
(1985) 07 KAR CK 0059

In the Karnataka High Court

Case No : Regular First Appeal No. 370 and 371 of 1982

T.K. Bose

APPELLANT

Vs

Sree Venkatesha Electrical Industries (P) Ltd.

RESPONDENT

Date of Decision : 15-07-1985

Acts Referred:

Companies Act, 1956 — Section 299, 299 (2)

Citation : (1985) ILR (Kar) 3189 : (1985) 2 KarLJ 333

Hon'ble Judges : Kudoor, J

Bench : Single Bench

Advocate : S.G. Sundaraswamy and Sridhar Hiremath, for the Appellant; A.G. Holla, for the Respondent

Final Decision : Allowed

Judgement

Kudoor, J.—R.F.A. No. 370/1982 is against the decree in O. S. No. 10462/1980 and R.F.A. No. 371/1982 is against the decree in O.S. No. 5673/1980 of even date 31-10-1982 arising out of a common judgment passed by the IV Additional City Civil Judge, Bangalore. The appellant in both the appeals is one T.K. Bose, who is the sole defendant in O.S. No. 10462/1980 and the plaintiff in O.S. No. 5673/1980.

2. O.S. No. 5673/1980 is a suit for declaration that the plaintiff continues to be the Director and Chairman of the 1st defendant- . Sree Venkatesha Electrical Industries (Private) Limited- (for short the "Company"), that the office of the Directorship of the Company held by the plaintiff has not fallen vacant under clause (i) of sub-section (I) of Section 283 of the Companies Act, 1956 (for short the "Act"), that the proceedings of the meeting of the Board of Directors of the Company held on 24-10-1980 are null and void, that defendant-3 was not validly appointed as a Director of the Company and granting permanent injunction restraining the defendants from preventing the plaintiff acting as a Director and Chairman and further restraining the 3rd defendant from acting as a Director of the Company.

3. The case of the plaintiff briefly stated is as under : The 1st defendant-Company is a registered private Company consisting of three shareholders viz., the plaintiff and defendants 2 and 3, The 2nd defendant is the brother of the wife of the 3rd defendant. The plaintiff and the 2nd defendant are the Chairman and Managing Director respectively. The plaintiff is also the Managing Director of "Nagpur Transformers Ltd., (for short "NTL") which manufactures and sells current and potential transformers in the 220 K.V. range and certain other items of similar nature. Defendants 2 and 3 were the employees in NTL. While defendant-2 was in service in the NTL, he requested the plaintiff to suggest a line of activity for him to utilize his knowledge as an Engineer in the Electrical Industries Company. Finally the 2nd defendant decided to take up the instrument transformers project of 132 K. V. Range. The plaintiff agreed to help the 2nd defendant in starting the industry in view of his close association with defendants 2 and 3 who were employed in the NTL of which the plaintiff was the Managing Director. As a result of the understanding between the plaintiff and defendants 2 and 3, the Company was incorporated in Bangalore on 16-5-1979 with the plaintiff and defendants 2 and 3 as shareholders each having 5 shares of Rs. 100/-. It was also agreed that the plaintiff will hold 51% of the shares in the Company. The company had been incorporated with the main object of manufacturing transformers which are similar in nature to the products of the NTL. The plaintiff was appointed as the first Chairman and defendant-2 as the Managing Director of the Company.

4. The Company approached the Karnataka State Finance Corporation (for short "KSFC") for grant of a term loan. The KSFC granted a loan to the extent of Rs. 12 lakhs. One of the conditions stipulated for the grant of the loan was that the Company should enter into a technical collaboration and selling arrangement with a reputed company. The subject of raising loan from the KSFC was discussed on 17-5-1979 at the very first meeting of the Board of Directors. The plaintiff had disclosed his interest in the NTL to the 2nd defendant who was the only other Director of the Company, when the 2nd defendant said that he was fully aware of the interest of the plaintiff in the NTL as he was an employee in the NTL for fairly a long time and there was no need to make a fetish of the same. This fact was also known to the 3rd defendant who was also an employee of the NTL at that time as Works Manager and resigned his job on 11-9-1980. The plaintiff pointed out to the 2nd defendant the scope of Section 299 of the Act and the 2nd defendant agreed to place on record the interest of the plaintiff in the NTL. The plaintiff had written a letter dated 10-3-1979 well before the Company was incorporated, to the KSFC expressing his willingness to help the Company in the matter of technical collaboration and selling arrangement in his capacity as the Managing Director of NTL and also kept the NTL Board of Directors fully informed about his 51% interest in the Company at the time, the NTL agreed to enter into an agreement with the Company to grant technical collaboration and to arrange the sale of the products of the Company. The 2nd defendant filed an application for term loan to KSFC in May 1979. The second defendant had also annexed a

statement of the assets of the plaintiff as Managing Director of NTL to the loan application. The statement was prepared by the plaintiff and given to the 2nd defendant at the first meeting of the Board of Directors on 17-5-1979 when the plaintiff made the disclosure of his interest in the NTL. The plaintiff has not withheld his interest in the NTL at any stage and in fact positively did disclose at the very first instance when the question of entering into a contract with the NTL came up for consideration. This was done in spite of the full knowledge and the long standing awareness of the 2nd and 3rd defendants about the interest of the plaintiff in the NTL.

5. Defendants 1 and 2, in violation of the terms of the agreement entered into with the NTL, have tendered with Haryana State Electricity Board for supply of transformers by under-quoting the rates. Therefore, the NTL filed Civil Suit No. 1340/1980 in the Court of the Civil Judge, Junior Division, Nagpur, and obtained an injunction restraining the company from submitting tenders and selling of Potential and Current Transformers directly or through any other agent in breach of the contract entered into with the NIL. In the meanwhile, on 14-10-1980, the plaintiff received a registered letter from the 2nd defendant stating that the Annual General Body Meeting of the company was convened to be held on 29-10-1980. The plaintiff filed a suit O.S. No. 2097/1980 (New No. O.S. 9750/1980) on 24-10-1980 in the Court of the I Additional 1 Munsiff, Bangalore, challenging the validity of the notice issued by the 2nd defendant convening the Annual General Body Meeting and sought for an injunction. Emergent notice on the application I.A.I.. for grant of temporary injunction along with the plaint copy being served upon defendants 1 and 2 on the same, the 2nd defendant took action to preempt the proceedings in O. S. No. 2097/1980 by passing certain resolutions slating that the plaintiff had ceased to be a Director of the company and a new Director had been co-opted in his place at the meeting of the Board of Directors said to have been held on 24-10-1980 at the factory premises and filed the statement of objections to the application I.A.I. enclosing a copy of the Minutes of the Board Meeting.

6. The 2nd defendant is alleged to have convened a Board Meeting on 24-10-1980. u/s 252 read with Section 287 of the Act, one Director cannot constitute a Board as he by himself falls short of the minimum required to constitute a quorum for a Board Meeting. Presence of at least two Directors are necessary to constitute a quorum and if the plaintiff ceased to be a Director, then the 2nd defendant being the only Director, could not constitute a Board and a meeting with one member is untenable in law. The action of the 2nd defendant in co-opting the 3rd defendant as a Director is in excess and beyond the powers of the Board of Directors. The Articles of Association do not authorise the Board to co-opt any person as a Director. The Articles provide that the plaintiff and the 2nd defendant shall be the first Directors and they continue in office until they vacate the office on their own accord or otherwise under the provisions of the Act. The other Directors have to be elected at a General Meeting. In the absence of validly appointed Directors functioning, the shareholders have the right to

appoint the Directors at a General Meeting. Neither the Act nor the Articles of Association of the Company authorise the 2nd defendant to appoint the 3rd defendant as Director. The action of the 2nd defendant in that regard is ultra vires of the Act and the Articles of Association. The co-option of the 3rd defendant as a Director is therefore, illegal and void. The 3rd defendant had no locus stand to be present at the alleged meeting held on 24-10-1980 as he had not been co-opted as a Director at that time. The re-resolution of waiving notice is also illegal.

7. It is incorrect and illegal to say that the plaintiff did not disclose his interest in the NTL and this fact was discovered for the first time after the plaintiff filed the suit C.S. No. 1340/1980 on the file of the Civil Judge, Junior Division, Nagpur, and till then the 2nd and 3rd defendants were not aware of the interest of the plaintiff in the NTL. The plaintiff had disclosed that he had substantial interest in NTL at the very first meeting of the Board of Directors when the question of collaboration agreement between the company and NTL came up for consideration. Besides, approving of the Minutes of the Meeting of the Board of Directors held on 14-4-1980 in the meeting of the Board of Directors held on 24-10-1980 is absolutely false, because no meeting of the Board took place on 14-4-1980 at Nagpur or at any other place. If any minutes of the Meeting of the Board had been recorded, it should have been got signed by the plaintiff as Chairman. Confirmation of the minutes of the Board Meeting held on 14-4-1980 in the Meeting of the Board of Directors held on 24-10-1980 is not valid and legal because the plaintiff had not vacated his office of Chairman and Director.

8. The plaintiff as Chairman of the Company, convened a Meeting of the Board of Directors on 24-10-1980 at Bangalore at 10 a.m. by his letter dated 9-10-1980, scheduled to be held at the registered office at the Peenya Works of the company at No. 33A/2, II Phase, Peenya Industrial Area, Bangalore. The plaintiff with two other persons reached the registered office at 10 a.m. on 24-10-1980 which was Friday and found the factory premises closed and a notice was found pasted on the office door that it was closed on account of Dasara. The plaintiff then went to a residential house with the address as No.6, 4th Cross, Uttaradimutt Road, Shankarapuram, Bangalore at 4 p.m. since the 2nd defendant had issued an illegal notice of an Annual General Body Meeting to be held on 24-10-1980 at the said address which was described as the Registered Office in the notice sent by the 2nd defendant. A relative of the 2nd defendant told the plaintiff that the registered office was closed on account of Dasara showing a notice signed by the 2nd defendant stating that the office at Shankarapuram was closed for Dasara on 24-10-1980. In fact the registered office of the Company was shifted to the factory premises at Peenya on 10-5-1980 from the residential house in Shankarapuram and a letter requesting that all the correspondence and mail addressed to the company should be diverted to the registered office at Peenya is on record in the Basavanagudi Post Office, Bangalore and which letter was sent by the 2nd defendant to the Postmaster of Basavanagudi Post Office on 10-5-1980. Thus no meeting of the Board of Directors could take place on

24-10-1980 at 4 p.m. either in the factory premises at Peenya or in the office at Shankarapuram as tried to be made out by the 2nd defendant. The 2nd defendant did not attend the meeting convened by the plaintiff at 10 a.m. on 24-10-1980 at Peenya with the sole object of avoiding the meeting of the Board of Directors. The Minutes recorded ratifying the action taken by the 2nd defendant in convening the Annual General Body Meeting is also illegal because convening of the Board Meeting itself was illegal. The plaintiff continued to be the Director even on 24-10-1980 and to say that his office had fallen vacant is only a ruse to oust the plaintiff from his office contrary to law. At no time earlier to the filing of the counter-affidavit to the application I.A.I, in O.S. No.2097/1980 on the file of the I Additional First Munsiff, Bangalore, had the defendants disclosed that the plaintiff's office as Director had fallen vacant on account of non-compliance of Section 299 of the Act. The proceedings held on 24-10-1980 are all hit by the doctrine of lis pendens because of the suit O.S.No. 2097/1980 which was filed on 24-10-1980. The Meeting of the Board which was purported to have been held on 24-10-1980 was a counter-blast to the said suit virtually removing the plaintiff from the office of the Director. The plaintiff continues to be the Director and Chairman of the Company. The plaintiff is excluded from participation in the management of the affairs of the Company as a Director and Chairman by the illegal acts of the defendants. Under the Articles of Association of the Company, the plaintiff is appointed as a Director and he shall continue in office until he vacates the same on his own accord or in accordance with the provisions of the Act. Deprivation of his right to participate in the affairs of the Company as a Director is a substantial injury of civil nature caused to the plaintiff. On these grounds, the plaintiff brought the suit for the aforesaid reliefs.

9. Defendants 1 and 2 have filed a joint written statement. Defendant-3 has adopted the same by a separate memo. They contended as under :

The Company had three share-holders at the inception, the plaintiff and defendants 2 and 3. Subsequently shares have been allotted to others also, The allegation that the plaintiff was promised 51% of the shares in the Company is false. The plaintiff was requested by the 2nd defendant to associate himself in a business venture at Bangalore as he was a person with commercial knowledge. The plaintiff did not help in floating the Company except that he signed the Memorandum and Articles of Association of the Company. The object of the Company is not only to pro-duce transformers similar in nature but also of different types than the products of NTL, The 2nd defendant wanted to take up H.V. Instruments transformers project not only upto 132 K.V. range but also in higher ranges. One of the conditions for the grant of loan by the KSFC was to enter into an agreement of technical know-how and sales arrangement of the products of the Company with a reputed Company. A draft agreement intended to be entered into between NTL and the Company was prepared to be submitted to KSFC, even before the first Board Meeting held on 17-5-1979. However, the plaintiff did not disclose his interest in the NTL as required u/s 299 of the Act at the Board meeting held on 17-5-1979. The statement of the plaintiff that he had

disclosed his interest in the NTL but the 2nd defendant said that he was fully aware of the same having been an employee of NTL for fairly a long time is false. The 3rd defendant had resigned his job as Works Manager in the NTL on 11-9-1980. The statement of the plaintiff that he pointed out to the 2nd defendant the scope of Section 299 of the Act and the 2nd defendant agreed to place on record the interest of the plaintiff in the NTL is false to the knowledge of the plaintiff. It is false to say that the statement of the assets of the plaintiff in the NTL submitted to the KSFC was given to the 2nd defendant at the first meeting of the Board of Directors held on 17-5-1979. The statement was handed over to the 2nd defendant at a subsequent date for being handed over to the KSFC which was done on 14-8-1979. The plaintiff did not disclose his interest in the NTL to the Board of Directors of the Company at any time.

10. There is no concluded agreement enforceable in law between the Company and the NTL. There was no violation of the terms of the agreement with NTL. However, the NIL by making false and irrelevant statements obtained an order of temporary injunction against the Company. The only motive for such legal action was to prevent the development of the Company as the plaintiff was afraid of competition from the company in the matter of production and sale of transformers.

11. The notice of the General Body Meeting dated 6-10-1980 was sent to the plaintiff and he received it in time. The Board Meeting was held by the 2nd defendant on 24-10-1980 even before the notice of the suit filed by the plaintiff was served on the 2nd defendant. The statement made by the plaintiff contrary to these facts are all false. The defendant-2 was constrained to hold the Board Meeting on 24-10-1980 as he was served with an order of temporary injunction on 21-10-1980 in the suit filed by the NTL in the Nagpur Court which disclosed that NTL was relying upon an alleged agreement between NTL and the Company for the purpose of obtaining the order of injunction. As there was no disclosure by the plaintiff of his interest in the NTL to the Board of Directors of the Company as required u/s 299 of the Act, his office as Director fell vacant under the provisions of Section 283(I)(i) of the Act. As the number of Directors fell short of the minimum required under the provisions of the Act, the 2nd defendant had to take action for the continuance of the day-to-day affairs of the Company and it was done in the interest of the Company in accordance with law. The action taken by the 2nd defendant in co-opting the 3rd defendant as a Director was necessary under the circumstances and was in accordance with law and the Articles of Association of the Company. It was so done bona fide in the interest of the Company. The 3rd defendant was present on invitation by the 2nd defendant as he was to be co-opted as a Director to the Board of Directors. The waiver of the notice for the meeting was in accordance with law.

12. A Board Meeting was held on 14-4-1980 at: Nagpur which the 2nd defendant attended and the statements contrary to these facts are all false. The defendants became aware of the alleged contract between the NTL and the Company when

the injunction order was served upon them which was obtained relying upon such a contract. To the best of knowledge of the defendants, what existed was only a pro-posed agreement between the two companies which had not culminated in a binding contract in accordance with law. However, even with regard to the proposed agreement, the requirements of Section 299 of the Act ought to be complied with if it is to be acted upon. In fact a Meeting was held on 14-4-1980 at Nagpur and business was transacted in the said meeting but the Chairman did not sign the proceedings with ulterior motive. The Meeting of the Board of Directors held on 24-10-1980 was in accordance with law. The plaintiff is neither the Chairman nor the Director of the Company by reason of the provisions of the Act and the Articles of Association of the Company.

13. The First Annual General Meeting of the Company was to be held before 15-11-1980 as per the provisions of the Act. A Board Meeting in this connection was proposed to be held on 17-9-1980 at Nagpur. However, the plaintiff sent a telegram requesting the Meeting to be held on 22-9-1980 at the registered office at Bangalore, The plaintiff confirmed having sent the telegram by his letter dated 19-9-1980. Accordingly, the 2nd defendant waited at the Registered Office for the plaintiff on 29-9-1980 and the plaintiff did not attend the same even though he was in Bangalore on that day. The Meeting had to be adjourned to 6-10-1980 which fact was duly intimated to the plaintiff. However, to his surprise, the 2nd defendant received a letter from the plaintiff dated 30-9-1980 along with the Minutes of the Board Meeting said to have been held by the plaintiff on 29-9-1980 at 10 a.m. at the work-spot at Peenya, Bangalore. The 2nd defendant had no notice of such a meeting and the 2nd defendant did not attend the meeting. The 2nd defendant sent a reply to the same on 3-10-1980 to which the plaintiff sent a telegram stating that the adjourned meeting was not necessary. Having found that the plaintiff was non-co-operative and obstructive in his attitude and there being no possibility of arriving at a reasonable decision in a Board Meeting before the termination of the statutory period to hold the Annual General Meeting, the 2nd defendant exercising the powers conferred under the Articles of Association, issued a notice dated 6-10-1980 to convene the Annual General Body Meeting of the Company to be held on 29-10-1980. However, in furtherance of his object of destroying the Company's business and growth, the plaintiff filed a suit O.S. No. 9750/1980 (New Number) in the court of the Additional Judge, City Civil Court, Bangalore and prayed for an interim order restraining the defendants from holding the Annual General Meeting on 29-10-1980. The 2nd defendant took notice and filed objections against granting such relief. However, the 2nd defendant gave an undertaking to the Court not to give effect to the resolution to be passed at such meeting pending orders on the application LA. No. 1 filed in the said suit and on such undertaking the -Court permitted the Annual General Meeting to be held on 29-10-1980, The registered office of the Company was not shifted to Peenya as alleged by the plaintiff. The Annual General Body meeting was properly held on 29-10-1980 with the permission of the Court. The Board of Directors' Meeting on 24-10-1980 was

held even before the notice of the suit was served on the defendants. Hence the question of listened does not rise. The plaintiff had not been removed from the office of the Director but his office as Director fell vacant by compulsion of law u/s 283(1)(i) of the Act. The plaintiff is neither the Director nor the Chairman of the Company. Hence there is neither deprivation of his right nor any injury caused to him. In any event, the last date for holding the first Annual General Meeting was on 15-11-1980 and the plaintiff, having regard to the Articles of Association, cannot claim to be the Chairman of the Company after 15-11-1980. On these grounds, the defendants sought for the dismissal of the suit.

14. Defendants 1 and 2 in O.S. No. 5673/1980 are the plaintiffs and the plaintiff is the defendant in O.S. No. 10462/1980. The 3rd defendant is not a party to this suit. The plaintiffs in this suit have prayed for declaration that the defendant T.K. Bose is not a Director and not a Chairman of the Company and for an order restraining him from indulging in any activity against the interest of the Company including writing letters to the Financial Institutions and others connected with the Company, claiming himself to be a Director or Chairman of the Company. The averments made by the plaintiffs in support of their claim in this suit are substantially the same averments made in their defence in O.S. No. 5673/1980 and the defence of the defendant in this suit is substantially the same as the stand taken by him in O.S. No. 5673/1980 for claiming the reliefs. Both the plaintiffs as well as the defendant have urged, in addition, some more facts in their respective pleadings, the details of which are unnecessary to be noticed.

15. On the basis of the pleadings, the Trial Court raised the following issues :

O. S. No. 5673/1980

(1) Whether the Meeting of the Board of Directors of first defendant-company was held on 24-10-1980 by defendants 2 and 3 ? If so.

(2) Is the said meeting hit by the Doctrine of lis pendens on account of the pendency of O.S. No. 2097/1980 and null and void ?

(3) Whether the co-option of defendant-3 as Director of first defendant-company is valid and legal ?

(4) Whether the plaintiff has failed to comply with Section 299(1) of the Companies Act ?

(5) Whether the plaintiff's office as Director of first defendant-company fell vacant by virtue of Section 283(i)(i) of the Companies Act ?

(6) Whether the plaintiff has ceased to be the Chairman of the first defendant-company from 16-11-1980 ?

(7) Whether the plaintiff proves that he continues to be the Director and Chairman of the Board of Directors of the first defendant-company in view of the order passed in O.S. 2097/80 (O.S. 9750/ 80) dated 28-10-80?

(8) Is the plaintiff entitled to declaration and injunction sought ?

(9) What order, what decree ?

O. S. No. 10462 / 1980

(1) Whether the defendant has failed to comply with Section 299 of the Companies Act ?

(2) Whether the defendant's office as Director of the plaintiff No. 1 company fell vacant by virtue of Section 283(l)(i) of the Companies Act ?

(3) Whether the defendant has ceased, to be the Chairman of the first plaintiff-company, from 16-11-1980 ?

(4) Whether the defendant has acted against the interest of first plaintiff-company ?

(5) Are the plaintiffs entitled to declaration and injunction sought ?

(6) What order, what Decree ?

16. Both the suits were clubbed together. Evidence was recorded in O.S.No. 5673/1980 and the evidence so recorded was taken as the evidence for the other suit O.S.No. 10462/ 1980. The Learned Trial Judge after recording the evidence, hearing the arguments and considering the evidence, both oral and documentary, dismissed the suit O.S.No. 5673/1980 filed by T.K. Bose and decreed the suit O.S.No. 10462/1980 filed by defendants 1 and 2, declaring that T.K. Bose is not a Director and Chairman of the Company and further restraining him from indulging in any of the activities against the interest of the Company including writing letters to the Financial Institutions and others connected with the said Company, claiming himself to be the Director or Chairman, and further directing the plaintiff to bear his own costs and to pay the costs of the defendants in both the suits as per his judgment and decree dated 31-8-1982. Hence these two appeals by the unsuccessful party T.K. Bose.

17. Since common questions of law and fact are involved in these two appeals, I propose to dispose of them by a common judgment.

18. I shall refer to the parties as they were arrayed in O.S.No. 5673/1980 in the course of this judgment for the sake of convenience as evidence was recorded and documents were marked in the said suit by the Trial Court.

19. Sri S.G. Sundaraswamy, Learned Advocate for the plaintiff argued that the crux of the point required to be answered in these two appeals is whether, on the facts of the case, was there any non-disclosure of interest by the plaintiff as contemplated in Section 299 of the Act and by reason of such non-disclosure, the plaintiff vacated the office of Director u/s 283(l)(i) of the Act. The importance of disclosure contemplated under sub-section (l) of Section 299 of the Act is to make known the Board of Directors, the concern or interest of every Director of the Company directly or indirectly in a contract or arrangement, or the proposed

contract or arrangement entered into or to be entered into by or on behalf of the company and such disclosure is to be made at a meeting of the Board of Directors. The word "disclosure" found in sub-section (1) of Section 299 connotes that the other Directors did not know the nature of the Director's concern or interest and that is why it is provided that he should disclose the nature of his concern and interest at a Meeting of the Board of Directors. If the Director or Directors already knew the nature of the concern or interest of another Director, no question of disclosure would arise as such disclosure would be redundant and meaningless. Further on the date of the first Meeting of the Board of Directors held on 17-5-1979, there was no concluded contract or arrangement between the Company and the NTL. There was a proposed arrangement or an agreement in the field and the question of entering into the contract or arrangement with the NTL was not on the agenda of the Board Meeting on 17-5-1979 for its consideration. What was decided on that day was that the 2nd defendant was to make an application to the KSFC for raising a loan of Rs. 10,60,000/- for putting up the factory and he was empowered to pledge the Company's immovable properties that were acquired and going to be acquired in the name of the Company for the purpose of obtaining the loan. Further, the proposed agreement with the NTL was required to be entered in a register to be maintained u/s 301 and the fact that it was not entered in such register shows that the parties did not consider that arrangement as the one falling u/s 299(2). So the question of disclosure of the nature of the interest of the, plaintiff did not arise at the Board Meeting held on 17-5-1979 because the proposal was only an assurance of the NTL to obtain a loan from the KSFC as per the plaintiff's letter to the KSFC dated 10-3-1979 written on behalf of the NTL. Disclosure of the nature of the concern or interest stipulated u/s 299(1) and (2) need not be in writing; oral disclosure will satisfy the requirement. To say that disclosure stipulated under these two sub-sections shall be in writing on the basis of the general notice referred to in sub-section (3) may not be sound. It serves a different object and applies to a totally different situation. Reading into the language of sub-sections (1) and (2) that the disclosure stipulated thereat, is disclosure in writing would amount to straining the language when the terms of sub-sections (1) and (2) do not call for such a construction. The interest of the future shareholders of the Company will be protected by Section 301 of the Act under which the Company is required to maintain a register of contracts and the companies and firms in which the Directors are interested. On these grounds Sri Sundaraswamy contended that the disclosure contemplated u/s 299(1) and (2) need not be in writing. Finally he argued that the plaintiff had disclosed his interest in the NTL orally pointing out to the 2nd defendant the scope of Section 299 of the Act at the Board Meeting held on 17-5-1979 but the 2nd defendant said that he would enter the same in the records, saying that he was fully aware of the plaintiff's interest in the NTL. This oral disclosure made by the plaintiff, according to Sri Sundaraswamy, draws support from the statement of the assets and liabilities of the plaintiff as Managing Director of the NTL handed over to the 2nd defendant at that meeting which the 2nd defendant had annexed to the loan application filed by him for

obtaining the term loan from the KSFC as authorised by the Board of Directors at the Meeting held on 17-5-1979. Thus he contended that there is no ground to hold that the plaintiff ceased to be the Director and consequently the Chair-man of the Company as he had failed to disclose his interest in the NTL as required under sub-sections (1) and (2) of Section 299. All the actions taken by defendants 2 and 3 in the matter of conducting the affairs of the Company to the exclusion of the plaintiff, including the meeting of the Board of Directors called on 24-10-1980 and the action taken in declaring that the plaintiff ceased to be the Director and also the Chairman of the Company and also the holding of the Annual General Meeting on 29-10-1980 and the proceedings there under are null and void as they were motivated solely and primarily to oust the plaintiff for which the 2nd defendant maneuvered in many ways in the name of the Company and in collusion with his brother-in-law the 3rd defendant. On these grounds, he submitted that the suit brought by the plaintiff deserves to be decreed and the suit brought by defendants 1 and 2 is liable to be dismissed by reversing the decrees and judgment of the Trial Court.

20. Per contra, Sri A.G. Holla, Learned Counsel for the respondents strongly argued in support of the decrees and judgment of the Trial Court. His argument was that disclosure of the nature of the interest contemplated in Section 299(1) and (2) shall be in writing. Oral disclosure will not satisfy the requirement of law as it may not be available for the benefit of the future directors and shareholders. General notice to be given to the Board by a Director contemplated in sub-section (3), which could only be in writing as is evident from clauses (b) and (c) of sub-section(3) specifying his interest in other institutions named therein would give a clue for interpreting that the disclosure contemplated in sub-sections (1) and (2) should also be in writing as no distinction in interpreting the language of different sub-sections of Section 299 is called for in the matter of disclosure of interest by the Director of a Company. Besides, the disclosure of the interest u/s 299(1) and (2) is before the Board of Directors at a meeting of the Board and not elsewhere, either by circulation or otherwise. Knowledge of the other Directors regarding the interest of an individual of Directors is immaterial, having regard to the language and object of Section 299. It is clear from the pleadings in the case and also the material produced that the proposed contract or arrangement to be entered into by the Company with the NTL came up for consideration and that it was discussed at the first Board of Directors' Meeting held on 17-5-1979. The contention that the other Director (defendants - the only remaining Director then - and defendant-3, a shareholder, knew or was aware of the interest of the plaintiff in the NTL and as such no disclosure by the plaintiff of his interest at that Meeting was necessary or that the plaintiff had disclosed his interest orally at that meeting are not tenable and true. What was disclosed orally by the plaintiff as stated in the pleading and in his evidence as P.W.I does not satisfy the requirements of sub-sections (1) and (2) of Section 299 because the plaintiff has not disclosed his concern or interest in the proposed contract or arrangement to be entered into by the Company with the NTL but it was his

interest in the NTL. This is not sufficient, to comply the requirements of disclosure contemplated under sub-section (1) of Section 299. He further contended that factually, the plaintiff did not disclose what he claimed to have disclosed at the Board Meeting held on 17-5-1979. The Minutes of the Proceedings of the Board Meeting for that day Ex. D.I do not support the say of the plaintiff. If ho had really made an oral disclosure of his interest in the NTL and the same was omitted to be recorded in Ex.D.1, he should have got the same included in Ex. D.1 before he signed even though the Minutes Ex. D.1 was written by the 2nd defendant. There is no satisfactory evidence to show that the plaintiff had disclosed his interest orally at the Board Meeting held on 17-5-1979. Section 299(1) and (2) contemplates disclosure of the nature of the interest by the Director at a meeting of the Board of Directors. The knowledge or awareness of the interest of the Director by the other Directors would not relieve the concerned director from disclosure of his interest enjoined on him by law at the meeting of the Board of Directors. Once the legislature thought that a particular act to be complied with in a particular way and embodied the same in an enactment, any other way or mode even if it could achieve the purpose cannot be substituted. Thus he argued that the knowledge of the 2nd defendant or the 3rd defendant of the interest of the plaintiff in the NTL would not be an excuse for the plaintiff from disclosing his interest in the proposed agreement or arrangement to be entered into by the Company with the NTL. Disclosure of interest by a Director of a Company is for the benefit not only of the present but also of the future directors and shareholders. Maintaining a register as required u/s 301 would not satisfy this requirement or achieve the object. In this case, the proposed contract or the agreement with the NTL was not completed and it was only at the proposal stage and non-mention of it in the register, even assuming that it was so, is of no consequence in respect of the compliance of disclosure of the interest u/s 299. What is required to be entered in the register u/s 301 is the particulars of the completed contracts or arrangements and not the contracts or arrangements which are at the proposal stage. There is no substance in the argument that defendants 2 and 3 maneuvered in every way and acted illegally only with a view to oust the plaintiff. All the actions taken by defendants 2 and 3 in conducting the affairs of the Company including the convening of the Board of Directors Meeting on 24-10-1980 and the proceedings there under and also the Annual General Meeting of the Company conducted in pursuance of the Court's Order on 29-10-1980 and the proceedings of the Meeting are all done in accordance with" law. He further argued that all the contentions raised contra to the findings of the Trial Court are without force. On these grounds, he submitted that both the appeals deserve to be dismissed.

21. Number of rulings have been cited by the Learned Advocates appearing for both parties. Such of those decisions relevant for the decision of the points arise for consideration will be referred to at the appropriate stage.

22. On the rival contentions urged, the points that arise for decision in these appeals are these :

(1) Whether the plaintiff has failed to comply with the requirements of sub-sections (1) and (2) of Section 299 of the Act ?

(2) Whether the office of the plaintiff" as Director of the Company fell vacant by virtue of Clause (i) of sub-section (1) of Section 283 of the Act ?

(3) Whether the Meeting of the Board of Directors held on 24-10-1980 and the Annual General Meeting dated 29-10-1980 and the proceedings thereunder are legal and valid ?

(4) Whether the plaintiff has ceased to be the Chairman of the Company from 16-11-1980?

23. I shall proceed to consider these points in the order in which they are formulated.

POINTS Nos. 1 & 2 :

24. These two points bearing upon the legal questions can be taken up together for consideration. The material portion of Section 299 and 283 of the Act read thus :

299. (1) Disclosure of interests by director -

Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of the Company shall disclose the nature of his concern or interest at a meeting of the Board of Directors.

2(a) In the case of a proposed contract or arrangement, the disclosure required to be made by a director under sub-section (1) shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration or if the director was not at the date, of that meeting, concerned or interested in the proposed contract or arrangement at the first meeting of the Board held after he becomes so concerned or interested.

(b) In the case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the director becomes concerned or interested in the contract or arrangement.

3(a) For the purposes of sub-sections (1) and (2), a general notice given to the Board by a director, to the effect that he is a director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.

(b) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further periods of one financial year at a

time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.

(c) No such general notice and no renewal thereof, shall be of effect unless either it is given at a meeting of the Board or the director concerned takes reasonable steps to secure that it is brought upon and read at the first meeting of the Board after it is given.

(4)

(5)

xxx xxx xxx (6)

(Emphasis is supplied)

283. Vacation of office by Directors

The office of a director shall become vacant if

(a) to (h)

xxx xxx xxx (i) he acts in contravention of Section 299.

(Note : Rest of the Section is omitted)

25. On the question of construing sub-sections of a section, the Supreme Court in *Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd.*, observed:

"The first rule of construction which is elementary, is that the words used in the Section must be given their plain grammatical meaning. Since we are dealing with two sub-sections of Section 76, it is necessary that the said two sub-sections must be construed as a whole "each portion throwing light, if need be, on the rest." The two sub-sections must be read as parts of an integral whole and as being inter-dependent ; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided."

26. Keeping in view, the above observations of the Supreme Court, I shall now proceed to consider the true scope and ambit of the provisions contained in sub-sections (1) to (3) of Section 299.

27. The heading of Section 299 reads : "Disclosure of interests by director". As could be seen from sub-section (1) of Section 299, the disclosure by a Director of the nature of his concern or interest relates to two categories of transactions viz., "a contract or arrangement" or "proposed contract or arrangement" entered into or to be entered into by or on behalf of the Company and the place of disclosure is "at a meeting of the Board of Directors". As regards the nature of the concern or interest to be disclosed? it stipulates that the disclosure should be made

whether the Director is directly or indirectly concerned or interested in the afore-said categories of transactions. Sub-section (2) provides as to when the disclosure of the nature of the concern or interest of the director is to be made. Clause (a) of sub-section (2) deals with the disclosure to be made in relation to the proposed contract or arrangement. It stipulates that in the case of proposed contract or arrangement, the disclosure required to be made by a director under sub-section (1) shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration or if the director was not at the date of that meeting, concerned or interested in the pro-posed contract or arrangement, at the first meeting of the Board held after he becomes so concerned or interested. It is obvious from the language of clause (a) of sub-section (2) that the disclosure required to be made by a director under sub-section (1) is in case of a proposed contract or arrangement shall be made only at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration or if the director was not concerned or interested in such contract or arrangement at the date of that meeting, then disclosure shall be made at the very first meeting of the Board after he becomes so concerned or interested. Clause (b) of sub-section (2) stipulates that in the case of other contract or arrangement, that is in the case of a completed contract or arrangement, the disclosure shall be made at the first meeting of the Board held after the director becomes concerned or interested in the said contract or arrangement. The language of sub-section (1) and (2) of Section 299 merely refers to the disclosure of the nature of the concern or interest by a director of the company but it does not provide the mode whether the disclosure should be made orally or in writing. However, one thing is clear that the disclosure by the director of the nature of his concern or interest is in respect of a particular proposed contract or arrangement or completed contract or arrangement. If once the disclosure is so made, the requirement of the law is complete. In both the cases, the disclosure to be made as required under sub-section (1) is positively at a meeting of the Board of Directors and nowhere else and it should be by the Director concerned. In other words, the disclosure shall be made at the meeting of the Board of Directors by the concerned Director personally and it shall not be by any other mode, say, by proxy on his behalf by any other person either orally or by presenting a written disclosure handed over by the Director. As noticed earlier, the requirement of disclosure by a Director under sub-section (1) is relating to a particular transaction of the categories stated therein and once the disclosure is made as required there under by the Director in the manner provided in clauses (a) and (b) of sub-section (2), there is due compliance of sub-sections (1) and (2) of Section 299 of the Act.

28. Now turning to sub-section (3), it is clear that it is open to a Director to give a general notice to the Board of Directors to the effect that he is a Director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice be entered into with that body corporate or firm

on behalf of the Company and such general notice shall be deemed to be a sufficient disclosure of his concern or interest in relation to any contract or arrangement so made, for the purpose of sub sections (1) and (2). Clause (b) provides the period during which the said general notice shall remain in force and it stipulates that such general notice shall expire at the end of the financial year in which it is given but may be renewed for further periods of one financial year at a time by a fresh notice given in the last month of the financial year in which it would otherwise expire. Clause (c) provides that such general notice and the renewal thereof shall be effective only if it is given at a meeting of the Board or the director concerned takes reasonable steps to secure that it is brought upon and read at the first meeting of the Board after it was given.

29. A close reading of the provisions of sub-section (3) shows that the general notice contemplated to be given to the Board by a Director disclosing the nature of his interest or concern for the purpose of sub-sections (1) and (2) is not in respect of any particular proposed contract or arrangement or concluded contract or arrangement but it is in respect of future contract or arrangements to be entered into by or on behalf of the company with any body corporate of which he is a director or a member or a firm of which he is a member, listed in the general notice and such a general notice shall be effective till the end of the financial year in which it was given and it is subject to renewal for further periods of one financial year at a time provided, action is taken as stipulated in clauses (b) and (c) of sub-section (3). The very concept that a general notice shall remain effective for a period would import the necessity of its being in writing so as to be available to the Board of Directors for reference whenever a future arrangement or contract to be entered into by or on behalf of the Company with any body corporate or firm, to see if such body corporate or firm is included in the general notice. To import the concept of a general notice as found in sub-section (3) to a "disclosure" to be made under sub-sections (1) and (2) of Section 299, in my opinion, as rightly contended by Sri Sundaraswamy, may not be the intention of the legislature and to place such a construction upon sub-sections (1) and (2) would amount to straining the language and reading into the provisions of the said sub-sections something not intended by the legislature. If the legislature Had really intended that the "disclosure" must be in writing, they would have said so in explicit language that the disclosure to be made is by a notice given at a meeting of the Board of Directors. The difference in the expression employed respecting the disclosure in sub-sections (1) and (2) "shall disclose the nature of his concern or interest at a meeting of the Board of Directors" and in sub-section 3(a) "for the purpose of sub-sections (1) and (2), a general notice given to the Board....shall be deemed to be a sufficient disclosure" show that in the case of former, a personal disclosure at the Board Meeting by the Director and in the case of latter a general notice given to the Board necessarily to be in writing shall be deemed to be a sufficient disclosure for the purposes of sub-sections (1) and (2). There is no ambiguity in the language employed in sub-sections (1) and (2) and sub-section (3) in respect of the mode

of disclosure to be made. The distinction in the mode of disclosure in the two broad categories of the transactions stipulated under sub sections (1) and (2) on the one hand and sub-section (3) on the other, is also in conformity with the purpose and object of the disclosure of the interest required to be made. The contention of Sri Holla that on the basis of the language employed in sub-section (3), the term "disclosure" employed in sub-sections (1) and (2) of Section 299 should also be construed and read as disclosure in writing, does not appear to be sound.

30. The construction I placed upon the terms and language of sub-sections (1) to (3) of Section 299 and the conclusion reached is in conformity with the enunciation of the Supreme Court in Madanlal's case¹ stated supra.

31. The Companies (Central Government's) General Rules and Forms, 1956, is found at Appendix I to the Act. Rule 3 stipulates that the forms set forth in Annexure-A or Forms as near thereto as circumstances admit, shall be used in all matters to which the forms relate. Rule 4 states that the particulars contained in a form are prescribed as the particulars, if any, required under the relevant provision or provisions of the Act. Annexure-A prescribes the various forms under the relevant provisions of the Act. Form No. 24 AA is the form of the notice by the interested Directors pursuant to Section 299. The contents of the form clearly indicate that the notice in Form No. 24 AA is in relation to the general notice contemplated under sub-section (3) of Section 299. It is difficult to hold that Form No. 24 AA is also meant for a disclosure of the nature of the concern or interest of the Directors as stipulated under sub-sections (1) and (2) of Section 299 with such modifications as it would suit the disclosure of the nature of the concern or interest of the Director to the Board of Directors. Form 24 AA specifically refers to the notice by the interested Directors pursuant to Section 299. As already noticed, the expression used in sub-sections (1) and (2) of Section 299 is "disclosure at a meeting of the Board of Directors" whereas in sub-section (3) of Section 299 is "by a general notice given to the Board" and it shall be deemed to be sufficient disclosure for the purpose of sub-sections (1) and (2) and the two modes "disclosure at the Board Meeting" and "general notice given to the Board" have been used to serve different situations and objects as noticed earlier. If the legislature intended that the disclosure under sub-sections (1) and (2) of Section 299 is also by a notice, certainly it would have been so specified in subsections (1) and (2). This circumstance also would show that the legislature did not intend that the disclosure under sub-section (1) and (2) should be by means of a notice in writing.

32. Sri Holla's argument that a construction as suggested by him that the disclosure of the nature of the concern or interest under sub sections (1) and (2) should also be in writing as in the case of general notice stipulated under sub-section (3) if not accepted, the interest of the future share-holders of the Company will be seriously affected as they will not be knowing the nature of the concern or interest of the Director in respect of the transactions stipulated under

sub-sections (1) and (2) if the disclosure is not in writing but only oral, does not seem to me tenable. In this connection reference to Section 301 of the Act is relevant.

33. The heading of Section 301 reads :

"Register of contracts, companies and firms in which directors are interested." Sub-section (1) stipulates that every company shall keep one or more registers in which particulars of all contracts or arrangements to which Section 297 or Section 299 applies shall be entered separately including the particulars specified in Clauses (a) to (e) of sub-section (1). Sub-section (2) prescribes that particulars of every such contract or arrangement to which Section 297 or sub-section (2) of Section 299 applies shall be entered in the relevant register referred to under sub-section (1) within the time mentioned under clauses (a) and (b). Sub-section (3) provides that the registers referred to in the previous sub-sections shall also specify in relation to each director of the Company the names of the firms and bodies corporate of which notice has been given by him under subsection (3) of Section 299. It is seen from these provisions that the register or registers required to be maintained u/s 301 is only in respect of contracts or arrangements, proposed contracts or arrangements, and companies and firms in which Directors are interested where a general notice is given under sub-section (3) of Section 299. Sub section (3) stipulates that the names of the firms and bodies corporate of which notice had been given by the Director shall be specified in the register in relation to each Director of the Company. The details of the information required to be entered in such register or registers in my opinion, are sufficient and adequate for the future share-holders or the Directors of the Company to know the nature of the concern or interest of any Director in respect of the contracts or arrangements entered into or to be entered into by or on behalf of the Company. The contention of Sri Holla that only completed contracts or arrangements are required to be entered in the register or registers to be maintained u/s 301 does not conform to the stipulation in clause (d) of sub-section (1) which lays down that in case of a contract or arrangement to which sub-section (2) of Section 299 applies (which includes proposed contract or arrangement), the date on which it was placed before the Board shall be entered. On a careful analysis of the provisions of the Act, I am unable to subscribe to the view that disclosure of the nature of the concern or interest stipulated in sub-sections (1) and (2) of Section 299 should be, in writing. Oral disclosure will be sufficient compliance of the law.

34. Bearing the above principles of law, I shall now proceed to consider whether the plaintiff has failed to comply with the requirement of sub-sections (1) and (2) of Section 299 and whether the office of the plaintiff as Director of the . Company fell vacant on the grounds urged by the defendants.

35. It is common ground that the plaintiff was concerned or interested in the NTL as he was the Managing Director then. It is not in dispute that there was a proposal to enter into an arrangement or contract with the NTL for technical

collaboration and selling arrangement of the products of the Company through NTL. Admittedly the 1st Meeting of the Board of Directors was held on 17-5-1979. Well before the incorporation of the Company, plaintiff wrote a letter Ex, D.6 dated 10-3-1979 to the KSFC on behalf of the NTL as its Managing Director expressing willingness to give technical know how to the Company and also to enter into a selling arrangement of the products of the Company through NTL. The question is whether this proposed arrangement or contract to be entered into by the Company with the NTL came up for consideration at the Meeting of the Board of Directors on 17-5-1979 and the plaintiff failed to disclose his interest or concern in the same. Defendants 1 and 2 in their plaint in O.S. No. 10462/ 1980 have specifically alleged that the plaintiff T.K. Bose was the Managing Director and also a shareholder of the NTL, that he and his family had the controlling interest in the said Company, that he failed to disclose his interest in respect of the proposed agreement or arrangement between the Company and the NTL to the Board of Directors of the Company as required u/s 299 of the Act and his office as Director of the Company became vacant by reason of the provisions of Section 283(1X0 of the Act and consequently he ceased to be the Chairman also. In traversing these averments contained in the plaint, T. K. Bose, in his written statement has averred that he became one of the Directors and the Chairman of the Company, that an application was filed for a term loan from the KSFC on behalf of the Company in May 1979 as per the resolution passed at the meeting of the Board of Directors held on 17-5-1979 at Bangalore, that he prepared a statement of his assets as Managing Director of NTL and presented it to the 2nd defendant at that meeting, where he made the formal disclosure of his interest in the NTL, that the defendants were fully aware of his interest in the NTL even before, that the statement of assets prepared by him and presented at the time of the first meeting of the Board of Directors on 17-5-1979 when he disclosed his interest in the NTL was annexed to the loan application presented to the KSFC by the 2nd defendant on behalf of the Company, that the defendants therefore, had the full knowledge about the interest of the plaintiff in the NTL, that the plaintiff had not withheld information regarding his interest in the NTL at the first meeting when the subject of entering into a contract or arrangement with the NTL came up for consideration and the disclosure of the interest of the plaintiff in the NTL was made in spite of the full knowledge and awareness of the defendants about the interest of the plaintiff in the NTL.

36. The plaintiff in his suit O.S. No. 5673/1980 dealing with this aspect, has averred that after the formation of the Company, the Company needed funds and it approached the KSFC for grant of a term loan to the extent of Rs. 12 lakhs and one of the conditions prior to the grant of loan was that the Company should enter into a technical collaboration and selling arrangement with a reputed company ; that being so, at the very first meeting when raising of the term loan from the KSFC was discussed on 17-5-1979, the plaintiff had disclosed his interest in the NTL but the 2nd defendant said that he was fully aware of the same having been an employee of the NTL for fairly long time, that the 2nd

defendant had filed an application for term-loan to KSFC and he had annexed the statement of the assets of the plaintiff as Managing Director of NTL to the loan application, that the statement of the assets was prepared by the plaintiff and handed over to the 2nd defendant at the time of the first meeting of the Board of Directors on 17-5-1979 when the plaintiff disclosed his interest in the NTL, that the plaintiff had not withheld the information regarding his interest in the NTL at any slugs and in fact positively did disclose at the very meeting in which the question of entering into a contract or arrangement with NTL came up for consideration. The defendants in traversing these averments contained in the plaint, have stated in their written statement that it is true that one of the conditions for grant of loan by the KSFC was to enter into an agreement of technical know-how and sales arrangement of the products of the Company with a reputed Company, that, a draft agreement intended to be entered into between the NTL and the Company was prepared to be submitted to the KSFC even before the first meeting of the Board of Directors held on 17-5-1979, that the plaintiff did not disclose his interest in the NTL as required u/s 299 of the Act at the Board Meeting held on 17-5-1979, the statement that the plaintiff had disclosed his interest in the NTL but the 2nd defendant said that he was fully aware of the same having been an employee of NTL for fairly a long time is false, the assertion that the statement of assets of the plaintiff in the NTL submitted to KSFC was given to the 2nd defendant at the time of the. first meeting of the Board of Directors on 17-5-1979 is also false, that the plaintiff did not give such a statement to the Board of Directors of the Company, that the plaintiff did not make any disclosure of his interest in the NTL to the Board of Directors of the Company at any time and the statement of assets of the plaintiff in the. NTL was handed over to the 2nd defendant at a subsequent date for being handed over to the KSFC which was done on 14-8-1979.

37. Now turning to the evidence adduced in the case on this aspect, the parties mainly relied upon the oral evidence coupled with a few documents. The plaintiff who was examined as P.W. 1 has stated that a discussion did take place in the first Board Meeting on 17-5-1979 at Bangalore about the contract to be entered into between the NTL and the Company, though the subject was not on the agenda, that he pointed out orally in the said Meeting about his interest in the NTL in compliance with Section 299 of the Act, that the 2nd defendant then replied that he too was an employee of the NTL and knew the interest of the plain-tiff in the NTL and the disclosure made by the plaintiff could be recorded at the appropriate time, that that subject did not appear again on the agenda of the 2nd and 3rd Board Meetings held during the year 1979, that he had disclosed his interest in the NTL orally at the very first Board Meeting , on 17-5-1979 with specific reference to the contract to be entered into on behalf of the Company with the NTL and denied the suggestion that he had not disclose his interest in the NTL in any Board Meeting of the Company.

38. As against this, the 2nd defendant who was examined as D.W.1 has stated in his evidence that the matter in the letter dated 10 3-1979 (Ex. D. 6) written by

the plaintiff as Managing Director of the NTL to the KSFC offering technical collaboration to the Company and also the selling arrangement of its products was discussed in the first meeting of the Board of Directors held on 17-5-1979, that the plaintiff did not disclose his interest in the NTL either orally or in writing in that meeting, that he has not disclosed his interest even subsequently also, that the order of temporary injunction granted by the Nagpur Civil Judge's Court in the suit filed by the NTL was served on him on 21-10-1980, that he immediately held a Board Meeting on 24-10-1980 as he was forced to do so by service of the temporary injunction order, that in that meeting, the 3rd defendant was co-opted as Director of the Company because the plaintiff had not disclosed his interest in the NTL and he ceased to be the Director, that in the initial stage, the plaintiff was interested in the formation of the Company, that the object of NTL and that of the Company are similar, that he knew that the plaintiff was the Managing Director of NTL and that he was aware that the plaintiff was holding controlling shares of the NTL. He has also admitted that he was very close to and intimate with the plaintiff when he was in service in the NTL and three Board Meetings of the Company were held during the year 1979.

39. As to what transpired in the Board Meeting held on 17-5-1979, we have the only evidence of P.W. 1 the plaintiff and D.W. 1 the 2nd defendant. D.Ws. 2 to 4, the other witnesses examined in the case were not present at the Board Meeting held on 17-5-1979 nor do they speak as to what had transpired in that meeting. Thus, we are left with the evidence of P.W. 1 on behalf of the plaintiff and D.W. 1 on behalf of the defendants on the question of disclosure or non-disclosure of the interest of the plaintiff in the proposed contract or arrangement to be entered into on behalf of the company with the NTL. Their evidence is oath against oath; one asserts the disclosure and the other emphatically denies. However, the oral evidence of these two witnesses shall have to be appreciated against the background of the admitted , facts of the case, the documents produced and also the surrounding circumstances including the conduct of the parties.

39. The plaintiff and defendants 2 and 3 were known to each other very closely and intimately for a long time. The plaintiff was the Managing Director of NTL in which defendants 2 and 3 were employed. Defendant-2 was working as an Engineer since 1974 and he was responsible for the project, during project phase and looking after all the papers in respect of financial institutions, Banks etc., and after completion of the project phase, he was responsible for and was in charge of planning, production planning and drawing departments and also responsible for various designing and implementation of plant and machinery like crane, winding machines etc. whereas defendant-3 was the Works Manager. Undoubtedly, the plaintiff was a man of experience about the functioning of a Company, he being the Managing Director of the NTL since 1974 which was incorporated in the year 1973. Such being the case, it is normal to expect that he had kept him-self informed the relevant provisions of law applicable to companies both public and private and in particular, the duties and functions of the Directors, the Managing Director and the Chairman of a Company, whereas

defendants 2 and 3 were the freshers and new-comers in the line. Since defendants 2 and 3 were the employees in the NIL for a considerable long period, they knew the nature of the interest of the plaintiff in the NTL. This aspect has been made clear by defendants 1 and 2 in their plaint in O.S. No. 10462/1980 wherein they have stated that the plaintiff is the Managing Director and shareholder and he with his family has the controlling interest in the NTL. Besides, the 2nd defendant, in his cross-examination has stated that he knew that the plaintiff was the Managing Director and that he was holding the controlling shares in the NTL. These three individuals, viz., the plaintiff and defendants 2 and 3 in this background, decided to start the company which was incorporated on 16-5-1979 of which the plaintiff and the 2nd defendant were the first Directors and they were respectively appointed as the Chair-man and the Managing Director. To start with, there were only three shareholders, the plaintiff and defendants 2 and 3 each owning five shares of Rs. 100/-. After the formation of the Company, the 2nd defendant was authorised to make the necessary application to the KSFC for grant of a term loan to the extent of Rs. 12 lakhs and one of the conditions prior to the grant of loan by the KSFC was that the Company should enter into a technical collaboration and selling arrangement with a reputed Company. It was decided among the shareholders that the Company should enter into a technical collaboration and selling arrangements with the NTL and in this regard well before the incorporation of the Company, the plaintiff wrote a letter Ex. D. 6 dated 10-3-1979 to the KSFC on behalf of the NTL as its Managing Director expressing willingness to give technical know-how to the Company and also to enter into a selling arrangement of the products of the company through the NTL and this proposed arrangement or contract to be entered into by the Company with the NTL came up for consideration at the 1st meeting of the Board of Directors held on 17-5-1979. Whatever may be the stand taken on behalf of the plaintiff at the time of arguments, the plaintiff in his pleadings in both the suits has taken up the stand that the proposed contract or arrangement respecting the technical collaboration and the selling arrangement of the products of the Company to be entered into by the Company with the NTL came up for consideration at the first Meeting of the Board of Directors held on 17-5-1979. Besides, the plaintiff has also" admitted in unequivocal terms in his evidence that a discussion did take place at the First Board Meeting held on 17-5-1979 about the proposed contract to be entered into between the NTL and the Company, although that subject was not on the agenda, obviously referring to the proposed contract or arrangement to be entered into in terms of the letter written by him as per Ex.D. 6 to the KSFC well before the incorporation of the Company. It is equally the case of the defendants both in their pleadings and also in the evidence of the 2nd defendant that the matter contained in the letter Ex, D. 6 came up for discussion and consideration in the first meeting of the Board of Directors held on 17-5-1979 and it was his further case that, that subject was discussed is borne out in para 7 of Ex. D. 1, the Minutes of the Board Meeting held on 17-5-1979, Thus far, there is no controversy or dispute between the parties.

40. However, the parties have joined issue seriously and bitterly regarding the disclosure of the interest of the plaintiff in the proposed contract or arrangement to be entered into on behalf of the Company with the NTL at the first meeting of the Board of Directors held on 17-5-1979 at which the said subject came up for consideration. As noticed earlier, the oral evidence in this aspect is that of the plaintiff and 2nd defendant and their evidence by them-selves is not of much assistance to resolve this question definitely one way or the other. It is the say of the plaintiff that at the Board Meeting held on 17-5-1979, a discussion did take place about the contract to be entered into between the NTL and the Company though the subject was not on the agenda of that Meeting, that he pointed out orally about his interest in the NTL in compliance with Section 299 of the Act and that the 2nd defendant then said that he too was an employee of the NTL and knew the interest of the plaintiff in the NTL and the disclosure made by the plaintiff could be recorded at the appropriate time, and that, that subject did not appear again on the agenda of the subsequent meetings of the Board of Directors held during the year 1979. He has averred in his pleadings that he had prepared a statement of his assets as Managing Director of the NTL and handed it over to the 2nd defendant at the time of the first Meeting of the Board of Directors which the 2nd defendant had enclosed to the loan application submitted to the KSFC for a term loan presented on 17-7-1979 as per Ex. P. 22.

41. However, the defendants have denied both in their pleadings and also in the evidence of the 2nd defendant, though admitting that the proposed contract to be entered into by the Company with the NTL came up for consideration at the 1st meeting held on 17-5-1979, that the plaintiff had disclosed his interest in the said contract orally as claimed by him. The defendants have further stated in their pleadings that the plaintiff did not prepare and hand over his statement of assets as the Managing Director of the NTL to the 2nd defendant at the time of the first Board Meeting held on 17-5-1979 but he handed over such a statement subsequently to the 2nd defendant to be handed over to the KSFC which was done on 14-8-1979.

42. Admittedly the letter Ex.D.6 dated 10th March 1979 was written to the KSFC by the plaintiff in his capacity as the Managing Director of NTL offering technical collaboration and also agreeing to sell the products of the Company through NTL which was one of the conditions precedent for granting a term loan to the Company. This letter was well before the Company came to be incorporated, obviously as a preliminary step to keep inform the KSFC in advance and also to facilitate the Company to make its loan application. It is admitted by the 2nd defendant in his evidence that the matter contained in Ex. D. 6 was discussed in the first meeting of the Board of Directors held on 17-5-1979. Thus it is obvious that Ex. D. 6 was placed at the first meeting of the Board of Directors on 17-5-1979 and the contents of Ex. D. 6 came to the knowledge of the Directors in that meeting. Besides, Ex. D. 6 was produced by the defendants in the Trial Court. The terms and conditions of the NTL offering technical collaboration and agreeing to sell the products of the Company have been made clear in Ex.D.6. It

is stipulated that the Company would pay to the NTL a technical know-how fee of 3 1/2% plus actual cost of drawings and other paper work which would be furnished at cost and also 5% on the selling cost exclusive of taxes, towards selling expenses. Besides, the letter in question also reveals the nature of the concern or interest of the plaintiff in the NTL that he was the Managing Director and consequently a shareholder and also one of the Directors of the NTL. With this document Ex. D. 6 before the Board Meeting on 17-5-1979, the evidence of P.W. 1 that he disclosed orally in the said meeting about his interest in the NTL in compliance with Section 299 of the Act and the 2nd defendant then said that he too was an employee of the NTL and knew the interest of the plaintiff in the NTL and the disclosure made by the plaintiff could be recorded at the appropriate time, appears to me true and real. This conclusion I reach gains support from the other material produced, the conduct of the parties and the the circumstances of the case to which I shall advert presently.

43. Ex. D.I is the Minutes of the Board Meeting held on 17-5-1979. It reveals that the Certificate of Incorporation of the Company dated 16-5-1979 was placed before the Meeting. Besides, it was reported by the 2nd defendant that he has filed Form No.37 pursuant to Section 303(2) of the Act on 23-4-1979 regarding appointment of the plaintiff and 2nd defendant as Directors of the Company. It also further reveals that among them plaintiff was the Chairman and the 2nd defendant was the Managing Director of the Company. Para 7 of the Minutes stipulates inter alia that it was resolved at the Board Meeting of the Company that the 2nd defendant was empowered to make the necessary application for raising a term loan of Rs. 10,60,000/- from the KSFC and he was further invested with the necessary powers to carry out the said purpose. Accordingly he made the necessary application as per Ex. P. 22 on 17 7-1979 and along with the loan application as required under the terms of the loan application, he also annexed proforma A-I containing the details of the plaintiff including his bio-data, personal assets and liabilities and also his association with the concerns other than the Company. Ex. P.22 including the proforma A-I relating to the plaintiff was marked by consent. Proforma. A-I furnishes the details of the interest of the plaintiff in the NTL. It is the case of the plaintiff that he prepared this statement and handed it over to the 2nd defendant at the first meeting of the Board of Directors in which the 2nd defendant was empowered to make the necessary application for loan from the KSFC, in addition to making oral disclosure of his interest in the NIL, The defendants, admitting that the plaintiff had handed over such a statement to the 2nd defendant denied that it was given to him at the meeting of the Board of Directors on 17 5 1979 saying that it was much later-without specifying the date on which it was given to the 2nd defendant-to be handed over to the KSFC which was done on 14-8-1979. The plaintiff was specific in his say that it was handed over to the 2nd defendant at the first meeting of the Board of Directors on 17-5-1979 whereas the stand taken by the defendants was an evasive one as to the time when the statement was handed over to the 2nd defendant, though admitting the fact that such a statement was

handed over to the 2nd defendant. In the circumstances of the case and in particular that the 2nd defendant was empowered to make the application at the Board Meeting held on 17-5-1979 the case of the plaintiff that the statement was handed over to the 2nd defendant at the first Board Meeting sounds more probable.

44. Besides, the conduct of the parties throughout in conducting the affairs of the company until bickering and differences of opinion between the plaintiff and the 2nd defendant started somewhere in the month of September 1980 would show that there was no grievance for the defendants against the plaintiff that he had failed to disclose his interest in the NTL at the first Meeting of the Board of Directors held on 17-5-1979. On the other hand, it is the case of the plaintiff that since he had disclosed his interest in the NTL at the very first Board Meeting held on 17-5-1979 that subject did not appear again on the agenda of the second and third Board Meetings held on 9-7-1979 and 15-12-1979 respectively. Ex. D.7 and D.8 are the Minutes of these two Board Meetings which show that the plaintiff took part in those meetings in his capacity as Director-Chairman. It is undisputed that these Board Meetings were held in the year 1979. It is the case of the 2nd defendant that two more Board Meetings were held at the beginning of the year 1980, one on 12-3-1980 and the other on 14-4-1980. In support of this plea, the defendants have produced Ex. D. 9 and Ex. D. 10 the Minutes of the Board Meetings held on 12-3-1980 and 14-4-1980. The plaintiff has disputed the holding of these Board Meetings. However, Ex. D. 9 and D. 10 on which the defendants rely also show that they have accepted the position that the plaintiff had attended those two Board Meetings in his capacity as Director-Chairman. It is not as if, the defendants and in particular the 2nd defendant did not know the nature of the concern or interest of the plaintiff in the NTL. The defendants in their plaint in O.S. No. 10462/1980 have specifically stated that the defendant is a shareholder and also the Managing Director of the NTL and he, with his family, has the controlling interest in the said Company. Besides, defendant-2 in his evidence has further admitted that he knew that the plaintiff was the Managing Director of the NTL, that he was holding controlling shares of the NTL and that he (defendant2) was very close and intimate with the plaintiff when he was in service in the NTL. In the face of these clear admissions of their knowledge about the nature of the interest of the plaintiff in the NTL even before the Company was incorporated, it is difficult to believe their version and in particular the say of the 2nd defendant that the defendants came to know for the first time the nature of the interest of the plaintiff in the NTL only on 21-10-1980 when the temporary injunction order passed in O.S. No. 1340/1980 on the file of the Civil Judge, Junior Division, Nagpur, instituted by the NTL was served on the 2nd defendant. Their own admissions show otherwise that this information, the 2nd defendant had at the time of the first meeting of the Board of Directors held on 17-5-1979 and if the plaintiff had not disclosed his interest in the NTL as required u/s 299 of the Act, when the proposed arrangement or contract to be entered into by the Company with the NTL came up for consideration, certainly he would have taken

immediate action and would not have allowed the plaintiff to take part in a series of Board Meetings held subsequently in his capacity as Director-Chairman. This conduct of the defendants and in particular that of the 2nd defendant go a long way in support of the stand taken by the plaintiff that he had disclosed the nature of his interest in the NTL at the first meeting of the Board of Directors held on 17-5-1979.

45. The mere fact that the disclosure made by the plaintiff about his interest in the NTL at the Board Meeting held on 17-5-1979 does not find a place in Ex. D. 1, the Minutes of the Meeting, by itself would not be a conclusive proof that the plaintiff did not make such a disclosure, in view of the overwhelming material available in this case to which a detailed reference has been made herein above. Section 193 of the Act stipulates that every Company shall cause the Minutes of all proceedings of every meeting of its Board of Directors, among other things, to be kept by making, within 30 days of the conclusion of every such meeting, entries thereof in books kept for that purpose with their pages consecutively numbered. Section 194 provides that the Minutes of the Meeting kept in accordance with the provisions of Section 193 shall be evidence of the proceedings recorded therein. Section 195 raises a presumption that where the Minutes of the proceedings of any meeting of its Board of Directors have been kept in accordance with the provisions of Section 193, all the proceedings thereat to have duly taken place until the contrary is proved. Undoubtedly, consideration of the proposed arrangement or agreement to be entered by the Company with the NTL was not one of the subjects listed on the agenda. However, it is an admitted fact that the matters contained in the letter Ex. D. 6 relating to the proposed arrangement or contract to be entered into by the Company with the NTL came up for consideration at the Board Meeting held on 17-5-1979. The minutes of the Board Meeting was written by the 2nd defendant and it is at Ex. D.I. It was signed by the plaintiff as Chairman. It is not made clear whether the Minutes of the Board Meeting was kept in a Register as contemplated and in the manner provided in Section 193. However, the provisions contained in Sections 193 to 195 do not lead to the conclusion that if any item of the proceedings conducted at the meeting of the Board of Directors, if omitted to be recorded in the Minutes of the proceedings would become invalid or inoperative or there would be a presumption that such an item of the proceedings did not take place at the Board Meeting. The only presumption of law arising u/s 195 is, that all the proceedings of the Meeting of the Board of Directors kept in accordance with the provisions of Section 193, have duly taken place until the contrary is proved and, nothing more. Hence omission to record the disclosure made by the plaintiff of the nature of his interest in the NTL in Ex.D. 1 is of little consequence in the circumstances of the case.

46. Assuming that the disclosure under sub sections (1) and (2) of Section 299 shall be in writing, it seems to me that Ex.D 6, the letter addressed to the KSFC by the plaintiff as Managing Director of NTL and which was before the Meeting of the Board of Directors held on 17-5-1979 at which the question of entering into a

contract or arrangement with the NTL was taken into consideration, would serve the purpose of "disclosure" stipulated u/s 299(1) and (2). Ex.D.6 furnishes information, among other things, that the plaintiff was the Managing Director of NTL and that the Company would pay to the NTL a technical know-how fee of 3 1/2% plus actual cost of drawing and other paper works which shall be furnished at cost and also 5% on the selling cost, exclusive of taxes, as the selling expenses. Thus the Board of Directors of the Company were kept informed the nature of the plaintiff's "interest being the Managing Director of the NTL" from the benefits, the NTL would receive under the proposed arrangement or contract to be entered into on behalf of the Company with the NTL on the lines indicate in Ex.D.6.

47. The meeting called by the 2nd defendant on 24-10-1980 the deliberations alleged to have taken place and the resolutions passed at that meeting, all appear to me with ulterior motive in active collusion with the 3rd defendant and D.W.3 M.P. Devaraj, the Tax Consultant, to oust the plaintiff from the Directorship of the Company and consequently the Chairmanship also, obviously taking advantage of the omission to record the disclosure made by the plaintiff at the first Board Meeting held on 17-5-1979 in the Minutes of its proceedings Ex. D. 1 and on the advice of D. W. 3 as admitted by him in his evidence as soon as the temporary injunction order in the suit filed by the NTL in Nagpur Court was served upon the 2nd defendant on 21-10-1980. The 3rd defendant has stated in his evidence that he attended the Board Meeting held on 24-10-1980, that the 2nd defendant had showed him the injunction order of the Nagpur Court issued against the Company prior to 24-10-1980 and consulted him in this behalf and he advised the 2nd defendant that the plaintiff ceased to be the Director of the Company on account of Section 299 of the Act. Obviously the defendants appeared to have thought over a novel scheme on the advice of D.W. 3, the Tax Consultant, that they, for the first time, came to know of the nature of the interest of the plaintiff in the NTL only when the injunction order was served upon the Company and the 2nd defendant, on 21-10-1980, as a ruse to oust the plaintiff from Directorship and consequently from Chairmanship of the Company somehow or the other. The convening of the meeting, the proceedings said to have been deliberated at the meeting and the decision taken as reflected from the Minutes of the Meeting at Ex, D. 5, all speak for themselves as to the motive and object of conducting the meeting on 24-10-1980.

48. Sri Sundaraswamy had advanced a contention that if the Director or the Directors of a Company already knew the nature of the concern or interest of another director, disclosure of the interest or concern of that Director in a proposed contract or arrangement or in a completed contract or arrangement to the Board of Directors as contemplated under sub-sections (1) and (2) would become redundant and meaningless as the very purpose of the disclosure is to keep inform the Board of Directors about the interest or concern of the other Director. In meeting this contention Sri A.G. Holla, Learned Advocate appearing for the defendants, contended that the knowledge or awareness of the interest of

the Director by the other Directors would not absolve. the mandate of the law to disclose the nature of his concern or interest by the Director concerned at the Meeting of the Board of Directors, as once the legislature thought that a particular act to be complied with in a particular way and embody the same in an enactment, any other way or mode, even if it could achieve the purpose cannot be substituted. It seems to me that the argument of Sri Holla has to prevail.

49. Sub-sections (1) and (2) of Section 299 enjoins the Director to disclose the nature of his concern or interest whether directly or indirectly in a contract or arrangement or proposed contract or arrangement entered into or to be entered in to by or on behalf of the Company at a meeting of the Board of Directors as prescribed under sub-section (2). The language of these sub-sections does not admit an argument that the disclosure by a Director of the nature of his concern or interest contemplated thereunder is only when the other members of the Board of Directors did not know of it and if they knew, formal disclosure is unnecessary.

50. In *Mandir Sita Ramji vs. Governor of Delhi* AIR 1974 SC 1968, the Supreme Court dealing with the scope of Section 5-A of the Land Acquisition Act, 1894, in particular, the failure of the Land Acquisition Collector to enquire into the objection after giving the appellant an opportunity of being heard, observed :

"The failure of the Land Acquisition Collector to inquire into the objection after giving the appellant an opportunity of being heard would show that he declined to exercise his jurisdiction under the Section. As we said, the fact that the ultimate decision has to be made by the State Government did not relieve the Collector from his statutory duty to enquire into the objection and make the recommendation. We see no reason why the Division Bench should have departed from the procedure prescribed by the Statute. The observation of the procedure laid down by statute before depriving a person of his property is necessary to generate the feeling that rule of law prevails in this country. When a procedure is prescribed by the legislature, it is not for the Court to substitute a different one according to its notion of justice. When the legislature has spoken, the judges cannot afford to be wiser."

(Emphasis is supplied)

Again dealing on the same topic, the Supreme Court in *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, , observed as under :

"A century ago, in *Taylor -v.- Taylor* (1875) 1 Ch. D. 426 Jessel M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden- This rule has stood the test of time...This rule squarely applies "where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in, a particular manner did not imply a prohibition to do it in any other".

The ratio of these decisions, as rightly contended by Sri Holla supports the view that the knowledge of the other directors of the Board, of the nature of the concern or interest of the Director who is enjoined to disclose under sub-sections (I) and (2), would not relieve him of his duty to disclose the same at the Meeting of the Directors. The ruling of the Madras High Court in Venkatachalapathy -v.- Guntur Mills AIR 1929 Mad. 353 relied on by Sri Sundaraswamy does not support his contention that disclosure of the nature of the concern or interest by a Director u/s 299(1) and (2) is un-necessary if the other Directors of the Board knew it.

51. Sri Holla argued that assuming that the plaintiff had orally disclosed the nature of his concern or interest at the first Meeting of the Board of Directors, still what was alleged to have been disclosed orally as stated in the pleading arid also in his evidence as P.W.I does not satisfy the requirements of sub-sections (1) and (2) of Section 299 because the plaintiff has not disclosed the nature of his concern or interest in the proposed contract or arrangement to be entered into by the Company with the NTL as what was disclosed was his interest in the NTL and this is not sufficient to comply with the requirement of "disclosure" as contemplated under sub-sections (1) and (2) of Section 299. It is true that the concern or interest of the Director to be disclosed at the Board Meeting must be in relation to the contract or arrangement or proposed contract or arrangement entered into or to be entered into by or on behalf of the Company. What was disclosed by the plaintiff at the first meeting of the Board of Directors has been adverted to in the earlier portion of this Judgment and found on the basis of the material that the plaintiff had disclosed his interest in the NTL being its Managing Director and in that capacity, concerned or interested in the benefit, the NTL would receive under the proposed contract or arrangement. It seems to me that this was sufficient disclosure as contemplated under sub-sections (1) and (2) of Section 299. Thus I find not much force in this argument.

52. On the above discussion and the conclusions reached, I hold that the plaintiff has not failed to comply with the requirements of sub-sections (I) and (2) of Section 299 and that his office as Director of the Company did not fall vacant by virtue of clause (i) of sub-section (1) of Section 283 of the Act and consequently, his office as Chairman of the Company also did not fall vacant.

POINT NO. 3:

53. The next question for consideration is whether the Meeting of the Board of Directors and also that of the Annual General Meeting held on 24-10-1980 and 29-10-1980 respectively and the proceedings of those meetings are legal and valid. Articles 5, 6, 7 and 8 of the Articles of Association of the Company enumerates the powers of the. Board of Directors. Article 9 stipulates that until other-wise decided by the General Meeting, the number of Directors of the Company shall not be less than 2 and not more than 11. Article 10(a) provides that the first Directors of the Company shall continue in office unless they vacate on their own accord or otherwise subject to the provisions of the Act, that all

other Directors shall retire at every Annual General Meeting but they shall be eligible for re-election and the first Director of the Company are the plaintiff and the 2nd defendant. Clause (b) of Article 10 stipulates that the plaintiff will be the first Chairman of the Company and his term shall be till the first Annual General Meeting in which the new Chairman will be elected and thereafter at every Annual General Meeting the Chairman shall be elected and it further provides that the retiring chairman shall be eligible for re-election. It also provides that the Chairman shall preside over all the meetings of the Board of Directors and other meetings and in his absence, the Board of Directors present shall elect its own Chairman and he shall preside over the proceedings of such meetings. Article 18 provides that the Board of Directors may appoint an alternate Director to act for a Director during his absence for a period of not less than three months from the date in which Meetings of the Board are ordinarily hold, subject to the provisions laid down in Section 313 of the Act. Article 19 provides that the Board of Directors may at any time appoint a person as ex-officio director of the Company and the person so appointed need not also hold any share qualification. Article 20 deals with general management.

54. As noticed earlier, the affairs of the Company was carried on smoothly without any bickering or differences of opinion between the Directors viz., the plaintiff and the 2nd defendant. The atmosphere in the functioning of the Company appeared to have been charged with dissensions and differences between them from the beginning of 1980 and finally resulted in the institution of O.S. No. 1340/1980 in the Nagpur Court by the NTL against the Company in which an order of temporary injunction was passed and served on the Company and the 2nd defendant on 21-10-1980. This situation, according to the defendants, forced defen-dant-2 in holding the Directors" Meeting on 24-10-1980 followed by the Annual General Meeting on 29-10-1980 to the exclusion of the plaintiff. Ex. D. 5 is the Minutes of the Board Meeting held on 24-10-1980. It is unnecessary to refer to the details. However, it discloses that the persons present at the Board Meeting were the 2nd and 3rd defendants and M.P. Devaraj (D.W.3) by invitation. The Board Meeting was presided over by the 2nd defendant. It was brought to the notice of the Board of Directors for the first time at this meeting that the office of the plaintiff as Director and also Chairman of the Company became vacant by virtue of the provisions of Section 283(1)(i) of the Act and the 3rd defendant was co-opted as a Director of the Company in view of the office of the Directorship of the plaintiff having, become vacant and further ratified the action of the 2nd defendant taken earlier as Managing Director, including convening of the Annual General Meeting to be held on 29-10-1980 as per a notice given by him dated 6-10-1980.

55. Ex. D. 23 is the Minutes of the Annual General Meeting held on 29-10-1980. It shows that the persons present at the Meeting were the plaintiff, defendants 2 and 3, D.W. 3 and D.W. 4 (the Legal Adviser and the Auditor of the Company respectively) and one V.R. Karia, the plaintiff's advocate. The General Body Meeting was held with the permission of the Court on an undertaking given by

the 2nd defendant on the application I.A.I filed by the plaintiff for an order of temporary injunction in the suit O.S. No. 2097/80 (New No, O.S. 9750/1980) instituted by him for restraining defendants from holding the Annual General Meeting on 29-10-1980, that any resolution to be passed at that meeting will not be given effect to pending orders of the Court on the said application. The proceedings of the General Meeting Ex. D. 23 as recorded further shows that the Meeting was dissolved by the plaintiff as Chairman and thereafter the Meeting was continued by the defendants and several resolutions were passed including appointing the 2nd defendant as the Chairman and re appointing the 3rd defendant as a Director of the Company on his retiring from the co-opted Directorship of the Board.

56. The 2nd defendant in his evidence has admitted that he did not send any notice of the Board Meeting held on 24-10-1980 to the plaintiff as, according to him, he had ceased to be the Director of the Company. It is provided under Article 10 (b) that the Chairman shall preside over all the Meetings of the Board of Directors and other Meetings and in his absence only the Board of Directors present shall elect its own Chairman and he shall preside over the proceedings only of such meeting. Obviously the 2nd defendant could not have sent any notice of the Annual General Meeting held on 29-10-1980 to the plaintiff, since action was taken to convene the said Annual General Meeting by ratifying the action taken by the 2nd defendant on the basis of the notice dated 6-10-1980. Since I have held under points 1 and 2 that the plaintiff continued to be the Director and also the Chairman of the Company, the Meeting of the Board of Directors held on 24-10-1980 and also the Annual General Meeting held on 29-10-1980 without giving notice to the plaintiff as if he had ceased to be the Director and Chairman of the Company and the proceedings of those meetings are all, in my opinion, not legal and valid.

POINT NO. 4:

57. As noticed earlier, the plaintiff was the first Chairman of the Company and his term should be till the first Annual General Meeting in which the new Chairman would be elected as per Article 10(b) of the Articles of Association. The first Annual General Meeting shall be held within a period of not more than 18 months from the date of incorporation of the Company as stipulated u/s 166 of the Act. Section 167 empowers the Central Government to call an Annual General Meeting if any default is made in holding an Annual General Meeting in accordance with Section 166. Section 168 prescribes the penalty for default in complying with Section 166 or any direction of the Central Government under sub-section (1) of Section 167. It was the contention of Sri Holla that since the Company was incorporated on 16-5-1979, the first Annual General Meeting of the Company at the latest should be held on 15-11-1980 and if the Annual General Meeting held on 29-10-1980 is to be treated as no Annual General Meeting, the plaintiff automatically ceased to be the Chairman of the Company since 16-11-1980. This argument, seems to me, not sound. If the Annual

General Meeting as required u/s 166 was not held within 18 months from the incorporation of the Company, the Central Government has the power to convene the Annual General Meeting u/s 167. It is provided u/s 168 that if any default is made in holding a meeting of the Company in accordance with Section 166 or in complying with any of the directions of the Central Government under sub-section (1) of Section 167, the Company and every officer of the Company who is in default shall be liable for punishment as specified therein. It cannot be said that in the instant case, the plaintiff was solely and exclusively responsible for not convening the Annual General Meeting within the stipulated period u/s 166 of the Act. The Company and the 2nd defendant were equally responsible for the default. Whatever may be, the consequence for which the Company and every officer of the Company who is in default, shall be liable for punishment u/s 168, the plaintiff will continue to be the Chairman till the first Annual General Meeting in which a new Chairman is elected as provided under Article 10(b) of the Articles of Association. In that view, it must be held that the plaintiff does not cease to be the Chairman of the Company since 16-11-1980.

58. The Learned Trial Judge, in my view, has recorded his findings on all the issues against the plaintiff on a superficial consideration of the evidence, both oral and documentary, on the assumption that the disclosure of the interest under sub-sections (1) and (2) of Section 299 must be in writing and that the plaintiff did not comply with the said provision and hence he ceased to be the Director and consequently the Chairman of the Company.

59. In the result, for the reasons stated above, I pass the following order:

Both the appeals are allowed with costs throughout. In reversal of the decrees passed by the Trial Court in both the suits, O.S.No. 5673/1980 is decreed as prayed for and O.S. No. 10462/1980 is dismissed.

60. Keep the original judgment in R.F.A. No. 371/1982 and a copy of it in R.F.A. 370/1982.