
(1968) 07 CAL CK 0013
In the Calcutta High Court
Case No : Suit No. 2005 of 1965

Turner Morrison and Co. Ltd.

APPELLANT

Vs

Hungerford Investment Trust Ltd.

RESPONDENT

Date of Decision : 24-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)
Companies Act, 1956 — Section 34, 4
Contract Act, 1872 — Section 255

Citation : AIR 1969 Cal 238 : (1969) 2 ILR (Cal) 323

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : M.N. Banerjee and Sen, for the Appellant; Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application on behalf of Brahmaputra Tea Co. Ltd. to be added as a party defendant in this suit and for stay of the suit until the disposal of this application. The application is dated 17-7-68. The grounds of this application are the petition of Brahmaputra Tea Co. Ltd., the applicant, verified by an affidavit of Bejoy Kumar Mundra, a Director of the applicant Company affirmed on 17-7-68 and also the plaint and proceedings in the present suit.

2. The substance of this application is the submission that the petitioner Brahmaputra Tea Co. Ltd. is a necessary party to the suit. In order to show that it is a necessary party to the suit, the applicant relies on mainly two agreements, one dated 16-1-68 and the other dated 27-1-68.

3. The first agreement of 16-1-68 is between Nirmaljit Singh Hoon and Sukhdev Varma. By this agreement Mr. Hoon agrees to sell and Mr. Varma agrees to buy Mr. Hoon's entire interest in the companies mentioned in the agreement for the sum of ? 225,000 payable on (a) 15-2-68, (b) 31-12-68, (c) 31-12-69 and (d) 31-12-70, the first of such payment being ? 75,000 and the rest of the

instalments at the rate of ₹ 50,000. There is no list of companies as such by name described to show Mr. Hoon's entire interest in such companies which was being sold by Mr. Hoon. It is however stated in the recital of this agreement that Mr. Hoon and Mr. Varma have been and are associated in the ownership of Romanigo Holdings S.A.H., a company incorporated in Luxembourg. This Romanigo has subsidiary companies incorporated in England, Singapore and India. It is further stated in the recital of this agreement that the most important companies which are subsidiaries of Romanigo are The Turner Morrison and Grahams Group of Companies Ltd., Hungerford Investment Trust Ltd. (in voluntary liquidation) and Turner Morrison & Co. Ltd. Turner Morrison & Co. Ltd., is the plaintiff in this suit in this Court and Hungerford Investment Trust Ltd. (in voluntary liquidation) is the defendant in this suit Mr. Hoon is said inter alia to be one of the Liquidators of the defendant Hungerford Investment Trust Ltd. (in voluntary liquidation).

4. It is provided in this agreement of 16-1-68 that time is the essence of the agreement and if any single payment, as specified, to be made by Mr. Varma, is not made on the due date, the agreement shall forthwith be made null and void by virtue of the default and any payments already made by Mr. Varma shall be forfeited and Mr. Varma shall be deemed to have relinquished irrevocably to Mr. Hoon every part of his interest in Romanigo.

5. The second agreement dated 27-1-68 was one between Sukhdev Varma and Brahmaputra Tea Co. Ltd., the present applicant. Here also it is acknowledged and recited in the agreement that Mr. Hoon is one of the Liquidators of the defendant company Hungerford Investment Trust Ltd. (in voluntary liquidation). It recites the agreement of 16-1-68 between Mr. Hoon and Mr. Varma. This agreement of 27-1-68 however shows that in consideration of the payment of a sum of ₹ 325,000 by the applicant Brahmaputra Tea Co. Ltd., to Mr. Varma, Mr. Varma agreed to assign, sell and/or transfer to Brahmaputra Tea Co. Ltd., the right, title and interest in that said agreement dated 16-1-68 and in addition Mr. Varma's right, title and interest in the said companies. The payment of the consideration for this second agreement dated 27-1-68 was also staggered as follows: (a) 15-2-68, (b) 31-12-68, (c) 31-12-69, (d) 31-12-70, (e) 30-9-71 and (f) 31-3-72 -- the first of such payment to be made for ₹ 75,000 and the rest in instalment at the rate of ₹ 50,000 each. While the payment of the consideration under the first agreement dated 16-1-68 was to conclude by 31-12-70, the payment of the consideration under the second agreement of 27-1-68 was carried beyond 31-12-70 until 31-3-72. The difference in the consideration viz. ₹ 225,000 under the first agreement of 16-1-68 and ₹ 325,000 under the second agreement of 27-1-68 is explained by the fact that in the latter agreement not only the right, title and interest in the agreement of 16-1-68 but also Mr. Varma's own right, title and interest in these companies were transferred. Here also in the second agreement of 27-1-68 it is plainly stated that in the event of the applicant Brahmaputra Tea Co., Ltd., failing to pay in terms of the agreement, the right, title and interest intended to be assigned by the second

agreement shall revert back to Mr. Varma or to Mr. Hoon as provided in the said agreement of 16-1-68. It is also provided in the second agreement of 27-1-68 by Clause 10 thereof that in case Mr. Varma within six months from the date transferred the right, title and interest in the defendant Hungerford Investment Trust Ltd., (in voluntary liquidation) free from all encumbrances including Hoffman Bank on payment of ? 225,000 by the applicant Brahmaputra Tea Co. in the manner provided by the agreement of 27-1-68, then the applicant Brahmaputra Tea Co., agrees to release, if Mr. Varma desires, all its right, title and interest in other companies, in favour of Mr. Varma and in that event the applicant Brahmaputra Tea Co., would not be required to pay ? 1,00,000 being the last two instalments under this agreement of 27-1-68.

6. The applicant company relies on these two agreements to show that it is a necessary party in the present suit in this Court in which this application is made. In further support of this application the applicant company relies on the Statement of Claim in an action in the Q.B.D., London. Now, this action in the Queens Bench Division was brought by this very applicant Brahmaputra Tea Co., Ltd., as the plaintiff and three defendants viz., Nirmaljit Singh Hoon, Sukhdev Varma and Star International Ship Owners Ltd. In this London action the plaintiff Brahmaputra Tea Co. Ltd., the applicant before me, claimed the relief for specific performance of the agreement dated 16-1-68 and 27-1-68. The action in the Q.B.D. is pending. It was instituted in the Q.B.D. on or about 10-4-68 while this present suit was pending in this Court. It is needless to say that in that action in the Q.B.D. the plaintiff applicant company's prayer is for the return of the sum of ? 75,000 on the ground that the money was paid on a consideration which has wholly failed.

7. It would be necessary now to refer to the suit which is pending here and in which this application is made by the applicant company to be joined as a party defendant.

8. This present suit in this Court before me was brought by Turner Morrison & Co. Ltd., as the plaintiff against the defendant Hungerford Investment Trust Ltd., (in voluntary liquidation). The suit was instituted as early as 15-11-65. The Written Statement in this suit was filed on 7-4-66 and the discovery and inspection having been completed the suit was on the Daily List for disposal and while the suit was being opened on behalf of the plaintiff Turner Morrison & Co. Ltd., this applicant moved this application to intervene on 17-7-68.

9. The nature of this suit between Turner Morrison Co. and Hungerford Investment Trust Ltd., can now be briefly noticed. It claims a decree for Rs. 1,27,67,052.60 p., a declaration that the plaintiff has a first and paramount lien on 2295 shares held by the defendant in the plaintiff company and on all dividends payable to the defendant in respect thereof. It prays for other incidental reliefs. The substance of the plaintiff's claim in this suit is that this sum of money is the total of various sums which the plaintiff had paid to the Indian Income Tax Authorities in respect of taxes owed to such authorities by the

defendant company in respect of assessment years, covering roughly a period from 1940-41 to 1955-56. Most of these payments were made before 1961. The last of such payment of taxes as shown in the Annexure A to the plaint was on 19-1-63. It is alleged in the plaint that the plaintiff company made all these payments as Agent and/or on behalf of or for the benefit of the defendant and the plaintiff claims to be entitled to or to be indemnified or reimbursed in full for such payments. It is pleaded in the plaint that these payments were made in respect of tax liability of the defendant u/s 23A of the Indian Income Tax Act which is said to be on the "deemed dividend."

10. The defence as contained in the written statement of the defendant takes a number of grounds. Before stating these grounds of defence, it is clearly stated in paragraph 1 of the written statement that up to 1956 the defendant was a hundred per cent shareholder of the plaintiff company and by an agreement concluded in December 1955, the defendant company agreed to sell 49% of its share-holdings in the plaintiff-company to one Haridas Mundra giving him also the option to purchase the balance of 51% share of the plaintiff-company on the terms and conditions mentioned in that agreement. The situation therefore is that the plaintiff-company in this suit, viz., Turner Morrison & Co. Ltd., is a company 49% of whose shares were under this agreement agreed to be sold to Haridas Mundra with the option to him to purchase the balance of the shares. This company as plaintiff filed this suit in this Court against the defendant-company which is pending here for the last three years from 15-11-65. The Brahmaputra Tea Co. Ltd., who is present applicant coming now to intervene, has Bejoy Kumar Mundra, the son of Haridas Mundra, as a Director.

11. Proceeding with the defence of the defendant-company Hungerford Investment Trust Ltd., (in voluntary liquidation), what the defence states briefly is as follows. The plaintiff paid Income Tax on behalf of the defendant-company u/s 23A of the Indian Income Tax Act on deemed dividend on the shareholding of the defendant-company but the plaintiff-company never actually or in fact distributed or paid the dividend to the defendant-company. It is also pleaded by the defendant that after the sale of the 49 per cent shares to Haridas Mundra and registration of the same in favour of his nominee the British India Corporation and after the 25th February, 1967, when Haridas Mundra obtained a decree for specific performance in suit No. 600 of 1961 between Haridas Mundra v. Mrs. Therasa Turner and others, the plaintiff started in collusion and conspiracy with Haridas Mundra to set up an alleged lien on the shares of the defendant-company with a view to assist the said Haridas Mundra to enjoy the 51 per cent share without making any payment for the same. It is further alleged in the written statement that besides the said 2,225 shares the defendant was always the registered owner of the balance share of 2,204 out of the total shares of 4,500 of the plaintiff until the same was sold and transferred in the name of the nominee of Haridas Mundra as aforesaid. It is alleged that the plaintiff did not render any proper account to the defendant and never distributed the dividend to the defendant in spite of demands. It is also pleaded that the plaintiff neither

paid any tax u/s 23A of the Income Tax Act at all nor made any payments of dividend to the defendant. In fact, the defendant-company makes the averment that it had to institute a suit for accounts and recovery of balance of Rs. 22,640,000/- due from the plaintiff which is the subject-matter of another pending suit No. 129 of 1960 in this Court. In the circumstances, the written statement denies that the sums claimed by the plaintiff can at all constitute a debt or liability to the defendant of the plaintiff within the meaning of Article 22 of the Articles of Association of the plaintiff company. It is said that in suit No. 600 of 1961 filed by Haridas Mundra in this Court, the plaintiff being a party defendant to the suit filed its written statement and never claimed any alleged lien or charge on the said 2,295 shares. The written statement also takes the plea of limitation. It is said by the defendant in its written statement that no lien was ever claimed or shown in the balance-sheet of the plaintiff u/s 370 of the Indian Companies Act. There are many other grounds set out in paragraph 18 of the written statement. But the brief survey of the written statement indicates these facts, relevant for the purposes of this application. Mr. Mukherjee for the defendant wishes it to be recorded that the allegations in the petition are not admitted.

12. The whole question now on this application is whether the applicant Brahmaputra Tea Co. Ltd., is either a necessary or proper party to such a suit. The general powers of the Court to add a party are sufficiently indicated in Order 1, Rule 10 (2) of the Civil Procedure Code. It provides that the Court may at any stage of the proceedings either upon or without the application of either party and on such directions as may appear to the Court to be just, order to add the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually, and completely to adjudicate upon and settle all the questions involved in the suit. What the Court has to see in such an application is whether the applicant Brahmaputra Tea Company is a party who should have been joined as a defendant or whose presence the Court considers necessary in order to enable it to effectually and completely adjudicate upon and settle all the questions involved in the suit.

13. Now taking the questions involved in the suit which have been sufficiently described above in the analysis of the plaint and the written statement the question arises what is the interest of the applicant to come in and intervene in such a suit. The plaintiff in this suit claims to be reimbursed for taxes which it is supposed to have paid for and on behalf of the defendant company. *Prima facie*, the applicant company has no interest to come and intervene in this controversy. All that the applicant wants to say is this that by reasons of these two agreements dated the 16th January, 1968 and 27th January, 1968, it has purported to acquire the interest of Romanigo which is said to be the holding company of these two subsidiary companies, the plaintiff and the defendant in this suit. Therefore, it claims a right to be joined as a party. Now, if the applicant-company is right in its submission there, then by reason of that fact alone it is

not a necessary party at all in this suit. It both the companies, namely the plaintiff and the defendant, are the subsidiaries of Romanigo then the applicant's acquisition of Romanigo interest will put them in control of both of them. It is therefore not necessary to intervene as a party, on the side of one against the other. Secondly, the position of Romanigo as a holding company means this that u/s 4 of the Companies Act, 1956 a company subject to certain limitations which I shall presently describe, shall be deemed to be a subsidiary of another if, but only if (a) that the other controls the composition of its Board of Directors or (b) that the other holds more than half in nominal value of equity share capital or (c) the first mentioned company is a subsidiary of any company which is that other's subsidiary. Now, the limitation is that in determining whether one company is a subsidiary of another, (a) any shares held or powers exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it, (b) subject to the provisions of Clauses (c) and (d) of Section 4(2) of the Act, any shares held or powers exercisable, -- (i) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity, or (ii) or by a nominee for a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity -- shall be treated as held or exercisable by that other company. It is expressly provided under sub-section (6) of Section 4 of the Companies Act that in case of a body corporate which is incorporated in the country outside India, which is the case with Romanigo, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of the Indian Companies Act also, whether the requirements of this section are fulfilled or not. The applicant of course has not produced the Articles of Association of Romanigo or its memorandum. I am told by Mr. M.N. Banerjee, learned Counsel for the applicant that Romanigo was incorporated on or about the 20th May, 1963. All the tax liability for which the plaintiff is claiming reimbursement in this present suit is in respect of years long before Romanigo was born as an incorporated company. On the plaint before me the last of the alleged payment of tax was on the 19th January, 1963, as indicated above, and therefore such liability was incurred before the incorporation of Romanigo. Incidentally it may be noticed here that the plaintiff-company before me was incorporated on the 4th July, 1913, and the defendant-company I am told was incorporated in June 1930, under the laws of Singapore.

14. The applicant's reliance on the two agreements dated the 16th January, 1968 and the 27th January, 1968, to support his present claim for intervening in this suit as a defendant has now to be analysed. It is clear that the parties to these agreements namely (1) Mr. Varma (2) Mr. Hoon and (3) the applicant are not as such any parties at all in the present suit before me. The two agreements as their dates indicate show the time in which they were born. They were born when this suit or litigation was going on and they were born when the defendant-company was in voluntary liquidation. The defendant-company went into

voluntary liquidation on the 10th August, 1956. With notice of these facts of (1) a pending litigation in this suit and (2) the voluntary liquidation of the defendant-company, the agreements dated the 16th January, 1968 and the 27th January, 1968, were entered into without joining the plaintiff or the defendant as parties to such agreements. If the applicant is right in his contention that Romanigo was the holding company and both the plaintiff and the defendant were subsidiaries, when both Mr, Varma and Mr, Hoon, who were parties to the said agreement were fully aware of these two facts viz., (1) the present suit and (2) voluntary liquidation of the defendant-company. In fact, the agreement expressly declared that both Mr. Hoon and Mr, Varma are associated with Romanigo holdings and therefore they must have known of the present litigation and the Intending purchaser Brahmaputra Tea Co., of the Romanigo interest of these persons Was equally on notice of both the facts of the pending litigation in the present suit and the voluntary liquidation of the defendant company. Prima facie, therefore, the agreements are subject to the results of these two facts. On the one hand, the shares of the company in voluntary liquidation were being transferred by the liquidator. On the other hand, full notice was there in the present suit about the plaintiff's claiming to be reimbursed in respect of the tax liability of the defendant in this present suit.

15. Pursuing the matter further on this point, it is necessary to note the event which the applicant company itself created immediately after entering into the agreement of 27-1-68. What it does is that although the applicant company knew that this suit was pending and although it was supposed to acquire the entire interest of the holding company Romanigo, yet it did not come in at that stage to be joined as a party defendant in this suit. What it did was to go to the Queens Bench Division in London and filed an action there for specific performance against parties to the agreement and excluding both the plaintiff and the defendant. It is therefore clear that the applicant even on the strength of these two agreements dated 27-1-68 and 16-1-68 did not think that it had acquired any claim or right to intervene in the present suit until its rights under those agreements were determined by an action for specific performance in London. Now, the London action for specific performance, as already noticed, was started on 10-4-68. Even then, the applicant had not cared to discover that it had any claim or right to intervene in the pending suit here before me. Now, the London action which the applicant-company itself has initiated can result in two consequences. The London action might fail or might succeed. If the London action fails, then the applicant-company has no right whatever to intervene on the strength of this agreement on which he is relying to come in as a party defendant to the present suit. If the London action succeeds, the applicant would get a decree for specific performance in which event his London decree will not in the least be affected by any Calcutta decree that may be passed in the present suit, for the Calcutta decree cannot bind the applicant. The position, therefore, is this that if the applicant's London action fails, then his inclusion as a party defendant in this suit will be wholly improper and unjustified. I do not think that

this Court should add a party in such circumstances on the speculation that the applicant's London action might succeed even though knowing all the facts and with notice of all the facts the applicant-company initiated the London action without joining the plaintiff or the defendant. Addition of a party in such circumstances would be merely a speculative addition which the Court should not grant. A Calcutta decree in this Calcutta suit where the applicant is not a party cannot bind the applicant and the applicant cannot be prejudiced in any manner by whatever happens in this Calcutta suit. Whatever be the result of the Calcutta suit, it will remain open to the applicant-company to challenge it, if at all its interests in any way, are affected in any eventuality,

16. If the applicant-company's reliance on these agreements dated 27-1-68 and 16-1-68 is intended to show that the applicant-company having acquired Romanigo interests as the holding company, which now controls both the plaintiff and the defendant as its subsidiaries then there is no answer to the question that the applicant is equally interested both in the plaintiff and the defendant and I for one cannot understand how it can choose to join one of the subsidiaries as against the other, viz., either join the plaintiff against the defendant or join the defendant against the plaintiff or remain as an independent defendant trying to intervene in the fight between its own subsidiaries. I consider it to be illogical and illegal by all canons of law and procedure.

17. There is also another cogent reason why the applicant's contention cannot succeed. Clause 5 of both the agreements dated 16-1-68 and 27-1-68 show that the agreement is contingent. The first payment of ₹ 75,000 is not enough. Any future default even in 1970 or 1972 forfeits the rights under the agreement. I have already indicated these clauses. Clause 5 of the agreement of 16-1-68 clearly stipulates that even the default of a single payment on the due dates specified in the agreement shall forthwith render the agreement null and void and such default would even forfeit any payments already made by Mr. Varma and further Mr. Varma shall be deemed to have relinquished irrevocably to Mr. Hoon every part of his interest in Romanigo. Equally, clause 5 of the agreement dated 27-1-68 clearly stipulates that in the event Brahmaputra Tea Co., the present applicant, fails to pay in terms of that agreement, the right, title and interest intended to be assigned by that agreement shall revert back to Mr. Varma or Mr. Hoon as provided in the agreement of 16-1-68. It will, therefore, be wholly improper in my opinion to include somebody as a party to this suit on the strength of these agreements where the rights would be forfeited by the very party wanting to be included in the suit. In other words, the rights of applicant Brahmaputra Tea Co., are at best inchoate and have not matured under the two agreements mentioned above.

18. Mr. M.N. Banerjee for the applicant has drawn my attention to what is called the Indemnity clause in both the agreements. Clause 7 of the Indemnity in the agreement of 16-1-68 provides that both Mr. Hoon and Mr. Varma "undertake to execute such share transfers, Resignations, Indemnities and other documents as

shall be reasonably required to give effect to this agreement" and Clause 6 of this agreement provides that upon Mr. Varma paying to Mr. Hoon the first payment of ₹75,000 not later than 15-2-68, Mr. Varma or his assignees shall forthwith indemnify Mr. Hoon against any claims which may be made against Mr. Hoon arising out of the indemnities given by Mr. Hoon on 7-6-63 to the executors of Nigel Turner (deceased) and John Turner (deceased). "But there again it is provided that "in case Mr. Hoon reverting to management and control under Clauses 1, 4 and 5, the claims and indemnities shall revert to Mr. Hoon."

19. Clause 7 of the agreement of 27-1-68 similarly provides that upon Brahmaputra Tea Co., paying to Mr. Varma the first payment of ₹ 75,000 in terms of the said agreement dated 16-1-68, the Brahmaputra Tea Co., or its assignees shall indemnify Mr. Hoon against any claims which may be made against Mr. Hoon arising out of the indemnities given by Mr. Hoon on 7-6-63 to the executors of Nigel Turner (deceased) and John Turner (deceased) and thereupon the Brahmaputra Tea Co., shall also be entitled to all benefits that may arise from such indemnities or original purchases of Turners' interest in the said companies. This indemnity is, in my opinion, quite irrelevant for the purpose of the present application. This is an indemnity given to the executors of Nigel Turner (deceased) and John Turner (deceased). In any event, the existence of such an indemnity does not alter the nature or character of the present suit which the plaintiff has brought against the defendant for recovery of taxes alleged to have been paid by the plaintiff for the benefit of the defendant.

20. Mr. Mukherjee, appearing for the defendant and opposing this application, submits that Varma's obligations under Clauses 1, 2, 4, 8, 9 and 10 of the agreement dated 16-1-68 between Mr. Hoon and Mr. Varma could not be transferred or assigned by the agreement of 27-1-68 as purported to be done under Clauses, D.E. and Clause 1 without Mr. Hoon joining the agreement of 27-1-68. In other words, his submission is that the obligations under an agreement as distinguished from the rights thereunder cannot be transferred without consent of the person concerned. By the agreement of the 16th January, 1968, Mr. Varma takes the obligation to pay to Mr. Hoon ₹ 2,25,000 and to pay interest thereon (vide clauses 1 and 2 of the agreement). By clause 4 Mr. Hoon and Mr. Varma irrevocably appoint Mr. Carnes and Mr. Ricard to act as their attorneys under that agreement and Mr. Carnes as the stakeholder of the documents of title. Mr. Varma also undertakes the obligation along with Mr. Hoon to terminate the litigation between Mr. Hoon and Mr. Varma (vide clauses 8 and 10). It is the defendant's submission, how could these obligations of Mr. Varma under this agreement of the 16th January, 1968, be transferred to a third party, the applicant Brahmaputra Tea Co. Ltd., without Mr. Hoon's consent. Mr. Mukherjee in support of this point relied on the statement of law in 8 Halsbury, 3rd Edition page 258, Article 451 that a party to a contract cannot transfer his liability thereunder without the consent of the other party and such liabilities can only be transferred by a tripartite agreement which in such cases will amount to novation. That principle is well settled by numerous decisions such as Khardah

Company Ltd. Vs. Raymon and Co. (India) Private Ltd., . It is unnecessary for me to pursue this point of assignment of alleged liabilities having regard to the view that I have already expressed on the points of merits in this application.

21. On behalf of the applicant Brahmaputra Tea Co. Ltd., reliance has been placed on clause 6 of the agreement dated the 27th January, 1968. This clause provides inter alia that on payment of ₹ 75,000 by the Brahmaputra Tea Co. Ltd. Mr. Carmes the stakeholder shall thereafter retain the custody of the documents of title and shall have full authority to act on behalf of Romanigo in the management of the subsidiary companies, particularly in connection with the appointment and/or dismissal of Directors and Liquidators acting therein on the instruction of Brahmaputra Tea Co. Ltd. and not on those of Mr. Hoon and Mr. Varma in accordance with the said agreement dated the 16th January, 1968. It is said on behalf of the applicant that this clause gives him a right to intervene as a party in this suit. For the defendant it is submitted that far from giving any right this clause does not help the applicant to lift the corporate veil. I have indicated already what the statute says about a holding company and a subsidiary company. But it must be stated that a holding company or the subsidiaries are incorporated companies in this context and each is a separate legal entity. Each has a separate corporate veil. Because accompany is a holding company, that does not mean that holding company and the subsidiary companies within it all constitute one company. They do not. Except to the extent that the statute indicates the nature of holding company and the subsidiary company the corporate veil still remains. If they did not remain then there would be no point in calling them subsidiary companies of another holding company. Then they would all be one company and one corporate personality. That they definitely are not under the Companies Act and the Company Law. Reference may be made to the The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others, and in Inland Steam Navigation Workers' Union and Another Vs. Rivers Steam Navigation Company Ltd. and Others, . It will be unnecessary to discuss any further the theories of corporate personality and the cases thereunder.

22. It is also contended for the defendant that Clause 6 of the agreement dated the 27th January, 1968, is in plain violation of the Companies Act for there can be no such right to nominate Directors and Liquidators as contemplated in Clause 6 of the agreement of the 27th January, 1968. It is said to be in violation of Section 255 of the Companies Act in respect of Directors and Section 425(2) read with Sections 484 to 497 and particularly Sections 491 and 492 along with Section 515 of the Companies Act in respect of the Liquidators. Liquidators and Directors can only be removed or replaced in the manner laid down by the Companies Act and not by private agreement between persons who do not represent the company as shareholders or contributors but who are third parties. Section 512 dealing with the powers and duties of Liquidator in voluntary winding up read with Section 457(c) of the Companies Act would seem to indicate that the Liquidator has no power to sell shares of the company without sanction of

the Board as Clause 6 purports to do that Mr. Cannes will act on the instructions of the Brahmaputra Tea Co., the applicant and not of Mr. Hoon or Mr. Varma under Clause 6 of that agreement of the 27th January, 1968.

23. It has been further contended on behalf of the defendant that there is no explanation given in the petition for the delay in making this application and to come in just when the suit is on the daily list and about to be disposed of. It will be necessary now to discuss the respective submissions made by the parties on the point of delay.

24. If the applicant Brahmaputra's case is that its alleged rights accrued only after the agreements of 16th January, 1968 and the 27th January, 1968, as is its case, then from January, 1968, till the 17th July, 1968, when the present application was made, for this period of six months, there is no reason or explanation for the delay. On the contrary, if these two agreements of January, 1968, conferred any rights on the applicant Brahmaputra Tea Company, then such rights did not provide it with any cause for making an application here in this suit to be joined as party defendant but led it to file a suit in the Queen's Bench Division for specific performance to enforce those agreements. The London suit for specific performance, therefore, can only mean that the defendants in that suit including Mr. Hoon and Mr. Varma have refused to perform these agreements and that is why the Brahmaputra Tea Co., Ltd., filed the London action for specific performance. If again, on the other hand, the applicant's case is that its rights did not arise before the first payment of ? 75,000 was made on the 15th February, 1968, even then the delay is not explained from 15th February, 1968, till the 17th July, 1968 and even then it remains as a fact that after the 15th February, 1968, the applicant chose to file a London action for specific performance which it did on the 10th April, 1968. A copy of the statement of claim in the London action for specific performance has been annexed to the present petition where there is no prima facie proof or even allegation that there was any written demand or notice for enforcing the agreements of January, 1968, against either of the two defendants in London, Mr. Hoon or Mr. Varma, nor is there any pleading in that statement of claim in London specifying the date when the defendants are supposed to have refused to perform the agreements. Mr. Mukherjee for the defendant in this suit before me has criticised this delay and has characterised this suit as a mala fide abuse of the process of the Court with the idea of preventing this suit being heard. His criticism is that Mr. Haridas Mundra is already the owner of 49 per cent of the shares of the defendant-company and also controls the plaintiff-company and he questions the motive of the applicant, controlled by Mundra, why the applicant company being in control of both the plaintiff and the defendant companies Would be trying to frustrate the defendant's defence in this suit. His submission is that the applicant company wants to keep the suit pending to use as a screen to show that a large claim is pending against the defendant-company.

25. It is unnecessary for me to decide the question of mala fides at the present

stage. It is enough for me to say that the delay has not been explained at all by the applicant and there is no explanation given by the applicant-company why it waited, with full knowledge of all the facts and circumstances of this pending litigation between the plaintiff and the defendant-companies, to make this eleventh hour application when the suit was on the daily list for disposal and when, in fact, the plaintiff had opened its case for the trial. I need only add that Mr. D.N. Das, learned Counsel for the plaintiff does not even support the present application and he has stated so to this Court. I can well imagine the embarrassment of the plaintiff-company to choose sides with regard to this present application.

26. Mr. M.N. Banerjee, learned Counsel for the applicant, has stated to this Court that so far as Mr. Varma is concerned, he is a bankrupt. In fact, the bankruptcy proceedings are proceeding in London. Mr. Banerjee says that a receiving order was made against Mr. Varma in London on the 6th October, 1967, and Mr. Varma was adjudicated bankrupt on the 12th December, 1967. Mr. Banerjee also makes a statement to this Court that an appeal is supposed to be pending against the order of adjudication against Mr. Varma. Whatever that may be, it only means this that the agreements of the 16th January, 1968 and the 27th January, 1968, and specially the latter, under which the applicant-company was buying the interest of Mr. Varma -- Mr. Verma was a bankrupt -- how that the applicant-company by its agreement dated 27th January, 1968, was trying to purchase the interest of a bankrupt and was agreeing to pay Mr. Varma ? 3,25,000 -- a procedure unheard of and inconceivable in bankruptcy proceedings. It comes to this that the applicant-company is resting its present claim in this application to join as a party-defendant in this suit on the strength of an agreement with a bankrupt against whom he has filed a suit for specific performance in the London Court which is supposed to be pending and whose future therefore is uncertain depending on the results of the proceedings in London.

27. As I have said before, Court's power to add parties under Order 1, Rule 10 (2) of the CPC is guided by the well settled consideration that the presence of the party intended to be added before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. On the facts stated above and for the reasons and circumstances discussed, I am satisfied that the presence of the applicant is not at all necessary to adjudicate effectually and completely upon and to settle any of the questions involved in the present suit. The suit is by the plaintiff-company to reimburse itself for having paid the Income Tax for and on behalf of the defendant-company on dermed dividends. This question of payment of Income Tax is not at all a subject-matter of the alleged agreements for the London suit on which the applicant-company is relying in the present application. On these facts and circumstances I am satisfied that not only the presence of the applicant is unnecessary but its presence will be improper in this suit, embarrassing, irrelevant and prejudicial to the trial of this suit.

28. Having regard to the well settled principles under Order 1, Rule 10 (2) of the Civil Procedure Code, it is, in my view, unnecessary to make any detailed reference to the case law on the point. Out of deference to the arguments at the Bar, I shall only briefly mention the cases cited before me. Mr. Banerjee referred to four cases, (1) Public Prosecutor Vs. K.G. Sivaswamy and Another, , (2) Ramaswami Chettiar v. P. M. A. Vellayappa Chottiar, AIR 1931 Mad 357, (3) Razia Begum Vs. Sahebzadi Anwar Begum and Others, , and (4) Dollfus Co. v. Bank of England (1950) 2 All ER 605. The first two Madras cases relate to joint family property, partition and ownership. They have no application whatever to the facts of the present case. The Supreme Court decision arose in respect of a declaration whether a person was the legally wedded wife and in my view has no application to the facts of this case.

29. The English case in (1950) 2 All ER 605 expresses the view that in determining whether or not the applicants had a proprietary right in the subject-matter of the action sufficiently could entitle them to be joined as defendants, the true test lay not so much in an analysis of what were the constituents of their rights, but rather in what would be the result on the subject-matter of the action if their rights could be established. Far from helping the applicant it is really against the applicant of the present case before me. It is not a question of the applicant's proprietary right in the subject-matter of the action. The applicant has no proprietary right whatever in the subject-matter of the present suit before me. I have also stated that the results of this Calcutta suit are immaterial to the applicant and the applicant's rights, even if any, are in no way affected by any decision in the suit between the plaintiff and the defendant before me. In this connection, it must be stated that a reference was made to the case in the House of Lords under the title --United States of America v. Dollfus Co. (1952) 1 All ER 572. But that is not an appeal from 1950-2 All ER 605.

30. Mr. Sen following Mr. M.N. Banerjee for the applicant in a brief and able argument on the Company Law aspect of this application drew my attention to the decision of a learned Single Judge of Madras in Rajaratnam Ayyar alias Bapurajan Vs. Halasyasundaram Aiyar and Others, , but that case also has no application to the facts of the present case before me for there the reversioners were said to be proper though not necessary parties. Protection of the reversion certainly is a very well-known plea to intervene in a suit where the reversion is affected. But applicant's rights under the alleged agreements of January, 1968, cannot in any way be affected by the decision of the present suit before me.

31. Mr. Mukherjee for the defendant opposing this application on the other hand drew my attention to the decision in Miguel v. Result (1958) PD 174. It lays down very clearly and succinctly the main principles with regard to addition of parties. Willmer, J., who delivered the judgment lays down the principle that the only reason which makes it necessary to add the name of a party to an action is so that the party may be bound by the result of the trial and the question to be settled must be a question which cannot be effectually and completely settled

unless that party is so joined. By the recent judgment of Devlin, J., in *Amon v. Raphael Tuck and Sons Ltd.* (1956) 1 QB 357 all the previous English authorities have been reviewed. Willmer, J., in the decision of "*The Result*" took the same view as Devlin, J., did to come to the conclusion which I have just stated.

In my judgment the applicant is neither a necessary, nor a proper party in the present suit.

For these reasons, I dismiss this application with costs.