

(1982) 10 KL CK 0016
In the High Court Of Kerala
Case No : M.F.A. No's. 96 and 104 of 1981

V.J. Thomas Vettom and K.M.J. Joseph and Another	APPELLANT
Vs	
Kuttanad Rubber Co. Ltd. and Others	RESPONDENT

Date of Decision : 18-10-1982

Acts Referred:

Companies Act, 1956 — Section 235, 237, 243, 244, 246
Evidence Act, 1872 — Section 111

Citation : (1984) 56 CompCas 284 : (1983) 1 ILR (Ker) 501

Hon'ble Judges : V. Khalid, J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : C.M. Devan and N.S. Sundararaman, in MFA No. 96 of 1981, K.V.R. Shenoi, P.K. Kurien, K.A. Nayar and E.R. Venkiteswaran, in MFA No. 104 of 1981, for the Appellant; Mani J. Meenattor, M.M. Abdul Aziz and Chacko J. Kallivayalil, in MFA No. 96 of 1981, Mani J. Meenattoor, M.M. Abdul Aziz and Chacko J. Kallivayalil for respondent No. 1 in MFA No. 104 of 1981 and Simon Luiz, in MFA No. 104 of 1981, for the Respondent

Final Decision : Dismissed

Judgement

Khalid, J.—These two appeals are against the judgment of the learned company judge in C.P: No. 19 of 1974 and C.P. No. 8 of 1976 which were heard together, filed under Sections 397 and 398 of the Companies Act, 1956. In the first petition, the prayers were for removal of the present director and secretary from the management of the company, to restrain the company by an order of injunction from effecting sale of the 53 acres of land and to appoint at least two directors from the petitioner's group, while the prayers in the other petition, inter alia, were to remove the second and third respondents from the management of the company", to direct the second respondent to make good the loss illegally pocketed by him out of the sale proceeds of the 53 acres of estate and to appoint an administrator to look after the affairs of the company. The main allegations against the respondents were: (i) that 53 acres of rubber estate were sold without valid necessity, (2) dividends were not declared to

create a situation of inducing the minority shareholders to part with their shares, (3) slaughter tapping and double tapping were resorted to unnecessarily and the amounts derived from them were not accounted in the books of the company, (4) timber trees were cut and sale proceeds were not accounted, (5) the son of the secretary was appointed as superintendent removing the then incumbent adopting an improper procedure, and (6) the workers of the company and its smoke house were used for the purpose of the son's estate. Though the petitions raised various other grounds also, the learned judge considered only such of the allegations as were pressed before him at the time of hearing. Six witnesses were examined on behalf of the petitioners and two on behalf of the respondents. A commissioner was appointed and he also gave evidence. After considering the evidence in the case, the learned judge felt that the evidence adduced was not sufficient to grant reliefs to the petitioners and dismissed the petitions observing that the petitions might have been filed because two of the petitioners wanted to settle some old scores with the secretary. Even so, the learned judge felt in view of the grave allegations made against the director and in view of the suspicious nature of the transactions which formed the subject-matter of the petitions, an investigation into the affairs of the company was necessary and, consequently, issued a direction to the Central Government, u/s 237(a)(ii) of the Act to appoint an inspector to investigate the affairs of the company. The appeals are directed against the judgment dismissing the petitions. A memorandum of cross-objection is filed against the direction made u/s 237(a)(ii) of the Act.

2. The sole petitioner in C.P. No. 19 of 1974 is P.W. 4. C.P. No. 8 of 1976 was originally filed by the first petitioner. The second petitioner is impleaded on June 1, 1976, The first petitioner was examined as P.W. 1 and the second petitioner as P.W. 2. P.W. 3 is a dismissed employee of the estate. P.W. 5 is the son of a former director. P.W. 6 was examined to prove certain documents. R.W. 1 was the superintendent of the estate till 1974 and R.W. 2 is the secretary. P.W. 4, the petitioner in C.P. No. 19 of 1974, was a director of the company from December 31, 1954, to January 18, 1972. P.W. 2, the second petitioner in C.P. No. 8 of 1976, was a director from 1971 to 1976. At the relevant time he was also the manager of the estate. Both P.Ws. 2 and 4 ceased to be directors of the company on account of their absence from three consecutive meetings of the board of directors. P.W. 4 filed O.S. No. 779 of 1971 before the Alleppey Munsiff's Court against his removal from the board of directors. The suit was subsequently dismissed. Thereafter, he filed O.S. No. 420 of 1972 for a declaration that he continued as a director. This suit also was dismissed. It was, thereafter, that he filed C.P. No. 19 of 1974. P.W. 2 filed O.S. No. 642 of 1976 in the Alleppey Munsiff's Court for a declaration that he continued as a director of the company. That suit also was dismissed. It is submitted that an appeal is pending.

3. One Joseph Chacko was the founder of the company. The main asset of the company is the rubber estate known as Pazhuthadam Rubber Estate with a planted area of over 450 acres. P.W. 4 is a grandson of the founder. In C.P. No.

19 of 1974, the allegations were mostly directed against the secretary and also P.W. 2. P.W. 2 is the son of the secretary's maternal grandfather. The old superintendent R.W. 1 was also related to the founder. The parties are in one or the other way related to one another.

4. The petitioners put forward their case on the basis that they belonged to the minority group of shareholders and that by various acts the majority group was oppressing them. According to them, they were denied access to the books of the company, the books were manipulated to suit the convenience of the directors and the affairs of the company were conducted in a manner harmful; to the interests of the company. The case of the petitioners is denied by the company. According to the company, there was never any attempt to acquire weak shares at low value, reserves were built up for being used in re-plantation, that during the relevant time when the impugned transactions took place the petitioners were active in the affairs of the company, that all transactions were placed before the general body, that the sale of 53 acres was necessitated since the company was badly in need of funds and that the petition was filed without any bona fides.

5. The learned judge has discussed the facts and evidence of the case in great detail. We will briefly advert to the allegations and the evidence bearing on them and examine whether the findings entered on each of the allegations pressed at the hearing need interference at our hands. Before examining the evidence in the case to consider whether the petitioner is entitled to any relief, and whether the judgment rendered by the learned judge needs interference, we will have to examine the correctness of a proposition of law put forward by the appellant's counsel in M.F.A. No. 96 of 1981. The contention raised is as follows:

6. There is a fiduciary relationship between a director and the company. A director, therefore, has always to act in good faith vis-a-vis the company. When the action of such a director is impeached on the ground that it lacked good faith, the person who makes the accusation need only adduce prima facie evidence in support of the accusation and once such evidence is adduced, the burden shifts to the director or directors to satisfactorily rebut the accusation by acceptable evidence. In other words, in such cases, there is a reversal of the normal rule of burden of proof. This contention was largely rested on Section 111 of the Indian Evidence Act.

7. It is necessary first to understand the scope of the fiduciary nature of the relationship on which this argument is built. Directors have been held to be sometimes agents of the company. They are also understood to be trustees so far as the company's property and its funds in their hands are concerned. Courts of law have considered and treated them as trustees of money which comes into their hands and once it is proved that they have misapplied or misused such money, they were held liable to make good those monies. In *Regal (Hastings) Ltd. v. Gulliver* [1942] 1 All ER 378, the House of Lords had occasion to consider this aspect of the case. The House of Lords observed thus :

" Directors of a limited company are the creatures of statute and occupy a position peculiar to themselves. In some respects they resemble trustees, in others they do not. In some respects they resemble agents, in others they do not. In some respects they resemble managing partners, in others they do not."

8. The House of Lords considered various authorities dealing with this question, and it was decided that the powers of the directors were in some sense fiduciary in relation to the company, On the facts of that case, directors who had made some profits by virtue of their position involving a cinema house and a subsidiary company, it was held that the rule of equity which insists on those who by user of a fiduciary position make a profit should account for it, is not dependent on fraud or absence of bona fides but by virtue of their position as trustee. In *Selangor United Rubber Estates Ltd. v. Cradock* [1968] 2 All ER 1073 the first question of law discussed was how far the directors are trustees of the company's funds and while answering this question, the discussion proceeded on the assumption that there existed a fiduciary relationship between the director and the company which is clear from the following observation (p. 1091):

" It is clear and not disputed that they owe a fiduciary duty to the company to apply its assets only for the purpose of the company and are, therefore, liable for breach of that duty; but the question how far they are trustees bears on the question how other defendants can be made liable as constructive trustees as claimed.

On occasion directors have been said to be trustees and on occasion not to be trustees."

9. The following observation In *re Forest of Dean Coal Mining Co.* [1878] 10 Ch D 450 was noted with approval (p. 453):

" Again, directors are called trustees. They are no doubt trustees of assets which have come into their hands, or which are under their control, but they are not trustees of a debt due to the company..... A director is the managing partner of the concern, and although a debt is due to the concern I do not think it is right to call him a trustee of that debt which remains unpaid, though his liability in respect of it may in certain cases and in some respects be analogous to the liability of a trustee. So much for the question of unpaid debts."

10. And the discussion on this question was wound up as follows :

"So, in my view, in general as in this case a credit in a company's bank account which the directors are authorised to operate are moneys of the company under the control of those directors and are held by them on trust for the company in accordance with its purposes."

11. Gower's Principles of Modern Company Law, fourth edition, contains the following passage (p. 572):

" The fiduciary duties of directors are, basically, identical with those applying to

any other fiduciary and discussed in works on Trusts and Agency. Such duties have, indeed, already been dealt with briefly in connection with another type of fiduciary peculiar to company law, the promoter. But the relevant rules have received particular elaboration in relation to directors and the practical importance of the subject makes it desirable to discuss it here in greater detail."

" Directors, once their appointments take effect, are fiduciaries and must, therefore, display the utmost good faith towards the company in their dealings with it or on its behalf." (p. 575)

12. From the above discussion, it has to be held that there exists a sort of fiduciary relationship between the directors and the company and that law requires the directors to deal with the monies and properties of the company as trustees. The contention that the appellants put forward on this basis is that once the fiduciary relationship mentioned above is accepted, the burden to satisfy the court of the good faith in transactions, the bona fides of which are questioned by a shareholder, shifts to the director and that the shareholder need only adduce some prima facie evidence. For this purpose, strong reliance was placed on Section 111 of the Indian Evidence Act. It is useful to read the section itself before considering the scope of its , operation :

" 111. Proof of good faith in transactions where one party is in relation of active confidence.--Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence. "

13. Normally, the law presumes prima facie in favour of deeds duly executed. Therefore, when the validity of a transaction on the ground of fraud, undue influence, etc., falls to be decided imputing bad faith, the burden is on the person who challenges it. The exception to this rule comes where fiduciary relationship subsists between the contracting parties. The scope of Section 111 has to be understood before applying it. It has no application except as between parties to the transaction in question. The section contemplates a transaction between two persons, one of whom has an advantage over the other, who puts trust in him. In order to bind persons with the rigour of proof contained in the section, the party who seeks its benefit must prove that the other party is in a position of active confidence. The two illustrations given to the section give some guide to appreciate cases where the section could be pressed into service. The section has been used in cases of "medical practitioner and patient, spiritual director and penitent, trustee and cestui que trust, husband and wife, guardian and ward, agent and principal and the like". The court always looks to the possibility of exercise of dominion and influence by the one who receives benefit over the other who is denied of it. The concept of active confidence must inform the court before extending the benefit of the section to a transaction in question. The words " active confidence " normally indicate that the parties to the transaction are such that one is bound to protect the interest of the other. A volume of case-

law is available where this section had been used in cases where pardanashin and quasi-pardanashin ladies are involved to the transactions impugned. We have tried in vain to get at any case where the rigour of the burden of proof in-built in the section had been extended to transactions entered into by the directors of the company, the bona fides and validity of which were questioned by a shareholder. In our view, this plea has remained virgin for the very good reason that such a plea is not available in cases like this. This is a contention not raised before the learned judge, nor in the memorandum of appeal before us. The transactions before us are those entered into between directors and third parties, not between the appellants and the directors between whom there does not exist any fiduciary relationship. The section has application only between contracting parties. A company incorporated under the Companies Act functions within the confines of the provisions of that Act and a company differs from a proprietary concern only to the extent that its activities are governed by the provisions of the Act. A proprietary concern is not answerable to any one for what it does, but a company is answerable to the Government as well as to its shareholders when the directors act against the provisions of the Act and to the proved detriment of the company or its shareholders. If the appellants' contention is to be accepted, any shareholder can throw some mud at a director by filing an application like the one filed in this case, adduce some evidence and then insist upon the company to satisfy the court that the allegation is not correct and thus stifle the activities of the company. The learned judge was not prepared to accept the evidence adduced as sufficient to substantiate the allegations made against the directors, indirectly holding that the burden of proving the allegations satisfactorily is on the petitioners. On a careful consideration of this contention, which we have permitted the appellants' counsel to argue before us, though not raised before, we hold that the burden to satisfactorily establish the accusations against the directors is upon those who question their validity and there is no reversal of burden as contemplated in Section 111 of the Indian Evidence Act.

14. One other question of law also has to be disposed of before entering into the evidence in the case. The learned judge, as already stated, directed the Central Government to appoint an inspector to investigate the affairs of the company u/s 237(a)(ii) of the Act since he felt that the company was not functioning in a proper manner. The Inspector appointed by the Central Government has submitted his report to the court as enjoined by the section. The memorandum of cross-objection filed relates to this direction by the learned judge and the counsel for the company submits before us that this cross-objection is not pressed because the report has already been filed. The attempt of the appellants' counsel in both the appeals is to invite us to go into the report to treat it as additional evidence, to be considered along with the evidence already on record, to displace the findings entered by the learned company judge and to persuade us to allow the appeals. The appellant in M.F.A. No. 96 of 1981 has also filed an application. C.M.P. No. 19643 of 1982 under Order 41, Rule 27 and

Section 151, CPC, to admit the inspection report as additional evidence in the case. The respondent has filed a counter-affidavit and has strongly opposed reception of the report as additional evidence and reading passages from the report to supplement the evidence already on record. In view of this objection, we allowed the counsel on both sides to make their submissions regarding this aspect of the case. The appellants' case is based on Section 246 of the Companies Act, which reads as follows:

" 246. A copy of any report of any inspector or inspectors appointed u/s 235 or 237 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report."

15. It is submitted that this section is very wide in its scope and permits the admissibility of the report in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report. An appeal from the judgment of the company judge is a legal proceeding. Such a proceeding is not excluded from the operation of Section 246. This court, sitting in appeal, will be perfectly justified, according to him, in looking into the report for the purpose of satisfying itself of the validity or the bona fide nature of the grounds set forth in the petition in supplementation to the evidence already on record. The respondents' counsel submits that this is totally impermissible and that Section 246 cannot be pressed into service for admitting the report obtained as per a direction u/s 237 in an appeal from the judgment in which such a direction was given. He took us through the various sections of the Act in reinforcement of this submission and to satisfy us of the use to which such a report can be put under the Act. According to him, the learned company judge becomes functus officio once a direction u/s 237 is given. He cannot be invited to look into a report submitted pursuant to such a direction after the main petition is disposed of. If his jurisdiction is so restricted, the jurisdiction of the appellate court would be also similarly, restricted. In other words, if examination of the contents of the report by the judge who gave the direction is not permissible in law, a court sitting in appeal over the judgment will also be not- permitted to look into that report. According to him, the provisions of the Act lay down how the report can be used. If the request of the appellant is to be accepted that would amount to inviting this court to displace the judgment of the learned judge by some material secured after the judgment when the learned judge found that the materials available before him were not sufficient to give relief to the petitioner. If this court is to interfere with the judgment of the learned judge relying upon the report, that would result in the deletion of the direction made u/s 237 without an attack by the appellant against that direction. We find force in this submission.

16. We will examine the scope of the report u/s 237 presently. Section 237 enables the Central Government or the court to appoint one or more competent persons as inspectors to investigate into the affairs of a company. The court

exercises its powers u/s 237 when it finds that the affairs of the company ought to be investigated by an inspector appointed by the Central Government, on being satisfied that such investigation is necessary though the evidence on record is not sufficient to give relief to the aggrieved party. u/s 241, the inspectors have to submit a final report to the Central Government on the conclusion of the investigation. Where the inspectors are appointed u/s 237 in pursuance of an order of the court, a copy of the report has to be furnished to the court. While u/s 235 appointment of inspectors by the Central Government when circumstances mentioned in the said section exist is discretionary, the appointment u/s 237 is mandatory. Section 242 provides for initiating prosecution against persons for any offence disclosed from the report submitted by the inspector. Section 243 enables the Central Government to file a petition for the winding up of the company, or to file an application for an order u/s 397 or Section 398 or both, a petition for the winding up and an application u/s 397 or Section 398. It has to be noted that the use of the report obtained u/s 237 is restricted; it can only be by the Central Government and not by any other person, for example, a shareholder. But the Central Government can cause an application to be made either for winding up in a case falling u/s 243, u/s 439(1) (f), or an application u/s 397 or Section 398, u/s 401, by any person authorised by it in this behalf. The attempt of the appellants before us is to make use of the report in a manner not contemplated by the Act. The report could be made use of only by the Central Government in the manner provided in Section 243. Section 244 provides for proceedings being taken for the recovery of damages if from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs had been investigated. The scheme contained in the above provisions makes it clear that a machinery is provided to use the report that an inspector submits after investigation into the affairs of the company either at the instance of the Central Government or at the instance of the court.

17. A direction by a court to appoint; an inspector for investigation into the affairs of the company is necessitated only when the court finds it difficult to pass an effective order in an application u/s 397 or Section 398. To use such a report at the appellate stage to displace the order of the original court would be to set at naught the effect of the various provisions enabling the Central Government to act on the report. To do so would be to violate the various sections quoted above.

18. The nature of the report that an inspector makes has also to be considered in this context. He has power to summon persons whom he thinks could give useful information. He takes their statements behind the back of persons to be affected. The persons whom he questions are not cross-examined by persons who will be affected. What he submits is his opinion on the materials so collected. To say that this court can at the appellate stage look into the statements so taken and the opinion so expressed, and then on the strength of those materials should

interfere with the judgment of the learned judge, would be to exalt the opinion submitted by the inspector over the decision of the learned judge, which, according to us, is totally impermissible and not contemplated under the Act. When proceedings are initiated on the strength of this opinion, the affected party will get a right to challenge the various particulars of the report and even a right to get the persons from whom statements were taken to be cross-examined. If we allow the report to be looked into, that would be in denial of an opportunity to the affected party to challenge the report. If the challenge against the various items of the report is to be permitted, this court will have to convert itself into a company court of original jurisdiction. The Central Government has to consider various aspects including public interest before starting any proceeding on the strength of this report. We, therefore, feel no difficulty in disallowing the use of the report at the appellate stage. In *Nadar Press Ltd. In re: N.K.R.K. Amirtharaj v. N. P. S. N. Ramiah Nadar* [1968] 38 Comp Cas 337 (Mad), the scope and applicability of Section 237 came up for consideration and the following extract in page 343, with which we agree, can be usefully quoted :

" The above conclusion of mine can also be reached by applying the provisions of the new Act. When the court by order declared that the affairs of the company ought to be investigated by an inspector and directed the Central Government to appoint an inspector to go into such details, then there is an exhaustion of the jurisdiction of this court in so far as this application is concerned, and it is for the Central Government to take up the matter in their hands after receipt of the report of the inspector and do such things as are necessary and expedient in public interest.....It should be, however, remembered that once an inspector is appointed and the inspector, after enquiry, submits a report, it is for the Central Government to act, and it is no longer open to a person, who prompted the court to issue an order u/s 237(a)(ii), to call upon such court after the investigation report of the inspector, to consider the said report once again and give him such reliefs which, according to him, he is entitled to. This is not provided under the Act....."

19. What remains in this connection is the application filed by the appellant in M.F.A. No. 96 of 1981 as C.M.P. No. 19643 of 1982 under Order 41 Rule 27 for reception of the report as additional evidence. What is produced is a copy of a copy. There was some controversy before the learned vacation judge when the matter came before him about the admissibility of the copy. We do not think it necessary to consider the question, nor to examine whether the application to admit additional evidence is based on satisfactory grounds, for the reason that we have already held that the document attempted to be produced cannot be admitted in evidence in this proceeding. Hence C.M.P. No. 19643 is dismissed.

20. We will consider the grounds of attack one by one. Before doing, so, it would be relevant to bear in mind the fact that the petitioner in C.P. No. 19 of 1974 was a director of the company from December 31, 1954, to January 18, 1972 (examined as PW-4), and the second petitioner in C.P. No. 8 of 1976 (examined

as PW-2) was a director from 1971 to 1976 and was also during that period the manager of the estate. The acts of oppression and acts resulting in financial loss and misappropriation took place at the time PW-2 was with the company and to a small extent while PW-4 was with the company. It has also to be noted that PW-2 did not figure as a petitioner originally when C.P. No. 8 of 1976 was filed and got himself impleaded subsequently in June, 1976. the fact that both PWs. 2 and 4 had moved the civil court for their reliefs against the loss of their directorship by filing suits and had got worsted in them, can also be kept in mind (though one of the cases is pending in appeal now) while considering the acceptability of the evidence adduced by them.

21. The most important allegation against the respondents relates to the sale of 53 acres of rubber estate. The case about the sale was not clearly set out in the first petition. The petition was, subsequently amended incorporating the prayer to set aside the same or to order recovery of Rs. 5,30,000 from the directors. In fact, the sale took place months before the filing of that petition. In the second petition, the allegation against the sale contains better details. It is said that this sale was by private negotiations and that by this sale, the secretary got unduly enriched to the extent of Rs. 4,00,000 with corresponding loss to the company. The sale was unnecessary and no sanction from the general body was obtained. The amount realised on paper did not represent the real consideration. The company met this allegation with the plea that sale was necessary and an advertisement was not taken out informing the sale to the public to avoid unnecessary labour agitations. The property sold was not fully planted and was in part rocky. PW-2 at all relevant times was actively participating in the negotiations for the sale and it was he who executed the sale deeds.

22. The minutes of the board meeting recorded in Ext. B1 during the relevant period when the sale took place will have to be looked into to appreciate the rival contentions regarding the sale. PW-2 was appointed manager of the estate on April 12, 1972. This decision was taken at the meeting of the board held on April 12, 1972. At the meeting of the board on November 7, 1973, RW-2 and PW-2 furnished an estimate of the immediate financial requirements for the estate, which included funds for clearing off an overdraft liability and for day-to-day working, payment of provident fund arrears, installing a motor and putting up of workers' quarters. The board felt that there was no possibility of getting loan on reasonable terms. This led to the decision to sell a part of the estate described as immature, non-yielding poor area. A block of 53 acres was pointed out by PW-2 as poor and hilly. The board thereupon authorised PW-2 and RW-2 to contact prospective buyers and report. At the next meeting held on January 12, 1974, PW-2 and RW-2 submitted a detailed report about prospective buyers. Some offers were also produced. The board discussed the matter and authorised PW-2 to execute sale deeds at the rate of Rs. 5,000 per acre and hand over possession to specified persons. All the sale deeds were executed by PW-2 at Kottayam at his residence. The execution of the document is seen to be between 6 p.m. and midnight on May 17, 1974, the District Registrar having been brought to his

residence for the purpose. Exts. B5 to B15 are the sale deeds, the sale being at the rate of Rs. 5,000 per acre. According to the allegation in C. P. No. 19 of 1974, the normal price for an acre of planted area would be Rs. 15,000. By this fraudulent and surreptitious sale, the company had lost Rs. 5,30,000. In C.P. No. 8 of 1976, the allegation is that the sale was in fact for Rs. 12,500 per acre and that the secretary had pocketed as illegal gain a sum of Rs. 3,97,500. PW-4 deposed that the sale was effected without advertisement and without authorisation from the general body, that the area was well planted and yielding, and that two of the purchasers had told him that they had paid at the rate of Rs. 12,500 per acre. PW-1 has no direct knowledge of this. His evidence is based on hearsay. PW-2 admits having executed the sale deeds in the presence of the Registrar at his residence. He was unwell at the time. Some of the purchasers told him that the real consideration was Rs. 12,500 per acre. He signed the documents as directed by the secretary and his son and was not permitted to read them. Consideration was received by the secretary and his son. The Other material witness regarding the sale is PW-6. He had sold away 82.50 acres of planted area belonging to him for Rs. 9,50,000 in 1975. The documents are Exts. A-31, A-32 and A-33. He had never seen the company's estate which is eight miles away from his own. He deposed that the market for rubber was not attractive during 1973-74 and there was a sudden jump in 1975. RW-1 deposed that parcels of another estate adjoining the estate in question were sold away at Rs. 5,000 per acre in 1973. The 50 acres sold by the company in 1974 were not being tapped at that time but they were about to be. Sales in 1974 varied between Rs. 5,000 and Rs. 6,000. He himself had eight acres of rubber which he sold after he left the services of the company at Rs. 6,000 per acre. RW-2, the secretary, deposed that PW-2 took a leading part in both the transactions, that the price of Rs. 5,000 was fixed after negotiations by P.W-2, that it was PW-2 who arranged for the execution of the documents and that he was giving false evidence deliberately. The learned judge felt that the above evidence gave room for suspicion that all was not well with the transaction. According to him, the consideration of Rs. 12,000 shown "in Exts. A-1 to A-33 for the rubber estate, eight miles away, in 1975 and Rs. 5,000 shown in 1975 for the estate in question gave room to suspect whether the documents in question showed the correct consideration. Even so, the learned judge felt that he was unable to find sufficient evidence to hold that the area was actually sold at Rs. 12,500 per acre and that the secretary had pocketed the difference. The learned judge was not prepared to accept the version given by PW-2. He held that PWs. 1 and 4 had only hearsay knowledge, thereby holding that the allegation under this head was not proved beyond doubt.

23. The respondents' counsel found fault with the observations made by the learned judge about the disparity between the consideration in the document in question and Exts. A-31 to A-33 to be abnormal, and stated that the evidence clearly indicated the transaction to be bona fide and beyond reproach. In particular he stated that the said observation by the learned judge was without

properly considering Exts. B-28 and B-29, two documents of sale in the year 1973 of an estate adjoining the estate in question. In these two documents, the consideration shown was Rs. 5,000 in the year 1973. According to respondents' counsel, if these documents were looked into, the learned judge would have been satisfied that the consideration shown in the documents impugned was fair and reasonable.

24. It is not correct to say that the learned judge had not adverted to this sale evidenced by Exts, B-28 and B-29. He refers to the evidence of R.W. 1 who had deposed about the sale of parcels of Kollankulam estate for Rs. 5,000 per acre in 1973 and did not rely upon it as that was hearsay information. It is true that direct reference is not made about these two documents. It may be that the respondents' counsel is justified in stating that these two documents which came into existence in 1973 represent a bona fide transaction and the consideration therein showed reasonable price. But no one connected with these documents was examined and, therefore, the details given in the said two documents cannot be made use of to contend that the amount shown in the impugned documents as consideration is fair. If these two documents had been proved, the respondent would have been in a better position to press them in support of his case of sufficiency of consideration for the sale deeds in question. Under these circumstances, the observation of the learned judge that the evidence of R.W. 1 is only hearsay, is correct. We have considered the evidence in the case regarding the impugned sale deeds. The evidence of P.W. 1 is of no consequence. The evidence of P.W. 2 cannot impress any court of law because he stands self-condemned on account of his active participation in all the affairs of the company during the relevant period. Exhibit B1, the minutes of the board meeting at the time he was the manager, which is a book maintained statutorily, contains the various decisions taken at various meetings. He had the temerity of denying the signature of the chairman in the minutes. This is the only method available to him to get rid of the effect of the minutes. This minutes book was produced in O.S. No. 642 of 1976 filed by him. We do not think it necessary to go deep into the case of P.W. 2 of the alleged forged signature of the chairman because, according to us, that is only a desperate attempt at this stage to explain the adverse circumstances against him. We have looked into the minutes book ourselves. We find the signature of the chairman, who is no more, in the minutes of the meetings at which he presided. We find the signature of the successor-chairman in the meetings at which he presided. The minutes book, as already stated, is a book the maintenance of which the Companies Act insists. If Ext. B1 is accepted, it has to be found that P.W. 2 knew at all relevant times about the proposal to sell 53 acres of land and that he had taken active part in the negotiations and the ultimate execution of the sale deed. His evidence that the actual consideration was Rs. 12,500 and that this amount was paid in the presence of the Registrar cannot, for a moment, be accepted. There was no reason why he should have been a mute spectator when Rs. 12,500 per acre changed hands while actually the document showed only Rs. 5,000 per acre as

consideration. Nobody has been examined to prove the actual payment of consideration of Rs. 12,500 though P.Ws. 2 and 4 would depose that some persons had mentioned as to them. The evidence of P.W. 4 also is not trustworthy. P.W. 6 is a witness examined on the petitioner's side. He proxed Exts. A-31 to A-33. He deposed that the price of rubber till 1974 was not appreciable and that there was a speedy rise in the price of rubber in 1975. By saying so, he justified the difference between the prices in the sale deeds in question and his sale deeds. He was not treated hostile. This evidence was made use of by the respondents to explain the difference in consideration between the two sets of documents. R.W. 1 has to be treated as a disinterested witness. His cause is seen espoused by the petitioners. The case of the petitioners was that an experienced superintendent like R.W. 1 was unceremoniously eased out to give way for the appointment of R.W.2's son. This case would show that the petitioners did not have any complaint against R.W. 1. However, R.W. 1 does not support the petitioner's case, According to him, the consideration shown in the documents is fair having regard to the rubber price at that time. He himself had sold 8 acres of rubber estate. He deposed about the sale of the adjoining rubber estate in 1973; possibly, the reference was to Exts. B-28 and B-29. It is true, that the learned judge has not made pointed reference to these two documents. These documents came into existence in 1973. R.W. 2 has deposed about the circumstances under which the sale took place and about the actual consideration received. The evidence adduced by the petitioners, in our view, is not sufficient to establish either that sale was unnecessary or that the consideration shown in the documents does not represent the actual consideration received. We, therefore, hold, in agreement with the learned judge, that the allegation that the sale was effected with ulterior motives, to enrich the respondent, not showing the actual consideration has not been satisfactorily proved.

25. Before considering the other allegations, we may in passing refer to the allegation that R.W. 1, the former superintendent of the estate, was driven out of office in order to accommodate the secretary's son, the third respondent, and to get at the shares held by R.W. 1 and his relatives. R.W. 1 gave evidence to the contrary. According to him, he went but voluntarily. He wanted better terms. The board did not accede and hence he resigned. All these are evident from the minutes of the board meeting held on January 12, 1974. His shares were purchased by P.W. 2 and his wife. Therefore, the case of exerting pressure on R.W. 1 and the alleged removal cannot persuade us to hold that it was done to accommodate P.W. 2's son and cannot pass muster in view of the evidence of R.W. 1 himself.

26. One other allegation was that the secretary and his group were keeping share certificates with them in order to prevent transmission of shares in favour of the legal representatives of deceased shareholders. This allegation is not supported by any evidence. Not even a single case had been mentioned though an attempt was made to say that the signature of the former chairman in some

share transfer forms was different from the admitted signature. The learned judge felt unimpressed by this case because some of those transfer forms were used to transfer shares in favour of P.W. 2 himself. Another important allegation made by the petitioners is that dividends were not declared for a long time with the avowed intention of compelling the minority shareholders to transfer their shares and facilitating cornering of shares by the secretary and his dependants. It is true that dividends were not admittedly declared from 1962-63 to 1971-72. But the allegation made is disproved by the fact that the petitioners did not succeed in citing one single instance of a transfer of share below par. P.W. 1 purchased some shares in 1971 at Rs. 100 per share. According to P.W. 4, the shares were worth Rs. 400 each in 1968. The evidence in the case indicates that after 1971-72, dividends ranging from 24 to 40% were declared.

27. The learned judge then examined the case that the secretary and his relatives tried to corner the shares by the device of non-declaration of dividends. As rightly pointed out by the learned judge, there is nothing wrong if a person tries to purchase shares which are being sold. In paragraph 20, the learned judge discussed in detail the relationship between the parties and the number of share"s held by them in the estate. It is seen that the majority shares in the company were always held by members of the Kanjooparambil and Kalappurakkal families. The petitioner in C.P. No. 19 of 1974 held only 10 shares in 1950. But he acquired 60 shares in March, 1958, and 8 shares in July, 1968. The first petitioner in C.P. No. 8 of 1976 acquired 173 shares in 1971 and the second petitioner started purchasing shares from 1971. The secretary, his wife, sons and daughters-acquired 320 shares during the period when dividends were not declared. But the evidence shows that most of the transferors were related; to the transferees. After discussing this evidence, the learned judge observed, according to us, with respect, rightly, that the transfer of shares was never below par, was not a one-way traffic and that there was nothing unusual or abnormal, susceptible of being characterised as oppression or mismanagement in relation to the transfer of these shares. The conclusion is that the non-declaration of dividend did not affect the value of the shares and in fact the value at all times had remained above par.

28. In C.P. No. 19 of 1974 there was one other allegation that the transfers to the contingency reserve, working capital reserve and gratuity reserve were either illegal or fraudulent. We were taken through the balance-sheet, etc., by the appellants" counsel in his attempt to satisfy us that these allegations were bogus, and was only to deplete the funds of the company and for undue enrichment of the secretary. The learned judge was not impressed with these allegations. No acceptable evidence was adduced to substantiate the case of bogus reservations. Building up reserves cannot be characterised as mismanagement. Companies sometimes require it. In the absence of acceptable materials, we are in agreement with the learned judge holding that this allegation has not been made out and cannot be pressed into service in support of an application u/s 397 or Section 398. The two other remaining allegations

related to double tapping and slaughter-tapping.

29. The allegation about double tapping is that though double tapping was carried on, the yield therefrom was not accounted, and that payments to the workers under this head were not entered in the company's accounts, the suggestion being that the respondents were appropriating the extra yield to themselves. According to the respondents, double tapping was never resorted to. Sometimes, extra tapping was arranged and that too when the season was favourable and the yield good. Without giving any importance to the nomenclature, we see from the materials on record that some sort of tapping other than normal was being carried on on some occasions. This being the admitted case, what this court is concerned with is the enquiry whether the income from this extra tapping was being entered in the accounts or not. We have already indicated that the evidence of P.W. 1 is unserviceable because he deposed what he heard from others. P.W. 2 would say that the income was being siphoned away without being brought into the accounts. P.W. 3 is a dismissed employee. He spoke about double tapping; but did not say that yield was not being accounted for in the company's books. P.W. 4 has no complaint in this regard. As against this evidence, there is the evidence of R.Ws. 1 and 2 who would say that the yield was being duly accounted for in the company's books. Some suspicion was sought to be created with reference to Exts. B-30 and B-31 and Exts. A-4 to A-8 in reinforcement of the appellants' case. Exts. A-4 to A-8 are demands made by the workers for higher rates of wages for extra tapping. These show that extra-tapping, if any done, was not a secret affair. Ext. B-30, "extra-tapping file", discloses that wages were being paid for extra-tapping. Ext. B-31 shows that during certain periods in 1974-75, the yield was about 50% more than the average. According to the respondents, during this period, extra-tapping was done. P.Ws. 2 and 4, who were intimately connected with the company for a long time as directors, could have adduced better evidence in support of this allegation. Their evidence cannot inspire confidence in a court for the reason that they chose to make this allegation after losing their directorship. In any case, the evidence is not sufficient to make out this allegation. From some of the books that we looked into, we find that the excess yield had been accounted for. We agree with the learned judge that the petitioners did not succeed to make out a case on this ground either.

30. Slaughter-tapping, according to the respondents, is a process of recent origin, in the sense of an act of mismanagement. The petitioners' case is that slaughter-tapping was resorted to without the matter being brought to the notice of the board of directors and tenders being invited. We do not propose to discuss the evidence in this regard in detail, for the evidence is not sufficiently persuasive to hold that the petitioners have made out a case on this ground. The company came into existence in 1910. Rubber plantation began in 1912. There is evidence to show that the rubber board recommended replanting the estate in 1960 with better plants. Slaughter-tapping started somewhere in 1952 and was completed in 1970. During 1952-1971, the process of replanting went on. From

1962 onwards slaughter-tapping was being arranged directly by the company itself and sometimes through reliable contractors. According to the respondents, it is not necessary to invite tenders always. It is for the board of directors to decide as to how the slaughter tapping is to be done. The complaint that the entire income from slaughter tapping was being suppressed has not been satisfactorily made out. The learned judge observed that the audited balance-sheet produced showed that at least part of it was being accounted for. He was not prepared to accept the evidence in this regard. He felt that the petitioners should have adduced better evidence especially because P.Ws. 2 and 4 who were directors during a long period would have been in the know of things at that time. We have examined the evidence ourselves. We find it difficult to accept the evidence of P.Ws. 2 and 4 in support of this ground. Their evidence throughout is suspect. They have not succeeded in making out a clear case of underhand dealings by the respondents by way of slaughter-tapping. We do not find any material persuasive enough to disagree with the findings of the learned judge on this ground also.

31. The next allegation relates to cutting and removing valuable teak and rosewood trees without bringing the sale proceeds in the company's account. This complaint has not been properly pleaded in the petitions. Despite this, the learned judge was inclined to consider the complaint, if evidence was made available. According to him, the evidence was far from satisfactory. Sufficient details regarding the number of trees cut, the time at which they were cut, the approximate loss occasioned to the company, etc., were not proved. If it was done between 1957 and 1976, P.Ws. 2 and 4 were equally guilty as the respondents for this. The evidence of P.W. 1 as usual is worthless. The evidence of P.Ws. 2 and 4 cannot be relied upon for this purpose in the absence of other acceptable corroborative evidence. R.W. 1 admitted that some trees standing on the boundaries were cut and sold during replantation, while R.W. 2 stated that the timber was used for estate purposes. Nothing turns out on this inconsistency when the petitioners have failed to make any specific allegation either in the pleadings or in the evidence. Exts.C-1 and C-2, the commission reports, only show that some trees were cut years ago and some others more recently. No attempt was made by the petitioners to establish the manner in which the misappropriation on this account was caused. The evidence of R.W. 2 that some of the trees were used for putting up sheds, etc., might be suspicious. Some trees were seen stacked in a portion of the estate also. But such suspicion alone is not sufficient to pass an order of the kind that the petitioners request for. We agree with the learned judge that evidence is far from satisfactory to prove this allegation.

32. The third respondent is the son of the secretary. The allegation against him is two-fold. According to the petitioners, R.W. 1 was eased out unceremoniously to find a place for him. The petitioners were also participants in this move. It is not necessary to examine this in detail because R.W. 1 himself has deposed that he resigned the job voluntarily since the company did not favourably respond to the

terms that he put forward. Regarding the method of appointment of the third respondent also, a detailed discussion is not necessary since at the time when he was appointed, P.W. 2 was very much in the picture and his appointment was after due publicity. The second allegation against him is that workers of the company and its smoke-house were used for the purpose of his estate in the adjoining area. This case cannot be true because the estate of the third respondent has its own smoke-house. That the services of the workers were availed of for the estate of the third respondent has not been satisfactorily proved. The only attempt made is to construct a case on certain note books and diaries; Exts. A-1 and A-14 and A-15 to A-17 seized by the tax authorities, where there is some noting about a 45th Block. No one connected with these note books and diaries was examined. Whether this 45th Block is third respondent's estate or not, is itself a matter not free from doubt. The allegation has not been satisfactorily made out nor is the evidence sufficient to hold that the resources of the company were being diverted for the benefit of this estate.

33. It is true that dividends were not declared from 1962-63 to 1971-72. This allegation was made to support the further allegation that it was deliberately done to corner the shares. We have already shown that the shares did not suffer from devaluation and that no evidence was made available to show that any transfer of shares took place below par. That there was deliberate attempt on the part of the company to oppress the minority shareholders by non-declaration of dividends has not been made out, though, in our opinion, no satisfactory explanation was given why dividends were not declared even during the period when the company was making profit.

34. We have considered the entire evidence in detail. We agree with respect with the conclusions of the learned judge-that the evidence is not sufficient to give any of the reliefs that the petitioners have prayed for. The dissatisfaction of a minority of shareholders with the conduct of the affairs of the company by the majority will not normally persuade a court to interfere with the management. It is only when the court has before it reliable evidence where the majority acts against the provisions of the articles of association of the company or of the statute governing it or unconscionable use of the majority's power resulting or likely to result in financial loss or where action which could be characterised as unfair and improper is made that the court will exercise its powers u/s 397 or Section 398 of the Companies Act. Every kind of oppression cannot be remedied by the court. The oppression must be such as to justify the winding-up of the company on just and equitable grounds, since the words used are "are being conducted ". The action complained of must be a continuous one and not either an isolated or a stale one. Once the court is satisfied that the complaint is made without bona fides and to settle old scores or with the sole intention of mud-slinging, no orders u/s 397 or Section 398 will be passed. The court must have strong grounds before it to order a winding up. An order u/s 397: or Section 398 can be supported only if such grounds are present. The fact that the complaining parties were themselves participants in the alleged activities will be one of the

factors to dissuade the court from exercising its powers under the section. Delay and acquiescence in the acts complained of will also be circumstances against the grant of reliefs. The powers of the court u/s 402 are wide. But the courts have always exercised restraint in interfering with the affairs of the company, for the affairs of the company are normally its own concern and the concern of its shareholders. It is only when the facts and evidence before the court are such as to persuade it to hold that interference with the affairs of the company is necessary that it would exercise its powers. The interest of public good will always be kept by the court in mind. But the concept of public interest will preponderate over the autonomy of a company and the management under the articles of association and within the confines of the provisions of the Companies Act, only if such evidence is available before the court. Stray cases of mismanagement or even a few cases of mismanagement without sufficient proof will not lead a court to entrust the powers of the management of a company in the interest of. public good, to strangers appointed by the court. Disgruntled shareholders there will always be. Courts will not listen to them unless they make out a persuasive case of oppression and mismanagement. The provisions of the Companies-Act, especially Chapter VI, are not meant to convert the company court into a super structure supervising all its activities and affairs. Since the powers are wide, they have to be exercised with utmost restraint. In this case, we have the spectacle of two disgruntled directors who had themselves been participants in the various acts "of mismanagement alleged figuring with injured innocence as complainants before the court. This circumstance itself to a large extent demolishes the bona fides of the allegations put forward. This fact would not have influenced us if there was reliable evidence to show that the respondents acted to the peril of the company and indulged in acts amounting to oppression of the minority shareholders and if the petitioners had made out sufficient grounds justifying the winding up of the company. We hold that the learned judge was justified in dismissing the petitions. As already indicated, the direction to appoint an Inspector, though challenged in the memorandum of cross-objection, has to stand since the memorandum is not pressed.

35. In the result, the appeals and the memorandum of cross-objections are dismissed without costs.

36. Counsel for the appellants in both the appeals make an oral application for grant of certificate for leave to the Supreme Court. We are not satisfied that these two appeals involve any substantial question of law of general importance, which, in our opinion, needs to be decided by the Supreme Court. Certificate refused.