserted that the drawing up of a formal agreement on 12-9-1970 was an essential condition of the contract and should be performed. No notice of the same was ever given by the Plaintiffs. The Plaintiffs as well as the Defendants by performing their respective parts of the contract waived the condition of drawing up of formal agreement on 12-9-1970 as stipulated in Ex. PW 5/1. The Plaintiffs cannot take any benefit from their default or non-compliance. If they wanted the execution of a formal agreement then they should have issued a notice to Bhagats (Defendants) to get a formal agreement drafted and signed on 12-9-1970. The mere non-execution of a formal agreement on 12-9-1970 is not sufficient to prove that there was not a completed contract between the parties.

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55. According to the minutes of the meeting (Ex. PW 6/3) held at 12-noon on 11-9-1970 (an admitted meeting) Shri R. D. Bhagat was appointed as a Chairman of the Company and was also authorised to operate the bank accounts singly or jointly with Shri B.K. Malhan. Thus Shri R.D. Bhagat was appointed as a Chairman and was given the control of the finances of the company. He along with his wife Sulochana Bhagat were also co-opted as Directors of the company. This resolution was proposed by Shri B.K. Malhan and was seconded by his father Shri B.S. Malhan (new deceased), who was the Chairman of the Company. Thus Shri B.S. Malhan actually vacated the office of Chairmanship from 12-noon on 11-9-1970. The share scripts along with blank transfer forms duly signed by the Plaintiffs were also handed over to Shri R.D. Bhagat and a sum of rupee one was received by the Plaintiffs for this sale/transfer of the shares. Mrs. Surjit Malhan (PW. 5) states that she handed over the share scripts with blank transfer forms on the asking of her husband (Shri B.K. Malhan). She herself never had direct negotiations with Shri R.D. Bhagat. She is a literate lady and was knowing all the affairs of the company. If she was persuaded by her husband (Shri B.K.Malhan) to part with the shares or to sign the blank iransfer forms then it was a mutual arrang-ment between the husband and the wife. The fact that the shares certificates of both Shri B.K. Malhan and Surjit Malhan were handed over to Shri R.D. Bhagat proves that both the husband and wife were consenting parties for the transfer of their shares to Shri R.D. Bhagat. There is no other oral or documentary evidence except Ex. PW. 5/1 and Ex. DW. 2/1 to prove that the sale price of the shares was fixed or agreed to be fixed at a certain price. The adequacy or inadequacy of the sale price is to be judged by the concerned party only.

56. Even otherwise looking to the various circumstances, it appears that in September 1970, the affairs of the company were not satisfactory. The Plaintiffs have also mentioned in the plaint that the finances of the company were not good. This fact is also evident from the various balance sheets produced on record.

57. Shri Jawahar Lal Kumar (PW. 9) proves the value of shares and had prepared a report Ex. PW 9/1. According to Annexure-A of the report Ex. PW. 9/1 the market value of the building at 54, Janpath, was 31 lakhs and the total value of the assets of the company was Rs. 48,90,422/-. There was a dispute regarding valuation of the property and on 29-4-1982 it was agreed that for the purposes of the present litigation the price of the property at 54, Janpath, New Delhi in September, 1970 br teken as Rs. 22 lakhs. Thus calculating the pries of the building at Rs. 22 lakhs the assets of the company according to the report of Shri Kumar (PW. 9) were Rs. 39,90,422/-. The liabilities of the company as per Annexure B of the report Ex. PW. 9/1 were 39.78 lakhs. The surplus assets with the company were therefore only 0.12 lakhs. Mr. Kumar (PW. 9) has mentioned that the company suffered losses of Rs. 2.50 lakhs from 1st of January 1970 to September 1970 and the loss in the whole calendar year was Rs. 5,40,199/-. He states that he had not taken into account the various items over-drawn from the

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banks which amounts were 4.15, 4.16 and 1.20 lakhs. Thus taking into consideration these few items, the value of the shares of the company in September 1970 could only be towards minus. There was also an unpaid liability of Rs. 50/- per share on the equity shares and this liability was to the tune of Rs. 1,69,600/-. There were also certain pressing demands from the depositors. In these circumstances, it is proved that the company was running into huge losses in September 1970 and the value of the shares of the company was minus or in other words, the shares were of no value. A purchaser of the thares would have only purchased certain liabilities which wsre to be discharged by the company. In theee circumstances the fixing of consideration of rupee one as the price for the shares could not be said to be inadequate in September 1970.

58. The next controversy is about the alleged meeting of 4.30 P.M. on 11-9-1970. The Plaintiffs allege that this meeting was never held while the Defendants assert that this meeting was held. The minutes of this alleged meeting (Ex. DW. 2/4) reveal that it was attended by S/Shri R.D. Bhagat, Chairman, Shri B.K. Malhan, Managing Director and Mrs. Sulochana Bhagat, and the minutes are recorded by Shri R.D. Bhagat as Chairman as follows:

Minutes of the meeting of the Directors of M/s John Tinson & Co. Private Ltd. held on Friday the 11th September, 1970 at the office of the Company at 54, Janpath, New Delhi at 4.30 p.m.

Present:

(1) Shri R.D. Bhagat (Chairman)

(2) Shri B.K. Malhan, Managing Director

(3) Smt. Sulochana Bhagat

Shri R.D. Bhagat took the chair.

(1) Minutes of the last meeting were read and approved. It was noted that the proceedings of the Directors meeting dated 24th June, 1970 and the first meeting held to-day had not been recorded in the minute book but the proceedings of the meeting dated 24th June, 1970 written in hand and duly signed by three Directors and the typed proceedings of the said meeting dated 11-9-70 duly signed by the Chairman thereof are attached to the minute book. It was decided that the said proceedings be duly recorded in the minute book and the said hand-written proceedings and the typed proceedings be also preserved.

(2) Shri B. K. Malhan stated that in accordance with the resolution passed by the Directors in the forenoon today he had intimated Shri R.D. Bhagat and Smt. Sulochana Bhagat of their co-option as Directors and the appointment of Shri R.D. Bhagat as Chairman. He also informed the Directors that immediately after the said meeting Shri B.S. Malhan handed over his resignation from the directorship of the company and it became necessary for him to call this second meeting today.

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(3) The resignation of Shri B.S. Malhan from the Board of Directors of the company was noted and accepted. Shri B.K. Malhan was directed to file requisite returns regarding the co-option of Shri R.D. Bhagat and Smt. Sulochana Bhagat and resgi-gnation of Shri B.S. Malhan.

(4) The applications for registration of transfer of the following preference shares were then considered by the board and the registration thereof was sanctioned :

TRANSFEROR TRANSFEREE Nos. Dist. From Nos. To

(1) Mr.B.K. Mr. RIPU DAMAN 20

20

MALHAN BHAGAT, 9, LINK ROAD, NEW DELHI

-do- -do- 9 31 39

-do- -do- 5 65 69

-do- -do- 30 75 104

(2) Mrs.Surjeet -do- 10 21 30

Malhan.

(5) The registration of the transfer of the following ordinary shares was then considered by the board and the registration of the said transfer was sanctioned.

TRANSFEROR TRANSFEREE Nos. Dist. Nos.

From To

Mr. B.K. Malhan Mr.RIPU 35 1461 1495

Daman Bhagat

9, Link Road

New Delhi.

-do- -do- 268 1019 1286

-do- -do- 35 141 175

-do- -do- 1492 2831 4322

Mrs. Surjeet Malha n -do - 900 1531 2430

Mrs. Surjeet Malhan -do- 150 4401 4550

and Mr. Paramjit

Singh Chopra.

Mrs. Surjeet Malhan -do- 150 4551 4700

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and Miss Phool

Chopra

Mrs. Surjeet Malhan -do- 150 4701 4850

and Mrs. Satwant

Mrs. Surjeet Malhan -do- 150 4851 5000

and Dr. (Miss)

Joginder Chapra.

Mr. B.K. Malhan Mrs. Sulochana 400 2431 2830

Bhagat, 9, Link

Road, New Delhi.

59. In this meeting the resignation of Shri B.S. Malhan from the Board of Directors was noted and accepted and Shri B.K. Malhan was directed to file the requisite return regarding the co-option of Shri R.D. Bhagat and Mrs. Sulochana Bhagat and the resignation of Shri B.S. Malhan. The applications for registration of transfer of the shares were sanctioned.

60. In the meeting held on 11-9-1970 at 12-noon (Ex. PW 6/3) it was decided that Mr. R. D. Bhagat should be given the comple tt ccntrol over the affairs of the company and the shares were to be transferred in his favour. He was also to become the Chairman of the company and was to operate the bank accounts. It is also proved that the financial position of the com-pany was not sound and the company was running in huge losses. There were also pressing demands from the depositors as well as from the banks because the company had over-drawn the amounts from the banks.

61. It is further admitted that on 14-9-1970 an amount of rupees one lakh was deposited by Shri R. D. Bhagat with the Bank of India by opening a fresh account. Several cheques were also issued in favour of differrent persons from 14-9-1970 to 13-10-1970 from this new account. The vouchers regarding the withdrawals from new account are Ex. P W 6/7 to Ex. PW 6/47. An account opening form (Ex. DW 2/6) was given to the Bank of India on 14-9-1970 at the time of the opening of the new account. Shri R. D. Bhagat, Shri B. K. Malhan and Mrs. Sulochana Bhagat have signed this form. With this account opening form a copy of the resolution Ex. DW 2/7 (an extract from the meeting held on 14-9-1970) was also handed over to the bank authorities. In this account opening form (Ex. DW 2/6) the special instructions are in the following words:

The account will be styled as John Tinson and Company Private Ltd.'' and will be operated upon by Shri R. D. Bhagat singly or by Shri R. D. Bhagat and B. K. Malhan as per Board''s resolution dated 14-9-1970.

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According to the resolution passed in the meeting held at 12 noon on 11-9-1970 (Ex. PW 6/3) a new account was not to be opened but only ths old accounts were to be operate by the persons named in the aforesaid resolution.

62. Shri R. Parmeshwaram (DW. 3) states that the copy of the resolution (Ex. DW 2/7) was handed over to him on 14-9-1970 when the new account was opened. He also states that as a matter of routine the original minutes book of every company is checked even though certified copies of resolutions are produced. A perusal of the resolution dated 14-9-1970, copy of which was given to the bank authorities on 14-9-1970 while opening a new account, will help this Court in deciding as to whether any meeting was held at 4.30 p. M. on 11-9-1970 or not. In the minutes book, the minutes of the meet-ng held on 14-9-1970 at 10 A.M. (Ex. DW. 2/5) are recorded as under:

Present :

(1) Shri R.D. Bhagat (Chairman)

(2) Shri B.K. Malhan, Managing Director

(3) Smt. Sulochana Bhagat Shri R.D. Bhagat took the chair.

(1) Minutes of the meeting held on 11th September at 4.30 p.m. were read and approved.

(2) Shri B.K. Malhan apprised the board of the arrangement he had made with Shri R.D. Bhagat for advance of rupees one lakh to meet the salary payments of last month and working funds for jobs in hand. Mr. Malhan further recommended that this money when received be placed in a separate current account as all the cash credit accounts of the company were over-drawn and therefore not operatable. It was therefore resolved that a banking account for the company be opened with Bank of India, Janpath Branch, New Delhi and that the said bank be and is hereby authorised to honour cheques, bills of exchange and promissory notes drawn, accepted or made on behalf of the company by Shri Ripu Daman Bhagat singly or by Shri Ripu Daman Bhagat and Sari B.K. Malhan for and on behalf of the company and to act upon any instructions so given relating to the account, whether the same be over-drawn or not or relating to the transaction of the company.

Sd/-Chairman.

This meeting was attended by Shri R. D. Bhagat, Chairman, Shri B.K. Malhan Managing Director and Mrs. Sulochana Bhagat. The first item recites that the minutes of the meeting held on 11-9-1970 at 4.30 p.m. were read and approved. I have already stated that in pursuance to the minutes of the meeting held at 12-noon on 11-9-1970 (Ex. PW 6/3) no new bank account could be opened. The new account opening form (Ex. DW 2/6) duly signed by Shri B. K. Malhan (Plaintiff) can only refer to the resolution passed in the meeting held on 14-9-1970 (Ex. DW 2/5). Shri B. K. Malhan (PW 6) has denied having attended

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any such meeting on 14-9-1970, but this statement of Shri B.R. Malhan cannot be believed in view of the fact that he himself has signed the account opening form. He has admitted that this form was signed by him on 14-9-1970 and was handed over to the bank authorities. He also admits that an amount of rupees one lakh was deposited by Shri R.D. Bhagat in this new account. As the minutes of the meeting held on 14-9-1970 at 10 a.m. are proved, therefore, it is proved that the minutes of the meeting held at 4.30 P.M. on 11-9-1970 were approved or meeting of 4.30 p.m. on 11-9-1970 is proved.

63. In the meeting of the Board of Directors held on 3-10-1970 (Ex. DW 2/8) the minutes of the meeting held on 14-9-1970 (Ex. DW 2/5) were read and confirmed. The meeting of 3-10-1970 was attended by Shri R.D. Bhagat, Chairman Shri B.K. Malhan, Managing Director and Mrs. Sulochana Bhagat and in this meeting a serious note of a letter (Ex. PW 6/6) issued from the Bank of India was taken. It was decided that Shri B.K. Malhan and Shri Venkataraman should go to Bombay to have personal talks with the officers of the Bank. Mr. B.K. Malhan admits that he went to Bombay with Shri Verkataraman. He, however, denied that he went in pursuance to the resolution dated 3-10-1970. He states that he went to Bombay by virtue of his powers as Managing Director and received the expenses for the journey etc. from the company for this visit. The fact that Mr. B.K. Malhan had to go to Bombay at a time, when Shri R. D. Bhagat had taken over the control of the company raises a presumption that Shri B.K. Malhan proceeded to Bombay at the instance of Shri R.D. Bhagat because Mr. Bhagat had taken a serious note of the letter, although Mr. Malhan had sent a reply (Ex. DW 2/65) dated 19-9-1970 to the bank authorities. If Mr. Malhan was satisfied with the reply dated 19-9-1970 then there was no necessity for him to go to Bombay, but it appears that he had to go because it was passed in the meeting held on 3-10-1970.

64. The next meeting of the company was held on 15-1-1971 (Ex. DW 2/9). This meeting was attended by Shri B.K. Malhan, who resigned from the directorship and managing director ship of the company on 15-1-1971, This resignation was considered and accepted in this meeting on 15-1-1971. The minutes of the various meetings held on 11-9-1970,14-9-1970, 3-10-1970, and 15-1-1971, prove that a meeting of the company was held on 11-9-1970 at 4.30 p.m. The minutes are required to be recorded in the minutes book under the 193 because u/s 193, the minutes of the proceedings of the general meetings and of boards and other meetings are to be recorded in a book kept for those purposes and u/s 195 the minutes of the meeting kept in accordance with the provisions of Section 193 shall be deemed to be correct until the contrary is proved. Section 195 reads as follows:

Section 195. Presumptions to be drawn where minutes duly drawn and signed.- Where minutes of the proceedings of any general meeting of the company or of any meeting of its Board of Directors or of a committee of the Board have been kept in accordance with the provisions of Section 193, then, until the contrary is

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proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid.

65. Thus there is a presumption of correctness to the minutes, which have been duly recorded in the minutes book kept by a company for the purpose u/s 193 of the Companies Act. The Plaintiff sraus that pages of the minutes book were left blank but this version of the Plaintiff is not supported by any evidence. The pages of the minutes book are numbered and the minutes of several meetings held from 11-8-1958 onwards are recorded. Shxi R. D. Bhagat joined the company only on 11-9-1970.

66. It was contended by the Plaintiff''s counsel that the minutes of the previous meetings (prior to 11-9-1970) were signed by all the persons who were present in the meetings, but in subsequent meetings the minutes are signed only by Shri R. D. Bhagat. This contention is correct, but every Chairman or a new entrant ha3 a right to change the old procedure. The simple fact that the minutes starting from 11-9-1970 are not signed by all the persons cannot be a proof of the fact that the minutes have been forged subsequently.

67. It is further contended that the minutes of the meeting dated 11-9-1970 held at 12-noon (Ex. PW 6/3) are pasted in the minutes book and are signed by Shri B.S. Malhan only. According to the statement of Shri R. D. Bhagat, the minutes are to be recorded in hand and for this reason he recorded the minutes of the meeting held at 12-noon on 11-9-1970 in his own hand at pages 209 to 211 of the minutes book, but as the signed minutes were in typed form, therefore, the same were also pasted at pages 212 and 213 of the minutes book. This Statement of Shri R. D. Bhagat appears to be correct because under the law the minutes have to be recorded in hand. Even at an earlier occasion hand written minutes of one meeting dated 24-6-1970 of this company have been pasted at page 208 of the minutes book.

68 It was further contended that some pages of the minutes book were left blank. This contention cannot be accepted because the authenticity and the maintainability of the minutes book is not challenged. The minutes of several meetings have been written in the minutes book. It is not possible to leave an approximate number of blank pages, simply to adjust and write the minutes of the meetings held from 11-9-1970 to 15-1-1971.

69 In fact there was no need to fabricate the minutes because between the transferor and the transferee the transaction of sale is complete as soon as the share certificates along with the transfer forms are handed over to the transferees. The other matters, e.g., the change in registers etc by the Company is onlv by way of recognition of the transfer which had already taken Place. After the actual transfer/sale of the shares, the position of the transferor in fact becomes that of a trustee for the transferee and the transfer/sale has a legal sanctity.

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70 In 1952 (1) AER 1211 (Rose and Ors. v. Inland Revenue Commissioners) it was held that :

(1) That the gift of the shares were completed on March 30, 1943, and on that date bona fide possession and enjoyment of the shares had been assumed by the transferees to the entire exclusion of the deceased or of any benefit to him by a contract or otherwise. In that case the deceased had executed share transfer forms in favour of his wife on March, 30, 1943 and had also handed over the share scripts to her. The transfer was, however, registered by the company on June 30, 1943. The question for consideration was whether the transfers were complete on March 30, 1943, when they were executed.

(2) The deceased (transferor) having done everything in his power by executing the transfers to transfer his legal and beneficial interest in the shares to the transferees, the transferees h ad become beneficial owners of the shares and between the date of execution of the transfers and the registration of the transfers, the deceased could not have asserted any beneficial title by virtue of his position as registered holder. Having regard to the form and operation of the transfers, the nature of the property transferred and the necessity for registration in order to perfect the legal title, coupled with the discretionary powers in the Directors to withhold registration pending registration the deceased was in the position of a trustee of the legal title in the shares for the transferees.

71. In Mathalone Vs. Bombay Life Assurance Co. Ltd., it was held that:

On the transfer of shares, the transferee becomes the sole beneficial owner of those shares sold by the transferor, the la gal title to which is vested in him. Thus, the relation of trustee and ''cestui que trust'' is thereby established between them. The transferor holds the shares for the benefit of the transferee to the extent necessary to satisfy the demands of Section 94, Trusts Act, 1882. As the transferee holds the whole beneficial interest and transferor has none, the transferor must comply with all reasonable directions that the transferee may give. In this situation if he becomes a trustee of dividends, he is also a trustee of the right to vote because the right to vote is a right to property annexed to the shares and as such the beneficiary has a right to control the exercise by the trustee of the right to vote.

The relationship arises by reason of the circumstances that till the name of the transferee is brought on the register of share-holders in order to bring about a fair dealing between the transferor and the transferee, equity clothes the transferor with the status of a constructive trustee and this obliges him to transfer all the benefits of property rights annexed to the sold shares of the ''cestui que trust''. That principle of equity cannot be extended to cases where the transferee has not taken active steps to get his name registered as a member on the register of the company with due diligence and in the mean time certain other privileges or opportunities arise for purchase of new shares in

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consequence of the ownership of the shares already acquired.

The principles of justice require that ''cestui que trust'' who gets all the benefit of the property should bear its burden unless he can show some good reason why his trustee should bear them himself.

72. In Vasudev Ramchandra Shelat Vs. Pranlal Jayanand Thakar and Others, it is again held "that the transferee had obtained a complete legal light to obtain shares under the gift deed and an implied authority to take steps to get his name registered. Once the donor delivered the registered gift deed together with the share certificite to the donee, the donee becomes the full owner of the shares."

73. In 1979 49 Company Cases 662 (A.M.B. Arunachalam v. A.R. Krishnamurty and Ors.) the facs were that the Raja of Ramnad held 5000 shares in Krishna Tiles and Potteries (Madras) Private Ltd., which he had pledged with Defendants 2 and 3 for a loan of Rs. 35,000/-. He sold the shares to Plaintiff No. 1 for the consideration of Rs. 50,000/- out of which he received Rs. 12,398/- by cheque and instructed the purchaser to pay the balance of Rs. 37,602/- to Defendants 1 and 2 (the pledgees) in full and complete discharge of the amounts due to them under the loans mentioned above. The Raja also addressed a letter to the pledgees asking them to receive the sum of Rs. 37,602/-from the purchaser and to deliver the share certificates and blank transfer forms to him. The pledgees declined to carry out instructions of the Raja. The purchaser as Plaintiff No. 1 filed a suit against the Raja, the pledgees and the company for a declaration that he was the owner of the shares and for a direction to the pledgees to deliver the share scripts together with the transfer deeds to him against payment of their dues and for a direction to the company to register him as the shareholder of those shares in place of the Raja. During the pendency of the suit the purchaser and the Raja died and their legal representatives were brought on the record. The suit was opposed by some of the legal representatives of the Raja on the ground that the Plaintiff had not acquired the right to redeem the shares from the pledgees vested in them. The learned Judges held:

That the transfer of insterest in the shares from the transferor to the transferee is independent of the requirement of its registration for purposes of Companies Act, as they constitute an anterior transfer. There can be no question of applying for registration of the shares. The fact that certain formalities have to be gone through under the provisions of the Companies Act, so as to vest a further marketable title in such shares in the purchaser would not lead to the conclusion that there has not been a valid transfer of title, under the normal law of the State, by the holder of the shares to the purchaser of the shares.

The Plaintiffs were, therefore, entitled to a declaration that they were the owners of 5000 shares in question and also to a direction as against Defendants 1 and 2 to receive from the second Plaintiff the sum of Rs. 37,747.21 and deliver the share certificates with the relevant transfer deeds and other instruments duly cancelled to the Plaintiffs.

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74. In Killick Nixon Ltd. v. Dhanraj Mills Private Ltd. [1983 54 Company Cases 432)] it was held that :

Once a transfer form has been executed, the transfer is complete as between the transferor and the transferee and the transferee acquires the right to have his name entered in the register of members. Apart from lodging the complete transfer form with the company, no further application is necessary for having the name of the transferee entered in the register of members. By getting his name entered in the register of members, the transferee perfect* his title to the share. As a result of the transferee becoming a member of the company, a contractual relationship earises between the company and the transferee by virtue of Section 36 with the Articles of Association of the company constituting the terms of the contract between the parties, but this ''statutory'' contract has nothing to do with the transfer of shares.

75. Another contention raised by the learned Counsel for the Plaintiffs was that u/ s 82 of the Companies Act, 1956, the shares of the company could only be transferred in the manner provided by the Articles of Association of the com pany. It was contended that the company had restricted the rights to transfer the shares by Articles of Association (Ex. PW. 6/l). Article 3 provided that the right to transfer the shares of the company was restricted in the manner and to the extent hereinafter appearing. Article 8 provides that no transfer of any share in the capital of the company shall be made or registered without the previous sanction of the Directors, who may with out assigning any reason whatsoever, decline to give such sancti on and shall so decline in the case of a transfer the registration of which would involve a contravention of article 3. Merely handing over the blank transfer forms with share scripts would not be a transfer of shares in accordance with the Articles of the Company and as such there was in fact no valid sale/ transfer of shares to the Defendants.

76. It may be mentioned that the Plaintiffs have not taken this plea in their plaint with the result that no evidence could be led by the parties on this fact. The Plaintiffs have nowhere stated that the consent of the Directors had not been taken and, therefore, the sale could not take place. According to the position as has been revealed in the evidence, the share scripts along with the transfer deeds were handed over to Shri R.D. Bhagat by the Plaintiffs in the presence of Shri B.S. Malhan. Shri R.D. Bhagat (DW 2) has stated that Mr B.S. Malhan had been told as to what had happened in Mr. V. Sagar''s office. The handing over of the share scripts with the transfer forms by the Plaintiffs and the statement of R.D. Bhagat (DW. 2) clearly proves that B.S. Malhan was a consenting party to the transfer. At the relevant time there were only two Directors, that is, B.K. Malhan and B.S. Malhan. Shri B.K. Malhan was himself a seller along with his wife Smt. Surjeet Malhan. B. K. Malhan (PW.6) states that the shares were delivered to Mr. R.D. Bhagat in the evening of 11-9-1970 after the meeting of 6 p.m. At that time the only Directors were Mr. and Mrs. Bhagat who had been co-opted in 12-noon meeting on 11-9-1970.

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As it was a transaction between Malhans and Bhagats, therefore, the consent of the Directors is to be presumed. In these cir-cumstances, it cannot be held that the sale was not valid because of the non-compliance of Article 8 of the Articles of Association of the Company because the consent of Malhans and Bhagats for the transfer of shares was impliedly available. Thus the simple fact that in the register of the company or in the office of the Registrar of the Companies transfer is not registered, cannot prove that the transfer has not taken place.

77. The learned Counsel for the Plaintiffs further contended that the minutes of the meeting held on 11-9-1970 at 4.30 p.m. did not tally with the copy Annexure ''Z'' filed by the Defendants with O.M.P. No. 117 of 1973. The learned Counsel for the Defendants contended that the copy Annexure ''Z'' was given from a rough draft but while copying the minutes in the minutes book some changes were made which were not material changes, that is, the names of the share holders were given share-wise instead of share-holder-wise.

78. From a comparison of the original minutes of the meeting Ex. DW. 2/4 as recorded in the minutes book and Annexure ''Z'' (copy placed on record with O.M.P. No. 117 of 1973), I find that both the minutes are practically in the same language with no material changes. There is a cutting in the original minutes book which shows that a rough draft might have been prepared earlier as is stated by Shri R.D. Bhagat (DW. 2) In any case it cannot be said that the minutes recorded in the minutes book (Ex. DW. 2/4) are forged in view of the production of Annexure ''Z''.

79 The learned Counsel for the Plaintiffs also contended that no meetings were held on 11-9-1970 at 4.30 p.m. (Ex. DW. 2/4) on 14-9-1970 at 10 a.m. (Ex. DW. 2/5) and on 3-10-1970 (Ex DW 2/8) and all these minutes were forged and fabricated after the filing of the present suits. He contended that there was no occasion for Malhans to ask R.D. Bhagat about the fmalisa-tion of the terms of sale on 12-9-1970 if a meeting was held on 11-9-1970 at 4.30 p.m. In fact the terms of the sale were to be finalised and settled on 12-9-1970 but the same could not bedone as Shri V. Sagar (DW. 4), the lawyer of Shri R.D. Bhagat, was taken seriously ill on the intervening night of 11 and 12 September 1970 with the result that the said lawyer had to be operated upon. Shri V. Sagar (DW. 4) could not produce any records of talks and settlements of 11-9-1970, between the parties.

80. It is correct that V. Sagar (DW. 4) admitted that he became sick and was operated upon on 12-9-1970 but this fact isnot sufficient to conclude that no meeting was held at 4.30 p.m. on 11-9-1970. The bald statement of Mr. Malhan(PW. 6) that Shri R.D. Bhagat had told him that due to the illness of Shri V. Sagar (DW 4) the matter would be settled later on, cannot be accepted as atrue and correct version in view of the various documents already discussed. There is in fact no cogent and reliable evidence to prove that the minutes of the meetings were fabricated after the filing of these suits.

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81. Another contention was that an annual general meeting was called for 30-9-1971 but it was not attended by Mrs. Sulochana Bhagat. After adjournment of this meeting the next meeting was not held because Bhagats had not acquired the qualifying shares and their names could not be shown in the register of members or in the register of directors shareholders. A reference was made to Sections 159 and 163(2) of the Companies Act.

82. It is correct that no meetings were held, but this irregularity or illegality for not holding the meetings (even if they were qualified share-holders) is not a proof of the fact that the shares had not been transferred.

83. It was further contended that the annual return was not filed with the Registrar u/s 159 of the Companies Act because a list of share-holders had to be filed along with the return. The return along with the list of share-holders could be the best evidence to prove transfer of shares. He referred to the statement of Shri Om Parkash Dixit (PW. 4).

84. Shri Om Parkash Dixit (PW.4) states that the Company was prosecuted for not filing the return for the year 1971 and a return was filed in November 1973. This prosecution .ended in a conviction. Shri Dixit (PW. 4) further states that the annual return upto 26-6-1972 was received in the office of the Registrar of Companies on 22-8-1972, but this was returned with a letter dated 1-9-1972 (Ex. PW 4/1). He has no personal knowledge because he was not employed in this office in 1972. He also states that a revised return was filed in October-November 1973 which was taken on record. The earlier return sent in August 1972 was destroyed by the office.

85. Shri R.D. Bhagat (DW. 2) also admits the prosecution, and states that the prosecution was justified because he was the director.

80. It was contended by the Defendants'' counsel that the list of share-holders had been sent along with the return but their occupation was not mentioned and for this reason the aforesaid letter containing the objection was sent by the Department The relevant portion of the letter (Ex. PW. 4/1) dated 1-9-1972 reads as follows:

List of share-holders'' holding 5000 ordinary shares should be sent. Occupation of share-holders should also be stated.

87. The contention of the Defendants'' counsel appears to be correct because the office objection in the letter (Ex. P W. 4/1) can also mean that the list of share-holders accompanying the return was incomplete in so much so that their occupation and addresses had not been mentioned.

88. As the earlier return is destroyed as stated by Shri Dixit (PW. 4), therefore, it is not possible to find out as to what documents complete or incomplete were sent with this return. In any case, even if it is presumed that the list of shareholders was not sent, still it cannot be a sufficient proof of the fact that the shares were not transferred. The non-supply of a document or the wrong

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submission of a document cannot prove this fact. It may be an irregularity or illegality but it cannot bea proof of the Fact that the shares had not been transferred.

89. The learned Counsel then contended that the company was required to give statutory reports u/s 227 of the Companies Act. The auditors had mentioned in their report dated 7-4-1972 (Ex. PW. 4/20) that certain records were not made available to them and the same were not seen. The records which were not made available to the auditors pertained to the register of charges, register of members, minutes of procee dings of general meetings and of the Board of Directors and register of contracts in which the directors are interested, register of directors etc. as also regisier of directors share-holding etc. Similar objections regarding the non-availability of the afore said records were made in the reports dated 5-9-1972 (Ex. PW. 4/31), fortheyear ending 31-12-1971,dated 4-7-1972 (Ex. PW. 4/32) for the year ending 31-12-1972 and dated 25-5-1974 (Ex. PW. 4/34) for the year ending 31-12-1973. But in the report dated 4-6-1975 (Ex. PW 4/34) relating to the year ending 31-12-1974 such remarks were missing. It was contended that the transfer of the shares had not besn recorded and therefore the records were not shown to the auditors.

90. Shri R.P. Bhagat (DW. 2) has explained that these statutory books of the company could not be shown to the auditors as the same were at the registered office of the Company at Solan. Although Mr. Bhagat has made some contradictory statements regarding the availability of the books, still the non-production of the books to the auditors can be a matter for proceeding against the company under the provisions of the relevant law but it cannot prove that the shares were not transferred.

91. The learned Counsel for the Plaintiffs also contended that in the transfer deeds (Ex. DW 2/2) and (Ex. DW 2/3) the consideration was mentioned as rupee one for 3730 equity shares and 74 preference shares which included the shares transferred herein. He contended that according to Shri R. D. Bhagat (DW. 2) the consideration of rupee one was for 5000 equity shares and 130 preference shares and the decision to reduce the number of shares for the same consideration was taken in a dinner meeting held in the latter half of December 1970 and these facts prove that no transfer of shares had taken place. He also contended that Shri R.D. Bhagat had not signed these transfer forms as chairman at the time of approval.

92. Now the correctness or the genuineness of the transfer deeds is not disputed. I have already held that a meeting was held at 4.30 p.m. on 11-9-1970. Shri R.D. Bhagat states that -the consideration of rupee one was for the shares which were in possession of Shri B. K. Malhan and Mrs. Surjit Malhan (Plaintiffs) and the remaining shares were to he transferred later on. In such circumstances, the parties or at least Mr. R.D. Bhagat was at liberty to get a lesser number of shares transferred in his favour for the consideration of rupee one.

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93. The share transfer forms were produced on 11-9-1970 before the Board of Directors, therefore, it was not necessary to fill in the back side of these forms, which were presented within a period of two months of their purchase from the Registrar of Companies. From the meeting nhld at 12-noon on 11-9-1970, it is proved that Shri R. D. Bhagat was the ''Chairman and he has approved the transfer forms himself. It was also not necessary for him to state that he was the Chairman.

94. The learned Counsel for the Plaintiffs also contended that a notice of annual general meeting called fox 30-9-1971 was not given to the members and that Mrs. Sulochana Bhagat did not attend this meeting. These are subsequent events and any irregularity or illegality in the holding of the meetings or in not issuing the notices cannot be a basis for holding that the shares had not been transferred. Similar is the position regarding the non-issuance of a notice of the general meeting which was held on 26-6-1972. If Shri R.D. Bhagat had committed any irregularity or illegality subsequently after the transfer of the shares then these irregularities or illegalities are not sufficient to prove that the meeting was not held. The persons concerned or the company can be penalised for net following the legal procedure.

95. The learned Counsel for the Plaintiffs also referred to the replies of certain applications and contended that it was for the first time in September, 1973 that the Defendante mentioned that the names of the Plaintiffs had been removed from the register of the share-holders with effect from 11-9-1970. This contention cannot be accepted as it is not a proof of the fact that the shares had not been transferred and the nambes of the Plaintiffs were existing earlier to 1973. The non-mentioning of a fact by the Defendants which they did not consider to be relevant for the reply of certain applications, cannot be treated to be a proof that the transaction of transfer had not taken place.

96. Even if it is admitted that the information regarding tranafer of shares was not given to the Registrar of Companies on that the names of the share-holders were not incorporated in the register or the names of the Plaintiffs were not removed from, the register of share-holders, still these irregularities or illegalities are immaterial for the purposes of the decision of the present suits. The sale/ transfer of shares is a positive fact and once this transaction is proved to have taken place, then the remaining actions are only follow-up actions, and the safe/ transfer of the shares between the transferee and the transferor cannot be said to be non-existent or nullity or void.

97. Thus from the various circumstances and the evidence narrated above, it improved that a meeting (Ex. DW. 2/4) was held at 4.30 p.m. on 11-9-1970 as is reeorded in the minutes book.

98. The Defendants counsel contended that a meeting was held at 6 p.m. on 11-94970, but from the documentary and oral evidence discussed hereunder this meeting is not proved.

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99. Shri B.K. Malhan states that this meeting was convened because Mr. B.S. Malhan was to resign from the Chairmanship of the company. In the meeting of 11-9-1970 at 12-noon (Ex. PW 6/3) Mr. B.K. Malhan proposed the name of Shri R.D. Bhagat as a Chairman and Shri B.S. Malhan seconded the same. Hence Shri R.D. Bhagat became the Chairman of the company and Shri B.S. Malhan is deemed to have vacated this office in favour of Mr. R.D. Bhagat. The letter of resignation of Shri B.S. Malhan simply states that he was resigning from the Board of Directors of the company. There is no evidence to prove that any notice of the alleged meeting of 6 p.m. was given to Shri R.D. Bhagat and Mrs. Sulochana Bhagat although they were co-opted as Directors. The minuter of the meeting held at 6 p.m. are Ex. DW 2/78. These are only signed by Shri B.S. Malhan as Chairman. Shri R.D. Bhagat or Mrs. Sulochana Bhagat never attended this meeting and this meeting is alleged to have been attended by Shri B.S. Malhan and B.K. Malhan only. Shri B.K. Malhan did8 not produce Ex. DW 2/78 during the course of his statement. It was only exhibited when Shri R.D. Bhagat appeared in the witness box. But Shri R.D. Bhagat only identified the signatures of Shri B.S. Malhan on this document and denied the contents of the same. The contents of Ex. DW 2/78 are, therefore, not proved and Shri R.D. Bhagat had also no chance to rebut the correctness of its contents. If any such meeting had been held at 6 p.m. then its contents should have been written in the minutes book which wers in the possession of Mr. Malhan till 15-1-1971 or at least a typed copy of ths minutes of the meeting could have been pasted in the minutes book. Hence it is not proved that the alleged meeting of 6 p.m. on 11-9-1970 was ever held.

100. There are some other circumstances to prove that the transfer/sale of the shares had taken place. The alleged sale is of 11-9-1970 and this suit was filed in 1973. There is no satisfactory explanation for the delay in filing the suit. If the shares scripts along with the transfer forms hadbeen obtained by the Defendants by fraud, mis-representation etc. then the Plaintiffs would have given notice of this fact to the Defendants and would have also intimated these facts to the Registrar of the Companies as well as the banks concerned. But this was never done. Mrs. Surjit Malhan (PW 5) only states that she did not take any steps of issuing notice etc. because her husband was ailing and she was mentally perturbed. She, however, admits having consulted lawyers and friends for the purpose. If she could have consultations then it was her bounden duty to get notices issued to the Defendants and to take adequate steps with the Registrar of the Companies.

101. Shri B. K. Malhan (PW 6) also would not have resigned from the office of the Managing Director on 15-1-1971, if the Defendants, had not purchased the shares. Shri B.K. Malhan (PW 6) knew that the Defendants were the real owners of the shares and Were to control the company, therefore, he did not feel any necessity of continuing as a Managing Director or Director.

102. In the statements of the witnesses as well as the parties there are certain

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minor discrepancies about the time etc., but it is to be noted that the statements of the witnesses were recorded after a long interval. In these circumstances, the minor discrepancies or inconsistencies in the statements are to be ignored and cumulative effect of all the facts and circumstances is to be considered to find out the truth.

103. In view of the above discussion, issues Nos. 6, 7, 8-A, 8-B, 11 and 12 of C.S. No. 1 of 1973 are decided against the Plaintiffs.

104. Similarly issues Nos. 5, 6, 8-A, 8-B and 12 of C.S. No. 2 of 1973 are decided, against the Plaintiffs. Issues Nos. 7,

10 and 11 of C.S. No. 2 of 1973 arc decided in favour of the Defendants.

Issue No. 9 in both the suits.

105. The learned Counsel for the Plaintiffs contended that Defendants Nos. 2 and 3 (Mr. and Mrs. Bhagat) did not acquire the qualifying shares within a period of two months and as such they could not become the members of the Board of Directors. He contended that according to Article 15 of the Articles of Association of the Company (Ex. PW 6/3) a director should held in his own right shares of the value of Rs. 3500/-and should comply with the provisions of Section 85 of the Indian Companies Act, 1913. The director could, however, act before the acquisition of qualifying shares. Under Article 19 if such share qualification was not acquired within the stipulated time of two months, then the director shall vacate his office. It was contended that Defendants Nos. 2 and 3 could acquire the shares within a period of two months from 11-9-1970, but this was not done and therefore, they (Defendants Nos. 2 and 3) did not become the directors.

106. The learned Counsel for the Defendants contended that by a resolution dated 11-9-1970 of 4.30 p.m. meeting (Ex. DW 2/4) the shares had been transferred in favour of the Defendants and they had acquired the prescribed share qualification. They were co-opted as directors and Shri R.D. Bhagat was appointed as a Chairman. The Defendant No. 1 is not a subsidiary of a public company and, therefore, vide Section 273 of the Companies Act, 1956 the provisions contained in sections 270 and 272 of the Companies Act regarding share qualification of a director are not applicable in this case.

107. Articles 15 and 19 of the Articles of Association (Ex. PW 6/1) are contrary to Section 273 of the Companies Act, 1956 and can have no force in view of the provisions of Section 9 of the Companies Act, 1956. Under the issues already discussed I have held that the Defendants Nos. 2 and 3 had purchased the shares of the Plaintiffs on 11-9-1970.

108. The conduct of the Plaintiffs also proves that the shares had been transferred in favour of Defendants Nos. 2 and 3 which position has been discussed in detail while discussing other issues. The Plaintiffs never objected that Defendants Nos. 2 and 3 were not holding the qualifying shares and they also did not make any complaint to the Registrar of the Companies or the banks

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about this fact. They never approached the bank that the operation of account by R. D. Bhagat be stopped.

109. The Defendants Nos. 2 and 3 were co-opted as directors on 11-9-1970 and they could hold the offics till the date of the next annual general meeting as is provided in Section 260 of the Indian Companies Act, 1956. The next annual general meeting was held on 26-6-1972 in which the Defendants were elected as directors and thereafter they continued as elected directors. The noticc for this meeting was issued vide Ex. PW 4/20 and item 3 of the agenda relates to the election of directors. In the notice it is stated that Defendants Nos. 2 and 3 were co-opted as directors on 11-9-1970 and their term was upto the date of that meeting and they offered themselves for election, in which they were elected. B.K. Malhan who was a director had resigned from his office on 15-1-1971 and he never offered himself for election as a director. In these circumstances, it cannot be said tha t Defendants Nos. 2 and 3 had not been appointed as directors validly or that they had not acquired the share qualification within the prescribed period of two months for being elected as directors. This issue is decided against the Defendants.

Issue No. 15 in C.S. No. 1 of 1973 and Issue No. 16 in C.S. No. 2 of 1973.

As a result of my findings on the various issues, the Plaintiffs are not entitled to any relief and both these suits are to be dismissed. In these circumstances, both these suits are dismissed. After taking into consideration the various facts and circumstances of the case, I leave the parties to bear their own costs.

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