

(1985) 08 MAD CK 0032

In the Madras High Court

Case No : O.S.A. No's. 145 and 136 of 1980

V.M. Rao and Others

APPELLANT

Vs

Rajeswari Ramakrishnan and Others
V.M. Rao Vs V.L.
Dutt and Others

RESPONDENT

Date of Decision : 02-08-1985

Acts Referred:

Companies Act, 1956 — Section 153A, 153B, 187, 187C, 2

Citation : (1987) 61 CompCas 20

Hon'ble Judges : V. Ramaswami, J;M.A. Sathar Sayeed, J

Bench : Division Bench

Advocate : R.P. Butt, for the Appellant; Vasantha Pai, for the Respondent

Judgement

Ramaswami, J.—These two appeals have been filed against the common judgment in C.S. No. 322 of 1975 and Company Petition No. 94 of 1976. The plaintiffs in the suit and the petitioner in the company petition are the appellants. The first appellant, V. M. Rao, is the elder son of late V. Ramakrishna, I.C.S. Appellants Nos. 2 and 3 are the wife and daughter, respectively, of the first appellant. The first respondent, Rajeswari Ramakrishnan, is the elder sister and V. L. Dutt, the fifth respondent, is the younger brother of the first appellant. The third respondent, P. R. Ramakrishnan, is the husband of Rajeswari Ramakrishnan and respondents Nos. 2 and 4 are two of their sons. The sixth respondent is V. Ramakrishna Sons Ltd. which is a company registered under the Companies Act, 1956, hereinafter referred to as "the company."

2. The company was incorporated under the Companies Act and a certificate of incorporation was granted on July 7, 1949. The nominal capital of the company is Rs. 10,00,000 divided into 1,000 shares of Rs. 1,000 each. The company was promoted by the late V. Ramakrishna, I.C.S., and Rajeswari Ramakrishnan as a private limited company, the shareholding being distributed as follows :

V. M. Rao ... 199 V. L. Dutt ... 199 Rajeswari Ramakrishnan ... 95 R. Prabhu ... 4
V. Ramakrishna, I.C.S. ... 1 P. R. Ramakrishnan ... 1 V. R. Durgamba ... 1

(V. R. Durgamba got this share from her husband, V. Ramakrishna, in the year 1951)

3. The entire share capital of the company was contributed, according to the plaintiffs, by the late V. Ramakrishna and his wife V. R. Durgamba. The late Ramakrishna also promoted another company by name R. S. Industrial Corporation P. Ltd. V. Ramakrishna Sons Ltd. were the managing agents of K. C. P. Ltd. and R. S. Industrial Corporation Ltd. were the managing agents of Jeypore sugar Co. Ltd. With the abolition of the managing agency system, the said companies became merely holding companies. The company became a public company by reason of section 43A(1B) of the Companies Act with effect from February 1, 1975.

4. The shareholding increased sometime in 1953 or 1954 and thereafter V. M. Rao held 398 shares, V. L. Dutt 398 shares, Rajeswari Ramakrishnan 190 shares, R. Prabhu 8 shares, P. R. Ramakrishnan 2 shares and Durgamba 4 shares totalling 1,000 shares. This was the position in 1961. There were some transfer of shares among the shareholders in between 1961 and the filing of the suit. On the date of plaint, the plaintiffs together held 473 shares, that is 47.3% of shares and Rajeswari Ramakrishnan 66 shares, her husband 2 shares and her two sons 66 shares each and V. L. Dutt 323 shares and thus respondents Nos. 1 to 5 were together holding 52.3% of the shares and the balance of 4 shares or 0.4% of the shares was held by V. R. Durgamba in V. Ramakrishna Sons Ltd. At the time of incorporation of the company, Rajeswari Ramakrishnan was appointed as a lifetime director of the company.

5. The case of the first plaintiff in the suit was that he and his sister, Rajeswari Ramakrishnan, have not been on friendly terms for a considerable period and that the temperamental differences between them escalated further when he got married to a foreign lady, the second plaintiff in the suit, in the year 1961. When this matter was brought to the notice of the father late V. Ramakrishna, he brought about an oral family arrangement.

6. The oral family arrangement thus brought about by the father at Madras, according to the first plaintiff was that the two sons would be in exclusive management of one company and the daughter the other company and accordingly the exclusive management of V. Ramakrishna Sons Ltd., vested with V. M. Rao and V. L. Dutt along with their mother, V. R. Durgamba, and that of R. S. Industrial Corporation Ltd., with Rajeswari Ramakrishnan. The arrangement also enjoined that in the event of the shareholding of V. Ramakrishna Sons Ltd. or that of V. M. Rao and V. L. Dutt in Jeypore Sugar Co. Ltd., or Krishna Industrial Corporation were to be disposed of, a right of pre-emption be given to Rajeswari Ramakrishnan and a corresponding right of pre-emption in favour of V. M. Rao and V. L. Dutt in case Rajeswari Ramakrishnan or R. S. Industrial Corporation wanted to dispose of their shares in K. C. P. Ltd., Andhra Cement Co. Ltd. and V. Ramakrishna Sons Ltd.

7. According to the plaintiffs, the family arrangement so brought about by the father was agreed to by Rajeswari Ramakrishnan, V. M. Rao and V. L. Dutt, the children of the late V. Ramakrishna. In accordance with this family arrangement, V. M. Rao, who was on the board of directors of Jeypore Sugar Co. Ltd. and R. S. Industrial Corporation (P.) Ltd. resigned on October 29, 1961, and February 1, 1962, from the above companies and also gave up all positions and responsibilities in respect of those companies. He had also transferred to Rajeswari Ramakrishnan and to her branch and/or nominees the shares which he was holding in Jeypore Sugar Co. Ltd. The company also had sold the bulk of its holding in Jeypore Sugar Co. Ltd. to Rajeswari Ramakrishnan and/or her branch or nominees. Likewise, Rajeswari Ramakrishnan also resigned her life-directorship on the board of V. Ramakrishna Sons Ltd. on October 19, 1961, which was accepted on January 9, 1962.

8. It is further stated that the late V. Ramakrishna had informed of the family arrangement to his wife, Durgamba (R.W. -1) his brothers-in-law, A. V. Subramanayam, and A. Visweswara Rao (P.W. -15) and the late A. V. Raghava Rao and friends like S. V. R. Appa Rao, M. Sitharama Rao (P.W. -8), A. V. M. Caesar, son of late A. V. Raghava Rao, and M. K. Bhandarkar (P.W. -3) also know of the above arrangement. Punniiah (P.W. -6) a former manager of Jeypore Sugar Co. Ltd., knows of this arrangement, having been informed thereof by the first defendant.

9. The plaintiff further stated that the family arrangement was accepted, implemented and acted upon by volition of the parties. All the parties to the family arrangement, having acted on the faith thereof, and having materially altered their respective positions, none of the parties is entitled now to seek to resile therefrom. However, contrary to the said family arrangement, Rajeswari Ramakrishnan and her son the second defendant were elected as directors at the annual general meeting of V. Ramakrishna Sons Ltd. held on April 22, 1975. The election of these two directors and their continued functioning, as such directors, are illegal and opposed to the accepted family arrangement.

10. The board of directors of the company in the meeting held on December 3, 1975, had also passed certain resolutions. According to the first plaintiff, these resolutions of the board are calculated to exclude him from the rights of management and participation, that these acts are opposed to and contrary to the family arrangement and have led to a disruption of the special relationship, which is the substratum of the company. The plaintiffs alleged that the substratum of V. Ramakrishna Sons Ltd. is comprised in the special relationship of the parties and the specific understanding between the parties, in particular V. M. Rao, Rajeswari Ramakrishnan and her branch will have only the role of sleeping partners in the company, the right of management being vested solely with the first plaintiff, fifth defendant and their mother and their branches, and violation thereof amounts to breach of the basic obligations and manifest lack of probity and the loss of mutual confidence. Such acts of violation of the

arrangement constitute fraud on the rights of the plaintiffs. The plaint further states that the first plaintiff has been trying to avoid conflict since March, 1975, and has been trying to arrive at a reasonable and mutually acceptable compromise through very respectable mediators, but the negotiations did not produce any fruitful response.

11. With these allegations, the plaintiffs filed C.S. No. 322 of 1975 on December 17, 1975, praying for a decree declaring :

(1) That defendants Nos. 1 to 4, or anyone claiming through or under them, are not entitled to participate in the management of the company;

(2) that the election of defendants Nos. 1 and 2 to the board of directors of the company at the annual general meeting held on April 22, 1975 is null and void; and

(3) for a permanent injunction restraining defendants Nos. 1 and 2 from functioning as directors; and

(4) for a permanent injunction restraining defendants Nos. 1 to 4 from participating in the management and affairs of the company in any manner whatsoever.

12. The plaint specifically states that no relief is asked for against defendants Nos. 5 and 6. Durgamba, wife of late V. Ramakrishna, is not impleaded as a party to the suit.

13. Defendants Nos. 1 to 4 filed a written statement denying the allegations that the first defendant had ever entertained any unfriendly feelings as against the first plaintiff or that there were any temperamental differences or that any such difference escalated further, when the first plaintiff got married to the second plaintiff in the year 1961. They also denied that the father ever thought of bringing about any family arrangement and denied further that any oral arrangement was devised by the father, as contended in the plaint. The defendants submitted that the family arrangement pleaded in the various paragraphs of the plaint is not true, that there was never any contemplation of the division of the family into groups and vesting of exclusive management of the various companies in such groups. Resignation of directorship of the companies, or acceptance of directorship of the companies by the members are all matters decided on practical considerations of convenience at the relevant time, but there was never any embargo against any member of the family becoming a director of any company with reference to the allegations relating to sale of shares, it is stated that giving the other members of the family first option to buy the shares was never a matter of binding agreement or family arrangement, but was, if at all, a mere matter of courtesy and mutual consideration and even this was not always adhered to. No family arrangement is violated by defendants Nos. 1 and 2 by becoming or being directors of the sixth defendant-company and they having been validly and regularly elected as directors in accordance with law,

they are entitled to function as such. They further contended that the rights of the members of the company, including the defendants, and the mode of election or appointment of the board of directors of the company are matters governed and governed only by the Companies Act in force and the articles of association of the company and the family arrangement pleaded which completely cuts across and abrogates the rights of shareholders and the prescribed procedure for the constitution of the board, is void in law, unenforceable and also hit by section 23 of the Indian Contract Act and that the alleged family arrangement not having been reduced to writing and not having been incorporated in the articles of association of the sixth defendant, is also unenforceable. As the family arrangement pleaded is at variance with and contradicts the articles of association of the sixth defendant, such oral agreement pleaded is also barred by the provisions of section 92 of the Indian Evidence Act. They have also contended that having regard to the nature of the allegations in the plaint and, in particular, allegations of fraud against and oppression of the plaintiffs and the nature of the reliefs prayed for which relates entirely to the internal management of the sixth defendant company, this court, as a civil court, will have no jurisdiction to entertain the suit and the matters raised and the reliefs prayed for here can be agitated, if at all, only before the court having jurisdiction under the Companies Act, 1956.

14. The fifth defendant, the brother of the first plaintiff filed a separate written statement, contending that the so-called family arrangement was not true. He had also submitted that there was never any family arrangement regarding the management of the sixth defendant company or any other company, that there was no arrangement to vest in any member or group of members the exclusive management of the said companies, that the resignation of any of the parties from his or her directorship was on the volition of the person concerned and not based upon or in consequence of any family arrangement, that there was never any embargo upon any person from becoming a director of any company, that there was no arrangement regarding the transfer of shares held by any of the parties in any of the companies, that no one is compelled to offer the shares held by him to any other party or group before selling them to third parties, that the transfer of shares in the past between persons who are related to each other was based on his or her own volition, and it was not the result of any agreement, that the election of defendants Nos. 1 and 2 as directors of the sixth defendant company was not in violation of any family arrangement, that as they are shareholders of the company, they could be elected as directors and there is nothing to prevent them from becoming directors, that the sixth defendant being a company incorporated under the Companies Act, the mode of election and the appointment of directors in the said company can only be within the framework of law, that the so called family arrangement put forward by the plaintiff was not in existence, that such an arrangement would be contrary to the procedure prescribed by law and hence unenforceable and void, that the so-called family arrangement not having been reduced to writing and it being inconsistent with

the articles of association of the company, it is neither valid nor is it enforceable, that it is not admissible in evidence, that the plaintiff is not entitled to get any relief based on the supposed agreement, that the matters complained of and in respect of which the plaintiffs seek to obtain relief are purely matters of internal management of the company, that the plaintiff is not entitled to urge them in this court, this being a civil court, that the plaintiff cannot seek any relief in the above suit, that the so-called family arrangement never existed and that the plaintiff is not entitled to obtain any relief from this court based on the supposed family arrangement.

15. On behalf of the sixth defendant also a written statement was filed in which it was contended that the relevant reliefs prayed for in the plaint cannot be granted, as the same are opposed to the principles of law governing the companies incorporated under the provisions of the Companies Act. The sixth defendant also pleaded that it had no knowledge of any such family arrangement. It was also contended that the rights and liabilities are to be decided only with reference to the memorandum and articles of the company and the provisions of the Act and that the company cannot take note of any family arrangement, even if such arrangement existed between the parties.

16. On these pleadings the following issues were framed on September 15, 1976;

(1) Whether the family arrangement pleaded by the plaintiffs is true, valid and binding on the parties ?

(2) Whether the said family arrangement was not acted upon and whether the same is not enforceable for any of the reasons set out in the written statement ?

(3) Whether the defendants are estopped from denying the truth and validity of the family arrangement ?

(4) Whether the suit is not maintainable for any of the reasons contained in the written statement ?

(5) To what relief the parties are entitled ?

17. When the suit was pending, V. M. Rao filed on December 13, 1976, Company Petition No. 94 of 1976, under sectioned 397 and 398 of the Companies Act, praying for an order superseding the board of directors of V. Ramakrishna Sons Ltd., and appointing an administrator or administrators to take charge of the affairs of the company and to function under the direction of this court till such time and under such terms as this court may deem fit and proper and for removal of V. L. Dutt, Rajeswari Ramakrishnan and Prabhu from the board of directors and for other consequential reliefs.

18. In this petition, V. L. Dutt has been impleaded as the first respondent. The petitioner has also impleaded Rajeswari Ramakrishnan and her husband as respondents Nos. 2 and 4 and their two sons as respondents Nos. 3 and 5 and V. Ramakrishna Sons Ltd., as the seventh respondent. Two of the parties, who

were not parties to the suit, are impleaded as respondents Nos. 6 and 8 in this petition and they are V. R. Durgamba, wife of late V. Ramakrishna, and a company by name Bajrangbali Iron and Steel Co. Ltd.

19. This petition has been filed on two main grounds. The first ground is based on the oral family arrangement referred to in the suit itself. After setting out the allegations relating to the family arrangement, the petitioner stated that the substratum of the company is comprised in the special relationship of the parties and the specific understanding between the parties and in particular the petitioner, V. L. Dutt and their respective branches will be exclusively entitled to the management and the affairs of the company and Mrs. Rajeswari Ramakrishnan and her branch will have only a sleeping role in the company. Any violation of this arrangement amounts to an interference in the management of the company and manifests lack of mutual confidence. Such acts of violation constitute a fraud on the rights of the petitioner. The acts of respondents Nos. 1 to 3 are opposed to and contrary to the family arrangement and have led to the disruption of the special relationship, which is the substratum of the company and also amount to oppression of the petitioner and his supporting shareholders, who are in the minority. Even if the oral arrangement cannot be treated as a family arrangement, it was certainly an arrangement or understanding between the parties and the conduct of the respondents in acting contrary to the said understanding itself amounts to an oppression of the minority shareholders like the petitioners.

20. Secondly, it was contended that the company's affairs are being conducted in a manner prejudicial to the public interest and also in a manner oppressive to the members especially, the petitioner. The various acts of oppression and mismanagement relied on by the petitioner are set out in paragraphs 26(A) to G of the petition and on those grounds it was contended that it is a case in which the company can be wound up on just and equitable grounds. It was also contended that the conduct of the company's affairs by the respondents is unfair, burdensome, harsh and wrongful to the other members of the company who constitute 47.3% of the shareholding. It is both oppressive and also against public interest. The petitioner has set out certain features in the administration of the company and the conduct of the directors in paragraph 32 of the petition as justifying interference by this court in exercise of its powers u/s 397 of the Companies Act. We are not setting out the details of the allegations at this stage as learned counsel for the appellants has not pressed some of the allegations and relied on only some of them. We will set out the relevant facts relating to the points pressed in the appeal and the submissions on these when we deal with the contentions.

21. V. L. Dutt and V. Ramakrishna Sons Ltd., respondents Nos. 1 and 7 have filed a counter-affidavit in which it was contended that there was no family arrangement or any other arrangement or understanding as alleged by the petitioner and it is also no legally valid. They also contended that the acts of

oppression and mismanagement referred to in the petition are unfounded and misleading and that the petition is an abuse of process of this court. All the various allegations in the petition have also been specifically denied.

22. In a separate counter-affidavit filed by the second respondent, the earlier defences raised in the suit were reiterated and the existence of the family arrangement was denied. The second respondent also specifically denied the allegation in the petition that the company's affairs are being conducted in a manner prejudicial to public interest and in a manner prejudicial to public interest and in a manner oppressive to the members especially to the petitioner. She has further contended that the election of respondents Nos. 2 and 3 as directors is valid and not null and void, that the petition is not maintainable under sections 397 and 398 and that the petitioner is also precluded from maintaining an action under the Companies Act and the filing of the suit was a bar to such action. This counter-affidavit of the second respondent has also been adopted by the fourth respondent.

23. The sixth respondent, Durgamba, the widow of late V. Ramakrishna, filed a separate counter-affidavit in which she stated that in view of the strained relationship between her eldest son, the petitioner in the company petition and her daughter, Rajeswari Ramakrishnan, her husband considered it necessary and advisable to bring about a family arrangement under which V. Ramakrishna Sons Ltd. was to be under the control of her two sons and herself, while R. S. Industrial Corporation (P.) Ltd., was to be under the control of Rajeswari Ramakrishnan and that this arrangement was accepted and acted upon by all the parties.

24. A reply was filed by the petitioner reiterating his original contentions.

25. After the eighth respondent was impleaded as a party to the petition by an order dated October 30, 1977, in Company Application No. 506 of 1977, a counter-affidavit has also been filed on behalf of the eighth respondent. It may be mentioned that one of the acts of oppression and mismanagement alleged was that an extraordinary general body meeting of the eighth respondent company was held on September 25, 1975, in which a special resolution was passed that the sanction of company u/s 81 of the Act be accorded to the directors to issue further shares to any person, whether or not those persons are existing shareholders of the company and in pursuance of that resolution at a subsequent meeting of the board of directors, shares worth Rs. 5,00,400 were allotted to Bajrangbali Engineering Co. Ltd. and three other individuals which according to the petitioner, has resulted in the dilution of the value of the shares of the existing shareholders. Because of this allegation, the eighth respondent was brought on record as a party respondent and a counter-affidavit was filed on behalf of the company. In the counter-affidavit filed, the facts relating to the allotment of shares are referred to in detail and the allegation of mismanagement based on those facts was denied.

26. In Company Application No. 425 of 1977, the points for consideration in the company petition were determined and they are as follows :

"(1) Is the present plaintiff, petitioner in Company Petition No. 94 of 1976 precluded from maintaining an action under the Companies Act in respect of all or any of the matters stated therein and in the proceeding by the wrong plaintiff or petitioner, a bar to the same ?

(2) Is the petition maintainable in respect of the allegations made regarding the Bajrangbali Iron and Steel Company Ltd. and Messrs. K. C. P. Ltd., when no application has been filed against the said companies u/s 397 and 398 of the Companies Act by any shareholders after complying with the provisions of section 399 thereof ?

(3) Is the petition otherwise maintainable under sections 397 and 398 of the Companies Act and do all or any of the reliefs claimed warrant an interference of the court under the provisions of the said sections ?

(4) Whether the family arrangement pleaded is true, valid and binding and can be agitated in the company petition ?

(5) Whether the alleged family arrangement, if true, has been acted upon and are the respondents estopped from questioning the same ?

(6) Whether the alleged family arrangement, if true, is legally enforceable ?

(7) Whether the election of respondents Nos. 2 and 3 to the board of directors of the 7th respondent company is null and void ?

(8) Whether any material change has taken place in the management and control of the 7th respondent company and has affected the company or is likely to affect it prejudicially to constitute a ground for action u/s 398 of the Act ?

(9) Whether the allegations in paragraph 26A and others of the petition concerning M/s. Bajrangbali Iron and Steel Co. Ltd. can be investigated in these proceedings ?

(10) Whether large amounts have been transferred to reserves and lawful dividends denied in the seventh respondent company unjustifiably, as alleged in paragraph 26B of the petition and is it a matter that could be agitated in these proceedings ?

(11) Whether no steps serious or effective have been taken to recover amounts due to the seventh respondent company from its debtors and if so is it a matter that could be agitated in these proceedings ?

(12) Whether loans have been borrowed in excess of requirements as alleged in paragraph 26C of the petition and could this matter, if true, be agitated in these proceedings ?

(13) Whether the investments of deposits in the New Bank of India Ltd. is

prejudicial to the seventh respondent company as alleged in paragraph 26D of the petition and is it a matter that could be agitated in proceedings ?

(14) Whether the hundi loans and other transactions referred to in paragraph 26F of the petition were acts of mismanagement by the first respondent and could they, if true, be agitated in these proceedings ?

(15) Whether the resolution of the board of directors of the seventh respondent company dated December 3, 1975, concerning the furnishing of copies of documents and information amounts to abuse of power and exclusion of the petitioner from management to warrant action u/s 397 and 398 of the Act ?

(16) Whether the allegations in the petition concerning the internal affairs of M/s. K. C. P. Ltd. can be investigated in these proceedings ?

(17) Whether the proposals dated November 17, 1976, of the seventh respondent company to raise the strength of the board of directors of M/s. K. C. P. Ltd. and proposing the appointment of the third respondent as a director of M/s. K. C. P. Ltd. are irregular, invalid and illegal ?

(18) What reliefs ?

27. Having considered the oral and documentary evidence and the legal position, the learned judge gave his findings on the issues in the suit and posers in the company petition as follows :

The result of the above discussion is, the family arrangement as pleaded by V. M. Rao and his group is neither true, nor valid, nor binding on the parties. The alleged family arrangement cannot be stated to have been acted upon, so as to bring about any principle of estoppel into play. Equally so, it is not enforceable in law. The suit, as it stands framed and launched, cannot be entertained and none of the reliefs asked for in the suit can be granted. Accordingly, issues Nos. 1 to 5 in the suit and poser Nos. 4 to 7 in the company petition are answered against V. M. Rao and his group.

28. The proceedings in the company petition at the instance of V. M. Rao in respect of all the matters urged by him are not maintainable and none of the reliefs asked for by him can be granted, invoking the aid of sections 397 and 398 of the Act. No material change can be stated to have taken place in the management and control of the company and the company is not affected nor is likely to be affected prejudicially by any such change, so as to constitute a ground for an action u/s 398 of the Act. Accordingly, poser Nos. 1, 3 and 8 in the company petition are answered against V. M. Rao.

29. Coming to the posers of the company petition relating to the affairs of the other companies, it cannot be stated that the affairs of the subsidiaries can never be investigated in proceedings against the holding company. Yet in the instant case, the investigation has not led to any concrete results, so as to warrant such affairs to be taken into consideration for the purpose of countenancing the reliefs

prayed for by the shareholder in the holding company. Accordingly, poser Nos. 2, 9, 16 and 17 in the company petition are answered against V. M. Rao.

30. Regarding the other allegations brought in by V. M. Rao, have already found that they lack substance and merit. They are not to be counted against his opposite parties and noting substantial turns out of such alleged grievances. In consequence, poser Nos. 10 to 15 in the company petition are also found against V. M. Rao."

31. Before we go into the validity and the binding nature of the family arrangement pleaded by the appellants, it is necessary to find out what exactly is the family arrangement pleaded by the plaintiffs and spoken to by the witnesses and whether the plaintiffs have proved any family arrangement.

32. In the plaint, it is stated that late V. Ramakrishna "thought it best to bring about a family arrangement by virtue of which the two sons will be in exclusive management of one company and the daughter, the other company". Then it is stated that the family arrangement thus brought about at Madras was as follows :

"(a) participation in the management and affairs of V. Ramakrishna Sons Ltd., the then managing agents of K. C. P. Ltd., will be the exclusive entitlement of the two sons, V. M. Rao (first plaintiff), V. L. Dutt (fifth defendant) and/or their respective branches along with their mother, V. R. Durgamba, during her lifetime.

(b) participation in the management and affairs of R. S. Industrial Corporation Private Ltd., the then managing agents of Jeypore Sugar Co. Ltd., will be the exclusive right and privilege of the daughter, Rajeswari Ramakrishnan (first defendant), and her respective branch.

(c) In the event of holding of V. Ramakrishna Sons Ltd. and/or personal shareholdings of V. M. Rao and V. L. Dutt, in the said Jeypore Sugar Co. Ltd., Krishna Industrial Corporation Ltd., and R. S. Industrial Corporation P. Ltd., were to be disposed of to third parties, i.e., outside their branches, the first option should be given to Rajeswari Ramakrishnan and/or her branch of the family or her nominees at the prevailing wealth-tax valuation at the time of transfer.

(d) Likewise it was enjoined on Rajeswari Ramakrishna (first defendant) and her branch of the family and R. S. Industrial Corporation P. Ltd., that their holdings in K. C. P. Ltd., Andhra Cement Co. Ltd. and V. Ramakrishna Sons Ltd., in the event of being disposed of to third parties, i.e., outside her branch, the first option should be given to the two brothers, V. M. Rao (first plaintiff) and V. L. Dutt (fifth defendant) or their respective branches of the family, or their respective nominees in equal moieties at the prevailing wealth-tax evaluation at the time of transfer."

33. It is further stated that the family arrangement so brought about by the father was agreed to by the first plaintiff, his brother, V. L. Dutt, and his sister, Rajaswari Ramakrishnan.

34. Along with the suit, the plaintiffs filed Applications Nos. 3246 and 3247 of 1975. In addition to the affidavit by the first plaintiff, an affidavit by Durgamba was also filed in support of these applications. It is stated in this affidavit of Durgamba that "because of strained relationship between V. M. Rao and his sister, Rajeswari Ramakrishnan, her husband felt it desirable to bring about a family arrangement by which V. Ramakrishna Sons Ltd. will be under control of two sons or their branch along with me for life and R. S. Industrial Corporation P. Ltd. under the control of my daughter or her branch "and that her husband" suggested that the daughter, Rajeswari Ramakrishnan, and R. S. Industrial Corporation P. Ltd. shall not dispose of their shares in K. C. P. Ltd., Andhra Cement Co. Ltd. and V. Ramakrishna Sons Ltd., to anyone except to the members of her branch of the family and if she or her branch of the family wanted to dispose of them to anyone else, she must give the option to buy these shares to the two sons or their respective nominees or branches in equal moieties. Likewise, if the sons or their respective branches of family or V. Ramakrishna Sons Ltd. were to dispose of their respective shareholdings in R. S. Industrial Corporation P. Ltd., Krishna Industrial Corporation P. Ltd., Jeypore Sugar Co. Ltd., Krishna Industrial Corporation Ltd., they should give her, her branch or her nominees, the first option to buy the shares. "It is further stated that her husband put these suggestions to each one of them individually and they accepted the same and acted upon it. Apart from the fact that the affidavit uses the expressions like "desirable", "advisable" and "suggested", as against the plaint allegation that the father "brought about" an arrangement, the affidavit of Durgamba does not confirm the plaint relating to the "exclusive" right of participation in the management and affairs of the companies by the respective parties. On the other hand, the affidavit refers to the "control" of V. Ramakrishna Sons Ltd., by the two sons and not the exclusive participation "in the management and affairs of the company".

35. In his oral evidence as P.W. -1, V. M. Rao, has stated :

"Then one day, my father called all of us, my sister, Rajeswari Ramakrishnan, my brother-in-law, P. R. Ramakrishnan, my brother, V. L. Dutt and myself to the office of K. C. P. Ltd. in 38, Mount Road, Madras, in the evening and then suggested to us that a formula could be evolved which would solve the differences. We accepted this arrangement gladly and without questions."

36. It was not the case of the plaintiffs in the plaint or in the company petition that P. R. Ramakrishnan was a party to the family arrangement pleaded. There is also no allegation in the plaint about the meeting in the office of K. C. P. Ltd. at 38, Mount Road, Madras. The omission in the plaint to refer to P. R. Ramakrishnan as a party to the alleged family arrangement and the place where the arrangement was suggested by the father cannot be ignored as immaterial or irrelevant or innocuous. Nor can the improvement in the evidence be taken at its face value. The exclusive participation in the affairs and management of V. Ramakrishna Sons Ltd., by the first plaintiff and his brother and the exclusive

right of management of R. S. Industrial Corporation P. Ltd., by the sister and the rights of pre-emption in respect of the transfers of shares were spoken to by P.W. -1 in the chief-examination. However, in cross-examination, the following questions were put and answers elicited by learned counsel for respondents Nos. 1 to 4 in the company petition.

"Q : Mr. Rao, coming back to your alleged family arrangement, according to you, your late father asked yourself, Mr. Dutt and your mother, Durgamba, you formed one group, to manage the K. C. P. through V. Ramakrishna and Sons Ltd. ?

A : Yes.

Q : The main function of V. Ramakrishna and Sons Ltd. at the date of your alleged family arrangement was the management of K. C. P. Ltd.

A : Yes.

Q : Similarly, the only function of R. S. Industrial Corporation was the management of the two companies Jaipur Sugars and K. I. C. (Krishna Industrial Corporation) ?

A : I believe so Sir.

Q : So, in effect your father, according to you, wanted yourself, your brother and Durgamba, i.e., your mother to manage K. C. P. and Shrimathy Rajeswari Ramakrishnan to manage Jeypore Sugars and K. I. C. Correct ?

A : Yes.

37. When the cross-examination continued on the next day and when his attention was drawn to the earlier answer, he said "It is not correct"; but, when his particular attention was drawn to his answer that he said "Yes" on the previous day, he said "Could be". It may be seen from these answers in cross-examination that the evidence was that the alleged family arrangement related to the management of K. C. P. Ltd., Jeypore Sugar Co. Ltd. and Krishna Industrial Corporation Ltd., which are public limited companies and not relation to the management and affairs of V. Ramakrishna Sons Ltd. and R. S. Industrial Corporation (P.) Ltd. The evidence of P.W. -1 thus does not establish the family arrangement pleaded in the plaint.

38. One of the parties to the alleged family arrangement according to appellants was R.W. -3, V. L. Dutt. He had completely denied the existence of any such family arrangement. He was cross-examined elaborately by counsel for the plaintiffs, but with no effect. Nothing can be stated to disbelieve his evidence either.

39. Rajeswari Ramakrishnan filed a counter-affidavit in Applications Nos. 3246 and 3247 of 1975. After stoutly denying the alleged family arrangement and the implementation of the same and denying any type of arrangement providing for participation in the management and affairs of V. Ramakrishna Sons Ltd. to be

the exclusive entitlement of the first plaintiff and the fifth defendant and their respective branches along with their mother, the affidavit further stated :

"The only intention of late Sri V. Ramkrishna declared and expressed to me, my husband the third respondent and my brother the first applicant and the fifth respondent was that the two brothers should jointly take over the management of K. C. P. Ltd. and I should take over the management of Jeypore Sugar Co. Ltd. There was no family arrangement concerning either the sixth respondent (that is, V. Ramakrishna Sons Ltd.) or R. S. Industrial Corporation Ltd., nor any arrangement as alleged in sub-paragraphs (c) and (d) of paragraph 6 regarding disposal of shares of the respective companies. Since K. C. P. Ltd. had been given to the brothers and Jeypore Sugar Co. Ltd. and Krishna Industrial Corporation Ltd. have been given to me, it was reasonable, proper and natural, that any disposal of shares held by any member of the family should not be disposed of to third parties without offering it in the first instance to the person controlling the respective companies. This was not, however, a term of any family arrangement or agreement as pleaded."

40. It may be seen from this passage that Rajeswari Ramakrishnan did not accept the alleged family arrangement as such and the statement in the affidavit is something similar to the admission of P.W. -1 in his cross-examination that the father wanted the sons to manage K. C. P. Ltd. and the daughter to manage Jeypore Sugar Co. Ltd., and no family arrangement relating to the management and affairs of V. Ramakrishna Sons Ltd. and R. S. Industrial Corporation (P.) Ltd. The statement in the affidavit can thus at best be interpreted as meaning that the two brothers should jointly "take over the management of K. C. P. Ltd. The statement in the affidavit can thus at best be interpreted as meaning that the two brothers should jointly "take over the management of K. C. P. Ltd. and Rajeswari Ramakrishnan should take over the management of Jeypore Sugar Co. Ltd." However, it should be noted that even here there is no mention of any permanent and exclusive right to management in respect of either K. C. P. Ltd. or Jeypore Sugar Co. Ltd. It was more in the nature of allocation of work to be looked after individually in the absence of co-operation among the parties. In fact, this is exactly the admission of P.W. -1 in cross-examination.

41. In her evidence as R.W. -1, Mrs. Durgamba stated :

"My son, V. M. Rao, had been abroad at that time. When he returned, my daughter was looking after the company, V. R. and Sons, and verifying the accounts. This act was not relished by my son, Rao. Thereafter, my son talked to my husband. He represented to his father that he did not like his sister looking after the affairs of the company which he was doing previously. He also stated that he did not like his sister looking after, he may be given some other work and that there should be no connection between him and his sister. Then we pacified my son and told him that he should not worry very much about the matter and he then looked after the affairs. Then, one or two days later, my husband told me that he did not like his son and daughter quarreling with each other and he

would make some arrangement for them. Then two or three days thereafter, my husband, sons, son-in-law and daughter made the division of the companies."

42. To a question as to what was the division, she answered :

"It was decided that my sons should look after V. R. and Sons and my daughter should look after R. S. Industrial Corporation."

43. When asked as to the terms of the arrangement, she said :

"In V. R. and Sons, my daughter was having twenty per cent of the shares. It was agreed that if my daughter wanted to sell her shares in V. R. and Sons, the same should be sold equally between our two sons. In the same manner, my two sons are having shares in R. S. Industrial Corporation and if they wanted to sell their shares in that company, the same should be sold to my daughter. In this way, my husband had made the arrangement without any connection between my sons and daughter."

44. In the cross-examination, however, while denying that the concept of family arrangement is a figment of imagination of her son, V. M. Rao, and her brother, Visveswar Rao, she further stated, "the family arrangement took place in one evening in 1961. My husband was informing to his friends and relatives whoever visited him that he has given the big factory to his sons and the other factory to his daughter." There is no dispute that reference to the big factory is a reference to K. C. P. Ltd. and the other factory referred to in the evidence relates to Jeypore Sugar Ltd. Though she has stated in her affidavit filed in support of Applications Nos. 3246 and 3247 of 1975 that her husband put the suggestions of family arrangement to each of their children individually, in her evidence she admits that she was not personally present at the meeting but she was told about the family arrangement by her husband only when she was serving him food. There is also evidence to show that all is not well in the relationship between her and her second son, Dutt, who is also an opposing party in both the suit and the company petition. She was particularly not in favour of V. L. Dutt's marriage and, in fact, she admitted that she walked out of the house and stayed in a hut for over three months immediately after the marriage. Even at the time of evidence she stated that she would refuse to see Dutt's face and, according to her, she used to cover her face whenever they met." Admittedly, she was not present at the time when the family arrangement was said to have taken place. Her evidence also cannot be said to be unbiased.

45. Learned counsel for Rajeswari Ramakrishnan has forcefully urged that the persons inimically disposed toward his client had been won over by this lady and that their evidence is not creditworthy. Her oral evidence also suggests that late Ramakrishna had asked his son to manage K. C. P. Ltd. and his daughter Jeypore Sugars and that this was necessitated because he feared that Mr. Rao who is a strong-willed man may not allow his daughter to carry on the management of Jeypore Sugar peacefully. It is in these circumstances and probably with a view to get better administration, the father desired the sons to be in management of

K. C. P. Ltd. and the daughter to be in management of Jeypore Sugars. The arrangement thus could not be with reference to the management and affairs of V. Ramakrishna Sons Ltd. or R. S. Industrial Corporation Ltd.

46. In the plaint and in the company petition, the first plaintiff has stated that his father had informed about this arrangement to his mother, his mother's brother, A. V. Subramanyam, one A. Visweswara Rao (P.W. -15) and the late A. V. Raghav Rao. It is also mentioned that friends like S. V. R. Appa Rao, a director of K. C. P. Ltd., M. Sitharama Rao (P.W. -8), the then plant manager of Vuyyuru Sugar Factory of the K. C. P. Ltd., etc., A. V. M. Caesar, son of late A. V. Raghava Rao and M. K. Bhandarkar (P.W. -13), the then sales manager of K. C. P. Ltd., also know of the above arrangement. P. Punniiah (P.W. -6), a former manager of Jeypore Sugar Co. Ltd., knows of this arrangement having been informed thereof by Rajeswari Ramakrishnan. However, in his evidence, as P.W. -1, the first plaintiff, had stated that it was his father who informed his mother, his mother's brother and the friends referred to above and P. Punniiah. This is also an improvement on the pleadings. Be that as it may, let us see what they say about the terms of the alleged family arrangement.

47. P.W. -6, Punniiah, says, "Ramakrishna arranged in such a way that Mrs. Rajeswari Ramakrishnan has nothing to do with the management of Mr. V. M. Rao, and on a reciprocal basis, Mr. V. M. Rao has nothing to do with the management of Mrs. Rajeswari Ramakrishnan." He further stated that Rajeswari Ramakrishnan explained to him that her father "made this arrangement and that she would be taking charge of the management of Jeypore Sugar Co. Ltd.". When he was specifically asked to state what this arrangement which he would refer to was, he said, "The arrangement was that Rajeswari Ramakrishnan should take charge of Jeypore Sugar Co. Ltd., and that she should not have anything to do with the management of V. M. Rao." In answer to another question, he said that she told him that "The management of Jeypore Sugar Co. Ltd. was entrusted to her and that she should not interfere with the management of V. M. Rao. Generally, Rao was in-charge of K. C. P. Ltd. and he was also looking after Andhra Cements Co. Ltd." There is evidence to show that P.W. -6 is inimically disposed towards Rajeswari Ramakrishnan. But suffice it for the present to observe that this evidence does not in any way support the case of the plaintiffs that any exclusive management was given for the respective branches in the management and affairs of V. Ramakrishna Sons Ltd. and R. S. Industrial Corporation. It does not also support the arrangement relating to pre-emption in the matter of transfer of shares. On the other hand, it seems to us to be more consistent with allocation of work in order to keep cordial relationship among the parties in respect of the management of K. C. P. Ltd. and Jeypore Sugar Co. Ltd.

48. P.W. -8, Sitharama Rao, stated in his evidence that until early 1961-62, V. M. Rao was giving him instructions regarding Krishna Industrial Corporation and that he was receiving instructions from Rajeswari Ramakrishnan after she "took over." When asked what he meant by "took over", he replied : "I was told by Mr.

Ramakrishna, after this change, that he made a settlement between his children the two sons to look after the concern controlled by V. Ramakrishna Sons Ltd. that was K. C. P. Ltd. and the daughter to look after the concerns controlled by R. S. Industrial Corporation Ltd." In cross-examination, he stated that Ramakrishna told him orally about this, that he did not make any note of what was conveyed to him and for the first time in 1975 he made a statement before a notary public at the instance of V. M. Rao after the dispute. Though he stated that the present evidence is in accordance with that statement, the plaintiff has not produced that statement, entitling the court to draw an adverse inference. It may be noted that this evidence also refers to the sons "looking after the management of K. C. P. Ltd. and the daughter the management of Jeypore Sugar Co. Ltd. and Krishna Industrial Corporation Ltd. It does not speak of any exclusive entitlement of any arrangement relating to V. Ramakrishna Sons Ltd. We may also state that this witness also is a partisan witness and, therefore, his evidence could not be relied on.

49. P.W. -13, M. K. Bhandarkar, who was the general manager of K. C. P. Ltd. between 1950-1956 and 1958-1972, states in his evidence that "Rao stopped giving instructions regarding Jeypore Sugar and he told me to refer to his father or his sister and he (Rao) was giving instructions only in respect of K. C. P. and that Raghava Rao, the co-brother of V. Ramakrishna and one of the directors of K. C. P. and Jeypore Sugar told him that "Mr. Ramakrishna has decided that Jeypore Sugar and R. S. I. C. and K. I. C. should be managed by his daughter, K. C. P. Andhra Cements and Machela Workshops to be managed by his two sons". Apart from the fact that his evidence is inadmissible as hearsay, it does not also confirm the alleged family arrangement as pleaded by the plaintiffs. It also does not state that either the parties should be given exclusive management for ever or that it related to V. Ramakrishna Sons Ltd. with which we are concerned. He admitted in his evidence when C.P. No. 94 of 1976 is pending here, he took a parallel proceeding by filing an identical petition before the Central Government in 1977 and praying for the same relief. The suggestion is that he had done that at the instance of the first plaintiff and P.W. -6. We must observe also here that this witness has made certain false and reckless statements about defendants Nos. 1 to 3 and 5 in this petition but when he was in the box, he denied having made the statement. This witness again is a partisan witness, who has not only taken sides but also has proved himself to be a thoroughly unbelievable witness.

50. P.W. -15, Visweswara Rao, stated in his evidence-in-chief that "there was a family arrangement at the end of 1961 or in the beginning or 1962 in the family of Ramakrishna. There has been misunderstanding between V. M. Rao and his elder sister. She wanted that accounts should be checked. She was going through the accounts and checking them. Mr. V. M. Rao did not relish it. He reported the matter to his father. Thereafter, his father wanted to settle the matter. He called myself and Mr. Raghava Rao and informed us that he wanted to make an arrangement in the family." According to him, the following are the details of that family arrangement.

"Mr. Ramakrishna divided the units. Both his sons and the mother were given V. R. Sons and the daughter was given R. S. I. C. and that they should not interfere with each other."

51. Except to state that there was misunderstanding between Mr. V. M. Rao and his elder sister, his evidence does not give the details of the family arrangement. Further, the witness says that Ramakrishna has divided the units. It is nobody's case that there was any such division as if it was a partial partition. In cross-examination he, however, clarified that V. Ramakrishna asked his daughter to look after Jeypore Sugars and "the sons to look after K.C.P.". The learned judge has pointed out several materials to show the animosity of this witness against V. L. Dutt and we agree with the learned judge.

52. It should also be remembered that even according to the plaintiffs, the arrangement was devised by the father, put to the sons and daughter and agreed to by them. Admittedly, Durgamba was a life director of V. Ramakrishna Sons Ltd., and she was not a party to the arrangement. The other shareholders who are R. Prabhu and his father, P. R. Ramakrishnan, are also not parties to this arrangement though they are as per the articles eligible to become directors. It is not also pleaded that Rajeswari Ramakrishnan represented or acted on behalf of her son and husband who are the other shareholders in entering into this arrangement. Admittedly, there was no simultaneous recording of the oral family arrangement as set out in the plaint in any document, letter or proceeding either in family accounts, correspondence or files or the files of correspondence or meetings of any companies. The alleged family arrangement had also not been noticed in any of the proceedings of the board of directors of the concerned companies. The language employed by the plaintiff is also his own and does not purport to be that of the father.

53. The immediate cause or provocation for bringing about the alleged family arrangement is stated to be the temperamental differences between the first plaintiff and his sister, the first defendant. In the plaint, it is stated that the first plaintiff and his sister have not been on friendly terms with each other for a considerable period, that the temperamental differences between them escalated further when the first plaintiff got married to a foreigner in the year 1961, that the first plaintiff resented the air of superciliousness adopted by the first defendant towards him, that while the first plaintiff was outside the country in the year 1961, the first defendant was put in charge of the management of all the companies and even after the first plaintiff's return to India and after he had resumed the duties as the managing director of the company, "the first defendant persisted in carrying out supervisory operations which was resented by the first plaintiff" and that when the matter was brought to the notice of their father, late V. Ramakrishna, the father thought it best to bring about a family arrangement. Durgamba, the mother of the first plaintiff and the first defendant, in her affidavit filed in Applications Nos. 3246 and 3247 of 1975, has stated that her daughter, Rajeswari Ramakrishnan, and her elder son, V. M. Rao, were not on

friendly terms with each other for a considerable period, that in the year 1961 V. M. Rao married a foreigner and since then the position worsened and that because of the strained relationship, her husband felt it desirable to bring about a family arrangement. In the written statement filed on behalf of defendants Nos. 1 to 4, the first defendant has stated that she had never entertained any unfriendly feelings as against the first plaintiff and denied that there were any temperamental differences or that any such differences escalated later when the first plaintiff got married in the year 1961. In fact, her case was that it is only the parents who were upset by the marriage and that she did her best to make the parents reconciled to the marriage. She denied the allegation of supercilious behaviour or any other unfriendly feelings in her. She had further stated that after the return of their father and brother from foreign tour, she continued to check the accounts of K. C. P. Ltd., as she was doing in their absence but that was as directed by the father since he was fully occupied with other planning and expansion programmes, but she was not aware that the first plaintiff was upset by her checking of the accounts. The fifth defendant who filed a separate written statement characterised these allegations of the plaintiffs as based on imaginary disbelief in others and are invented by the plaintiffs in order to make it appear that there was some occasion to bring about the so-called family arrangement. In his evidence as, P.W. -1, V. M. Rao, has stated that his sister is a domineering individual. His sister was in charge of all the companies during the absence of his father, himself and his brother. When he came back, he found that his sister was still giving instructions and that he did not approve of this interference. It is not clear as to what is meant by this statement that the first defendant was "giving instructions" because it was his own case that as a technical man, he was only looking after the technical problems of K. C. P. Ltd., and the expansion programmes of all the companies and that his father was completely in charge of the administration and management of the company. After his brother, V. L. Dutt, came from abroad, the brother was looking after the administrative matters. In the circumstances, therefore, there could not have been any giving of instructions to the plaintiffs by the first defendant. In the context of the statements in paragraph 5 of the plaint, the allegation of the first defendant persisting in carrying out the supervisory operation which was resented by the first plaintiff refers to her continuance of the supervision which was entrusted to her during the absence of the father and the two sons from 1959 to 1961 and that was admittedly of all companies including K. C. P. Further, it is in evidence that the first plaintiff himself had entrusted the work of V. R. K. Sons to the first defendant for which she was also paid a remuneration of Rs. 1,000 per month when the manager-accountant was taken ill. Therefore, it does not appear that there was any difference or friction in respect of the management of V. Ramakrishna Sons. In her evidence, as R.W. -1, Durgamba, the mother has stated that there were misunderstandings between her elder son and her daughter after they had grown up and that her son, V. M. Rao, did not relish the first defendant verifying the accounts of V. Ramakrishna Sons. She did not say that her daughter was in any way upset or had ill-feeling towards her brother on

his marrying a foreigner or that was one of the reasons for bringing about the alleged family arrangement. On the other hand, the first defendant had produced exhibits R-6 to R-8, which are photographs taken at the air port on the arrival of the first plaintiff and his wife from Germany for the first time after their marriage. In these photographs, the first defendant finds a prominent place and she was one of those who received the first plaintiff and his wife. The allegation of temperamental differences escalating due to the first plaintiff getting married to a foreigner appears to be the imagination of the first plaintiff. May be, because the first plaintiff is a strong-willed man, he was not able to brook any interference, whether it was warranted or not. It is important and noteworthy that there is no allegation of mutual distrust among the brothers and sister or any overbearing conduct of the sister in business matters. Thus, neither this character of P.W. -1 nor the verifying of the accounts by the first defendant could be considered such strong or compelling circumstance which would warrant an inference that the father would have felt compelled to create groups and bring in a family arrangement in the form in which it is referred to in the plaint. In this connection, we may also keep in mind that the alleged family arrangement not only referred to the management of the first plaintiff and the first defendant but grouped the mother, Durgamba, and the other brother, V. L. Dutt, along with the first plaintiff, though no particular reason is suggested as to the reason for excluding the mother and the other brother from participation in the management of R. S. Industrial Corporation and Krishna Industrial Corporation which were to be managed by the first defendant. The circumstances and the reasons stated, therefore, do not suggest, and are not strong enough to suggest, that the father entertained a doubt about the intentions or cordiality or mutual respect among the brothers and sister compelling and necessitating him to bring about a family arrangement. There is, therefore, great force in the suggestion of the defendants that this allegation of temperamental differences is invented in order to make it appear that there was some occasion to bring about the alleged family arrangement.

54. Much was said about the non-examination of Rajeswari Ramakrishnan. But as rightly pointed out by learned counsel for the respondents when P.W. -1's evidence in substance confirmed her statement in the affidavit and since she stands by the statement, it was not necessary for her to go into the witness box. Further, when P.W. -1 and his brother, R.W. -3, who are parties to the alleged family arrangement have given evidence and the question depended largely on the acceptance or other wise of their evidence, non-examination of Rajeswari Ramakrishnan could not be too much emphasised. She herself does not rely on any family arrangement to come and speak to the same. Also her not examining herself as a witness is consistent with her case that she does not entertain any animosity against the first plaintiff. By not giving evidence, she only maintains her neutral position. It is also in evidence that far from taking sides, she only maintains the equilibrium between the brothers. While she has refused to align herself with the first plaintiff against his brother, she has always been consistent

by voting for the re-election of the first plaintiff as a director. The suggestion of the respondents that her attendance in court is required not for the purpose of obtaining any material evidence but from other and indirect motive is, therefore, not altogether improbable. In the circumstances, no adverse inference can be drawn on the ground that she was not examined.

55. u/s 346 of the Companies Act, 1956, where the managing agent of a public company is a body corporate and any change takes place in the constitution of the body corporate, the managing agent shall cease to act as such on the expiry of six months from the date on which the change takes place or such further time as the Central Government may allow in that behalf, unless the approval of the Central Government has been accorded before the expiry of the said six months or where further time has been allowed by the Central Government before the expiry of that time, to the changed constitution of the body corporate. The explanation to clause 1 of that section defines a change in the constitution of a body corporate as meaning among others" (h) any change by the death or directors or managers of the corporation whether caused by the death or retirement of a director or manager, the appointment of new director or manager or otherwise". It may be seen from section 346 of the Act, the family arrangement pleaded, if true, would amount to a change in the constitution or V. Ramakrishna and Sons Ltd. It is the case of the plaintiffs that the alleged family arrangement took place some time in July, 1961. Exhibit R-10 dated October 19, 1961, is a letter written by V. Ramakrishna Sons Ltd. to the Government of India with reference to section 346 of the Companies Act. In this letter, it is stated that (a) Rajeswari Ramakrishnan has tendered her resignation from the post of the director of the company subject to the approval of the Central Government thereto, and that (b) she has also vacated her office by reason to her absence from four consecutive meetings of the board. Rajeswari Ramakrishnan, in her letter dated October 18, 1961, had not also given any reason for the resignation. They have further stated that the board of directors at their meeting held on October 19, 1961, have resolved to accept her resignation from the date of approval of the Central Government and to appoint V. L. Dutt as director of the company in the place so to be vacated. The letter further states :

"We consider it necessary to appoint a director in the place of Mrs. Rajeswari Ramakrishnan who intends to vacate the office of director.

Mr. V. L. Dutt is already a member of this company, and, the proposed changes in the constitution did not involve any change in the ownership of the company's shares, or, in the controlling interest.

We, therefore, request that the Central Government will be pleased to approve the following changes in the constitution of the company.

(a) The retirement from the office of director by Mrs. Rajeswari Ramakrishnan from the date of your approval, and

(b) The appointment of Sri V. L. Dutt as the director of the company in her place

from the date of your approval."

56. There is thus a categorical statement that the resignation of Mrs. Rajeswari Ramakrishnan or the appointment of V. L. Dutt in her place as a director, did not involve any change in the ownership of the company's shares or in the controlling interest. If really there was a family arrangement as pleaded in the plaint, certainly there is a change in the constitution and in the controlling interest of V. Ramakrishna Sons P. Ltd. Though as per the articles of the company, both Mrs. Rajeswari Ramakrishnan and her husband, P. R. Ramakrishnan, are eligible to become directors, if the family arrangement pleaded is true and to be accepted, they could not become directors and in fact that was the case of the plaintiff and that, therefore, it necessarily involves a change in the controlling of V. Ramakrishna Sons Ltd. If the family arrangement was true, Mrs. Rajeswari Ramakrishnan could not exercise her vote as a shareholder and could not be elected as director of the company and in effect her shares shall be deemed to be held in trust for the benefit of the first plaintiff. There was, therefore, an occasion for the company to bring into its record the alleged family arrangement and a legal necessity to get the approval of the Central Government u/s 346 but that had not been done. This necessarily implies that there could not have been any family arrangement as pleaded in the plaint.

57. u/s 347(1) of the Act, the provisions of Schedule VIII to the Act shall apply to every private company which acts as the managing agent of any company whether public or private. Since V. Ramakrishna Sons P. Ltd. are the managing agents of K. C. P. Ltd., which is a public limited company, the provisions of Schedule VIII are applicable to it. Clause 7 of Schedule VIII requires a declaration signed by a director of the company to be filed whenever there is a sale or transfer of any shares in the company or any other change occurs in regard to any of the matters specified in clause 5. Sub-clause (a) of clause 5 relates "to the particulars to be furnished in regard to the manner in which each such member deals with his shares or interest, that is to say, whether he owns the same beneficially or on behalf of or in trust for any other person; and in the latter case, the name or names of the person or persons on whose behalf or interest for whom, the shares or interest is held and the extent of interest of each such person". Sub-clause (e) requires the declaration to specify "the names of the directors of the private company and the name of its managing director, if any". The case of the plaintiff was that as per the family arrangement, the first plaintiff and his brother along with their mother are entitled to be in exclusive management of the affairs of V. Ramakrishna Sons Ltd. and the other shareholders could not become directors. Certainly, thereof, this amounts to a change in regard to the matters specified in clause 5 of Schedule VIII and in particular subclauses (d) and (e) thereof. Admittedly, the declaration as required u/s 347 read with Schedule VIII had not been filed with the K. C. P. Ltd. u/s 347(3) of the Act, if default is made by a managing agent to which Schedule VIII applies in complying with the provisions thereof, the managing agency company and every director or other officer thereof, who is in default shall be punishable

with fine which may extend to Rs. 50 for every day during which the default continues. We are referring to this matter not to point out that there is a default in complying with the provisions of Schedule VIII but to point out and infer that there could not have been any family arrangement as pleaded by the plaintiffs and that is why no declaration as is required by Schedule VIII had been filed with the managed public company.

58. The evidence of P.W. -3 is of no assistance on the issue relating to the truth and validity of the family arrangement apart from the fact that it is not reliable. He stated that some time in September, 1961, Ramakrishna wanted him to work out the intrinsic value of the shares of the company and R. S. Industrial Corporation Ltd. stating that some transfer of shares between the brothers and sister had to be done. But this has not been spoken to by P.W. -1 himself. There is evidence to show that from 1959 he was not well, that he was admitted in the Vellore Hospital for treatment and that his illness continued right up to 1962. It may also be mentioned that nothing was done in pursuance of this alleged valuation.

59. In support of the argument that the family arrangement brought about by the father was agreed to by the two sons and daughter and was given effect to, learned counsel for the appellants relied upon the resignation of the directorship of V. M. Rao in Jeypore Sugar Co. Ltd. and R. S. Industrial Corporation P. Ltd. on October 29, 1961, and February 1, 1962, respectively, and the resignation of Rajeswari Ramakrishnan of her life directorship on the board of V. Ramakrishna Sons Ltd. On October, 19, 1961, which was accepted on January 9, 1962. Learned counsel also relied on the sale of his shares and that of V. Ramakrishna Sons Ltd. in Jeypore Sugar Co. Ltd. to Rajeswari Ramakrishnan and to her branch and/or nominees. It was the contention of Mr. Pai, learned counsel for the respondents, that the resignation of V. M. Rao was not in pursuance of any family arrangement. According to him, V. M. Rao was a strongwilled person and the father thought that he was likely to come in the way of his sister whom he was associating with Jeypore Sugar Co. Ltd. and R. S. Industrial Corporation along with him and in order to enable V. M. Rao to concentrate on K. C. P. where he was in charge of the technical aspect, the father had asked him to resign from the company. It was his further case that Rajeswari Ramakrishnan was not actively taking part in the management as a director in V. Ramakrishna Sons ever since its inception in 1949 to 1960 and in order to make way for her younger brother who had just then returned from abroad and who was in charge of the administration, she resigned her directorship.

60. It is seen from exhibits R. -68 to R. -89 that, though she had been designated as a life-director, she was living at Coimbatore with her children and had never taken any active part in the management or affairs of V. Ramakrishna Sons. We find from these records that she signed the list of shareholders initially in the year 1949 and thereafter till 1969 she had not signed any documents except, probably, attending certain annual general body meetings. In 1960, when

her father went abroad, she was asked to be generally in charge of the management and to look into the accounts. By a special resolution, she was also paid a remuneration of Rs. 1,000 per month for the extra work done for the company when the accountant of the company was on leave. Thus, she was not taking any particular interest in V. Ramakrishna Sons till 1961 and she was also not exercising her right as director. There are no reasons given in exhibit R. 10 for the resignation of Rajeswari Ramakrishnan other than that she did not attend four consecutive meetings. Nor is there any reason given for coming in of V. L. Dutt except that he comes in to fill a vacancy created by the retirement of Rajeswari. If there was really a family arrangement, the minutes would have shown the reasons for resignation. In the circumstances, therefore, if she had resigned her directorship in order to give way to her younger brother who had just then returned from abroad to become a director, that is nothing unusual and this should not in any way be attributed to the family arrangement as such.

61. We have seen that P.W. -1 has admitted in his evidence that he did not like the attitude of his sister and, in fact, he called it supercilious behaviour and that he was not able to get on well with his sister. We have also seen that the father was aware of the brother's ill-will towards the sister and their inability to get on smoothly in the management of Jeypore Sugar Co. Ltd. In the circumstances, there is great force in the contention of learned counsel that the father wanted V. M. Rao to be kept away from the sister both in Jeypore Sugars and R. S. Industrial Corporation and, therefore, asked him to resign from those two companies and concentrate on the technical aspect of K. C. P. Ltd. In any case, the resignation appears to be of his individual volition and cannot be attributed to the family arrangement as such.

62. The subsequent conduct of the parties also is not consistent with any family settlement. It is seen from exhibit R. -1 series which are the annual reports of Jeypore Sugar Co. Ltd. that V. L. Dutt became a director in Jeypore Sugars in 1963 and continued as such till the filing of the suit. The father, V. Ramakrishna, was the chairman till his death in 1968 and, thereafter, from 1969, his wife, Durgamba, became the chairman and continued as such. Thus, both Durgamba and V. L. Dutt who, according to the family arrangement, had to carry on the business of K. C. P. Ltd. only through V. Ramakrishna Sons Ltd. were taking active participation as chairman and director in the management of Jeypore Sugar Co. Ltd., which is not consistent with the terms of the family arrangement pleaded by the plaintiffs. If the family arrangement was true, V. L. Dutt and Durgamba could have no connection with Jeypore Sugars. The first plaintiff sought to explain this, saying that the family arrangement only refers to participation in the management of the affairs and that if one member of the group was invited by the opposite side for giving help, it would not affect the family arrangement. This argument could not be accepted at all, because they were elected as directors of Jeypore Sugars with the votes of R. S. Industrial Corporation and they were functioning as elected directors of shareholders of

both. In fact, the argument of Mr. Bhatt, learned counsel for the appellants with reference to respondents Nos. 1 and 2 becoming directors of V. Ramakrishna Sons was that even becoming a director amounts to interfering with the affairs of the company, how V. L. Dutt and Durgamba became directors in Jeypore Sugar Co. Ltd. is not explained. We find that the first plaintiff also has participated in the affairs of Jeypore Sugars in 1969, though he stated that he was asked to help when the industry was in trouble. It is also seen from the records that P. R. Ramakrishnan also became a director in the K. C. P. Ltd. through V. Ramakrishna Sons in 1974 and the first plaintiff himself has proposed his name as a director of K. C. P. Ltd., and in the annual general body meeting of K. C. P. Ltd., he was elected. Rajeswari Ramakrishnan had also participated in the annual general meetings of V. Ramakrishna Sons subsequent to 1961.

63. The first plaintiff V. M. Rao, had 339 shares in R. S. Industrial Corporation P. Ltd. and his father had 36 shares in the same company. These shares were transferred in the name of V. R. Durgamba after the death of V. Ramakrishna. This is not consistent with the right of pre-emption or the rights of exclusive management pleaded as part of the family arrangement. When this was pointed out to P.W. -1, he has stated that it was the desire of the father that these shares should be transferred to Durgamba and she should be made the managing director of R. S. Industrial Corporation and that is why they were transferred. There could be no doubt that whatever be the reason for such transfer, it is directly against the terms of the family arrangement himself could not be a party to breaking it or bypassing the same. The plaint allegation relating to sale of the shares of the first plaintiff and the company is that the first plaintiff transferred to the first defendant and to her branch or nominee the shares which he held in Jeypore Sugar Co. Ltd. The sixth defendant, V. Ramakrishna Sons Ltd., also sold its 37,790 equity shares in Jeypore Sugar Co. Ltd. to R. S. Industrial Corporation P. Ltd. and Rajeswari Ramakrishnan during the assessment year 1966-67 and 36,900 equity shares in Jeypore Sugar Co. Ltd. were sold by the company to Baba Chandrasekhar, the second son of the first defendant, during the assessment year 1967-68. With reference to this allegation, it was stated in the written statement of defendants Nos. 1 to 4 that it was not in pursuance of any family arrangement. The sale of the shares of the first plaintiff in Jeypore Sugar Co. to the first defendant was a small number of shares which were offered to the first defendant and which she purchased to avoid the shares being disposed of to any third party. With reference to the alleged disposal of the shares of the sixth defendant in Jeypore Sugar Co. Ltd. to R. S. Industrial Corporation P. Ltd. and to the first defendant and her son, it was again stated that it was not in pursuance of any family arrangement or settlement. It is further stated that the sixth defendant company owed a large sum of Rs. 3,25,000 to R. S. Industrial Corporation P. Ltd. and a block of shares of the sixth defendant in Krishna Industrial Corporation Ltd. and in Jeypore Sugar Co. Ltd. were transferred to adjust the liability. Moreover, with a view to consolidate the position of the first plaintiff and that of the fifth defendant in K. C. P. Ltd. the plaintiffs were going in

for the shares of K. C. P. Ltd. in the market and under the pressure of the need for money for this purpose, the fifth defendant had even disposed of 2,000 shares of Jeypore Sugar Co. Ltd. to be disposed of in the open market to the Life Insurance Corporation of India. In that context and as the first defendant did not want shares of Jeypore Sugar Co. Ltd. to be disposed of in the open market to third parties, the first defendant borrowed the required money and purchased one large block of shares of Jeypore Sugar Co. Ltd. held by the sixth defendant at that time for the purchase of the shares of K. C. P. Ltd. These allegations were made in the counter-affidavit filed by the first defendant in Applications Nos. 3247 of 1975 and also in the written statement. No reply has been filed to this counter-affidavit. This has also not been contradicted either in the pleadings or in the oral evidence adduced in this case. The transfers are also consistent with articles 16 to 20 of the articles of association of the company. There could, therefore, be no doubt that the sale could not be attributed to any family arrangement as alleged in the plaint.

64. What is more, there has been no whisper of any family arrangement anywhere at any time by any one of the parties to the arrangement for over 14 years. For the first time, this has been referred to only in the lawyer's notice dated November 24, 1975. Even in exhibit P-3, dated March 21, 1975, the petitioner only speaks about "the settlement arrived at as far back as 1962" in accordance with which he and his sister resigned from each company; but none of the terms set out in the plaint were then put forward by the plaintiffs. Admittedly, the family arrangement now pleaded was not there in 1962. If there was such a family arrangement which, according to the plaintiffs, should bar Rajeswari Ramakrishnan and Prabhu from becoming directors, the first plaintiff should have stated so immediately on his receiving the notice about the nomination of those two individuals as directors of V. Ramakrishna Sons. He did not do so. In his letter, exhibit P-3, he only says that there was no need to expand the board. He also admitted in his evidence that no reference was made to the family arrangement in exhibit P-3. There was also no reference to the right of pre-emption in that letter and no mention about exclusive rights of management. The statement of the first plaintiff in exhibit P-3 that he will have no objection to Rajeswari Ramakrishnan becoming a director if a special resolution is passed allowing proportional voting rights to the members of the company totally negatives the existence of a family arrangement. Further, the first plaintiff's proxy attended the annual general meeting held on April 22, 1975. The proxy voted at the election held on that day but did not register any protest that the first and second defendants were not eligible to contest for directorship on account of any family arrangement or agreement. There was also no protest even from Durgamba who attended the meeting but abstained from voting. Exhibit P-8 is a letter dated September 2, 1975, written by the first plaintiff to the company complaining of omission of material and relevant facts in the minutes relating to the annual general meeting held on July 22, 1975. Though he complained that his proxy was not permitted to take part in the

discussion, he had not stated as to what he wanted to represent. What is more, this is the first letter after the meeting relating to the conduct of the meeting and one would have expected him to protest that the election of the first and second defendants as directors was against the family arrangement, if it was true. The omission to refer to the alleged family arrangement cannot be brushed aside as insignificant either. These facts also clearly support the case of the defendants that the theory or family arrangement was first conceived by the first plaintiff in consultation with his lawyers at Delhi after he heard arguments in the Supreme Court in Jhunjhunwalla's case [1976] 46 C.C. 91, with a view to obtain full control of the sixth defendant company to the exclusion of his brother and sister, having failed to secure a consensus on a resolution to recognise proportional voting which he brought before the general meeting on April 22, 1975, and was first trotted out on November 29, 1975, and given final shape in the lawyer's letter dated December 12, 1975, written under instructions of the first plaintiff. The first plaintiff was suspicious that his sister may try to dislodge him, and, therefore, she has to be immobilised and a family arrangement has to be devised for that purpose.

65. The first plaintiff admitted that he was present in the Supreme Court when Jhunjhunwalla's case [1976] 46 C.C. 91, was heard by the Supreme Court on August 19, 20, 21, 1975. The judgment in the case was delivered by the Supreme Court on October 10, 1975. The first plaintiff also admitted that he obtained an opinion after the judgment was delivered. Thereafter, for the first time in exhibit P-10, dated November 22, 1975, he refers to the induction of the first and second defendants in the board as :

"contrary to and is in violation of the family arrangement brought about by late father, Sri V. Ramakrishna, I.C.S (Retd.), in the year 1961. In fact, Mr. P. R. Ramakrishnan, Mrs. Rajeswari Ramakrishnan, Mr. S. R. K. Prasad and Mr. R. Prabhu have wrongfully exercised their voting power in the annual general meeting of the company held on April 22, 1975, in so far as they interfered with the management of the company which is the exclusive right of the undersigned, Mr. V. L. Dutt and their mother, Mrs. V. R. Durgamba. Mr. V. L. Dutt has also exercised his voting power wrongfully in so far as he supported Mrs. Rajeswari Ramakrishnan and Mr. R. Prabhu to become directors and in the reduction of the dividend. I hasten to point out that the continued functioning of Mrs. Rajeswari Ramakrishnan and Mr. R. Prabhu as directors of V. Ramakrishna Sons Ltd. is illegal and opposed to the family arrangement."

and states that :

"It is opposed to and contrary to the family arrangement brought about by late father, Sri V. Ramakrishna, I.C.S. (Retd.) in the year 1961, and is calculated to exclude me from my rightful participation in the management of the company of which I was assured in the year 1961, as this "leads to a disruption of the special relationship which is the substratum of the domestic company."

66. Promptly, this allegation was denied by the first defendant in her reply, exhibit P-15 dated December 14, 1975. She also pointed out that the letter was not clear and that the first plaintiff has not spelt out what was the family arrangement which he had in mind and that, therefore, she could not be specific in her denial. It is for the first time in the lawyer's notice, exhibit P-14, dated December 12, 1975, that the first plaintiff has mentioned the alleged family arrangement as pleaded in the plaint. The language employed in the notice also shows that the plaintiff wanted to bring his case within its ratio and accordingly made the allegations. In this connection, we may notice that the father, who was a distinguished civil servant, was meticulous in all his dealings. He wanted his wife to execute a registered settlement deed, dated, exhibit R. -37, spending over Rs. 9,000 even for a gift of shares to his two sons and in the circumstances we do not expect him to leave this family arrangement, if true, to be dealt with as an oral understanding without reducing it to writing. There was also a need for such writing if it was true, as it was the case of the first plaintiff that the misunderstanding, non-co-operation and estrangement between the first plaintiff and the first defendant came to a boiling point. We may also point out that V. Ramakrishna sons were managing agents of K. C. P. Ltd. and R. S. Industrial Corporation were in management of Jeypore Sugar Co. Ltd. The managing companies, therefore, have a substantial stake in the managing companies' affairs. It is admitted that the alleged family arrangement was not placed in the board meeting or the annual meeting of the managing agency companies. In the circumstances, the first plaintiff cannot contend that the management and affairs of the company should be retained in the hands of the first plaintiff and his brother. It is a matter left to the shareholders to decide under the articles which bind the plaintiff as well. Neither the company nor any other person on behalf of the company was a party to the agreement or arrangement. Nor had the articles of association been amended. Thus, the resolution passed on April 22, 1975, electing the first and second defendants as directors is valid, true and in accordance with law. The plaintiff are bound by it.

67. As to why the family arrangement was conceived, the defendants also would state that there were internal dissensions between V. M. Rao and his brother, V. L. Dutt. The lack of mutual confidence between these two brothers even led to V. M. Rao cancelling the power of attorney given in favour of his brother. When there was such a deadlock on account of the disputes and dissensions between the brothers, we agree with the view of the learned judge that even assuming that the family arrangement alleged was true, the two brothers put in a group were at loggerheads and there developed a deadlock and the company, to avoid a paralysis of its affairs, had to interfere and elect directors the would ease the situation.

68. Learned counsel for the appellants contended that an arrangement or agreement between two groups of shareholders that one group will not participate in the management and affairs of the company and the other will have exclusive rights of such management, is valid. He also contended, if certain

things have been done, though not embodied in the articles, automatically, the articles shall be deemed to have been amended. In support of his argument he relied on the following decisions :

Puddephatt v. Leith [1916] 1 Ch 200; and Pender v. Lushington [1876] 6 Ch 70, and certain passages in Palmer's Company Law.

69. Learned counsel for the respondents-defendants contended that articles of association formed the basis on which any particular person becomes a member of the company and that constituted a binding contract with the company and its members and between the members of the company inter se. Any agreement or contract which varies the manner of exercising votes, electing directors and management of the company as envisaged in the memorandum and articles of association and the provisions of the Act, is not valid and enforceable, unless the articles are amended and the consent of the company in meeting obtained with the requisite majority. Out of the 1,000 shares allotted, the plaintiffs are holding 473 shares, the first plaintiff's brother, V. L. Dutt, is holding 323 shares, the first defendant and her two sons each are holding 66 shares, the first defendant's husband is holding 2 shares and the remaining 4 shares are held by Durgamba, the mother. The alleged agreement is stated to have vested the participation in the management and affairs of the company, V. Ramakrishna Sons, in the first plaintiff, his brother and mother and that group together was holding 800 shares. The first defendant and her branch who, according to the plaintiffs, could not participate or interfere in the affairs of the company, are owing the remaining 200 shares. The crux of the family arrangement pleaded in the plaint, therefore, is that out of the 1,000 equity shares issued and subscribed, those who were holding 800 shares alone have the right to stand for the election of directors and manage the company and the holders of remaining 200 shares can neither stand for the election of directors and thus participate in the management, nor can they choose a director other than one of the persons holding the other 800 shares. The family arrangement pleaded, therefore, completely deprives the voting right of those who were holding the 200 shares and also enables the other shareholders alone to be in management of the company. The question for consideration is whether such a provision, if true, will be valid.

70. In *Ho Tung v. Man on Insurance Co. Ltd.* [1902] AC 232 the facts were these. The memorandum of association was duly signed by nine persons and their signatures were duly attested. the memorandum was accompanied by a small printed book purporting to contain articles of association of the company, but those articles were not signed. The Registrar, however, registered them with the memorandum, and there upon gave a certificate of incorporation of the company. The articles so registered have been in use by company from that day for over 19 years. They had been twice amended by special resolutions which had also been registered. A purchaser and transferee of shares in the company applied for and disallow the sale or transfer of shares to a transferee whom they do not consider a fit person to hold shares. In exercise of this power, the directors

refused to register the transferee. Thereupon, the transferee moved the court to have the register rectified by registering him as the holder of the shares on the ground that since the articles had not been validly registered, Table A only was applicable. It may be mentioned that Table A did not authorise the directors to reject any transfers. Overruling the contention of the plaintiff, the Judicial Committee of the Privy Council observed (at p. 235) :

"It appears, therefore, that these articles have been registered, and have been published and put forward as the company's only articles of association, and have been acted on, amended, and added to by the shareholders of the company, and the company's business has been conducted under the regulations contained therein for nineteen years without any objection, and the company on the record says that these articles are its articles of association. Their Lordships think that in these circumstances they are entitled to draw the inference that all the shareholders have accepted and adopted the articles as the valid and operative articles of association of the company."

71. In this case, there is no such written proceedings amending the articles whether they were validly amended or not. Nor can we accept the contention that there was any acquiescence by the shareholders with reference to the procedure to be adopted for election of directors or in regard to the participation in the management and affairs of the company so as to invoke any such theory of automatic or deemed amendment of the articles.

72. In *Pender v. Lushington* [1876] 6 Ch 70, it was held that (headnote) :

"A member of the company is a person whose name was on the register of shareholders; that the register was the only evidence by which the rights of members to vote at a general meeting could be ascertained; and that at a general meeting no votes of shareholders properly qualified and whose names had been three months on the register should be rejected on the ground that their shares had been transferred to them by other shareholders for the purpose of increasing their own voting power, or with an object alleged to be adverse to the interests of the company, or on the ground that the holders were not beneficial owners of the shares."

73. As abstract propositions of law, there could be no doubt that the register was the only evidence by which the rights of members to vote at a general meeting could be ascertained and that at the general meeting every registered shareholder is entitled to vote in his own self-interest.

74. Strong reliance was placed by learned counsel on the decision in *Puddephatt v. Leith* [1916] 1 Ch 200. In that case, the facts were these. The plaintiff was the owner of 2,500 fully-paid shares in a company which she had mortgaged to the defendant, the shares being transferred in his name. The terms of the loan were contained in an agreement dated February 14, 1913, but the court in the proceedings held that there was a collateral agreement binding on the defendant relating to the voting power in respect of the shares, the terms of which were

contained in a letter dated January 20, 1913, sent by the defendant to the plaintiff and that read as follows (at p. 200) :

"I should have mentioned to you today that your voting rights in virtue of the shares held in mortgage by me during the period of the loan will be untouched. Though the shares will be in my name and my voice may give the vote, I shall give no such vote without first consulting you, I shall vote in all cases when a vote is necessary in respect of these shares as you wish me to do. This proviso will not be mentioned in the agreement, but you can preserve this note if you like."

75. Differences had arisen in connection with the management of the company's business, and at the last general meeting of the company, the defendant who was himself a director of the company had voted in respect of the mortgaged shares against the wishes of the plaintiff and was insisting on his right to do so at the approaching general meeting to be held later. The plaintiff then brought an action in which she had prayed for an injunction restraining the defendant from voting in respect of the shares otherwise than in accordance with the plaintiff's direction. After holding that the undertaking to vote in accordance with the plaintiff's wishes contained in the letter constituted a collateral agreement binding on the defendant, the court held that the general principles of injunction could be applied to that case also, inasmuch as there is one definite thing to be done about the mode of doing of which there can be no possible doubt and granted the injunction.

76. It may be seen from the decisions and the authorities cited therein that the case was taken as analogous to the position of a mortgagee who is bound to be present in accordance with the direction of the mortgagor. Surely, if the condition of the mortgage was that the mortgagee should exercise the right in a particular way, the right transferred to the mortgagee itself is limited by that condition. In fact, the mortgagee was holding the shares in trust for the mortgagor. That principle has no application to the present case. Further, the injunction was against an individual and not against the company and also the direction is in no way contrary to the articles of association or the provisions of the Act. As Palmer in Company Law, twenty-third edition, para. 55-07, observes :

"... the company is bound to recognise the vote of the registered holder : if he casts his vote otherwise than in accordance with a contract with some other party, the company nevertheless is bound to accept his vote and the party whose contract is thereby broken has rights only against the shareholders and not against the company."

77. We are also of the view that these principles have to be read subject to the provisions in section 87 of the Companies Act. Under those provisions, every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company; and his voting right on a poll shall be in proportion

to his share of the paid up equity and individual right, a member's right to poll in proportion to the shares held by him could not in any way be affected or separated. Thus, the voting right and number of votes arise out of and with reference to the number of shares held as that right cannot be separated or taken away.

78. In fact sections 88 and 89 of the Act prohibit the issuing of any shares not being preference shares which carry voting right or rights in a company as to dividend, capital or otherwise which are disproportionate to the rights attaching to the holders of other shares; and even if with reference to an existing company, if the shares carry voting rights in excess of the voting rights attaching under sub-section (1) of section 87 to equity shares, the company shall reduce the voting rights so as to bring them in conformity with the voting rights attached to such equity shares under sub-section (1) of section 87.

79. Section 255, 256, 257, 260, 261 and 262 deal with the appointment of directors and section 274 and 283 relate to the qualification, disqualification and vacation of office of directors. The family arrangement pleaded is also contrary to these provisions. We are, therefore, of the view that the family arrangement pleaded, even if true, is not valid and binding on the defendants.

80. As per the family arrangement pleaded, the first defendant and her branch shall be deemed to be holding shares in the company as legal owners with beneficial interests in favour of the branches of the first plaintiff and his brother and also his mother during her lifetime. The first plaintiff admitted that this is the legal implication of the family arrangement. However, he did not dispute that no declaration as is required u/s 187C in respect of the shares held in trust has been filed with the Registrar of Companies. Nor have the provisions of sections 153A and 153B of the Companies Act been complied with.

81. In the foregoing circumstances, we agree with the findings of the learned judge that the family arrangement as pleaded by V. M. Rao is neither proved nor valid nor binding on the parties. We also agree with the finding that the alleged family arrangement has not been acted upon and, therefore, no question of estoppel could arise.

82. The prayer in the suit, as already stated, is for a declaration that defendants Nos. 1 to 4 or anyone claiming through or under them are not entitled to participate in the management and affairs of the sixth defendant-company, that the election of defendants Nos. 1 and 2 to the board of directors of the sixth defendant company at the annual general meeting of the company held on April 22, 1975, is null and void and that, therefore, they are not entitled to function as if directors of the company. These declarations have been prayed for on the ground that there was an oral family arrangement and under that arrangement defendants Nos. 1 to 4 are not entitled to participate in the management and affairs of the company and the election of defendants Nos. 1 and 2 as directors is, therefore, void.

83. Learned counsel for the defendants contended that the matter complained of and in respect of which the plaintiffs seek to obtain relief are purely matters of internal management of the company and that, therefore, the plaintiffs cannot seek any relief in a civil suit and the suit is not maintainable. In support of this contention learned counsel relied on *Foss v. Harbottle* [1843] 2 Hare 461; 67 E.R. 189, *Macdougall v. Gardiner* [1875] 1 Ch 13, *Burland v. Earle* [1902] AC 83, AIR 1950 81 (Privy Council) and *N.V.R. Nagappa Chettiar and Another Vs. The Madras Race Club and Others*, . Since *Burland v. Earle* [1902] AC 83, had dealt with the earlier English cases and *N.V.R. Nagappa Chettiar and Another Vs. The Madras Race Club and Others*, a is a case decided by this court, we would think it sufficient to deal with these two cases in this judgment.

84. The Judicial Committee of the Privy Council in *Burland v. Earle* [1902] AC 83 observed :

"It is an elementary principle of the law relating to joint stock companies that the court will not interfere with the internal management of companies acting within their powers, and in fact has no jurisdiction to do so. Again, it is clear law that in order to redress a wrong done to the company or to recover moneys or damages alleged to be due to the company, the action should prima facie be brought by the company itself. These cardinal principals are laid down in the well-known cases of *Foss v. Harbottle* [1843] 2 Hare 461; 67 E.R. 189 and *Mozley v. Alston* [1847] 1 Ph 790, and in numerous later cases which it is unnecessary to cite. But an exception is made to the second rule, where the persons against whom the relief is sought themselves hold and control the majority of the shares in the company, and will not permit an action to be brought in the name of the company. In that case, the courts allow the shareholders complaining to bring an action in their own names. This, however, is mere matter of procedure in order to give a remedy for a wrong which would otherwise escape redress, and it is obvious that in such an action, the plaintiffs cannot have a larger right to relief than the company itself would have if it were plaintiff, and cannot complain of Acts which are valid if done with the approval of the majority of the shareholders, or are capable of being confirmed by the majority. The cases in which the minority can maintain such an action are, therefore, confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the company. A familiar example is where the majority are endeavouring directly or indirectly to appropriate to themselves money, property, or advantages which belong to the company, or in which the other shareholders are entitled to participate, as was alleged in the case of *Menier v. Hooper's Telegraph Works* [1874] LR 9 Ch 350. It should be added that no mere informality or irregularity which can be remedied by the majority will entitle the minority to sue, if the act when done regularly would be within the powers of the company and the intention of the majority of the shareholders is clear."

85. In *N.V.R. Nagappa Chettiar and Another Vs. The Madras Race Club and Others*, , after a consideration of all the English judgments on the question of

maintainability of suits, this court observed (at p. 184 of 19 Comp Cas) :

"At the outset it is necessary to consider the question whether the suit as framed is maintainable. The action was brought by two plaintiffs who are the members of the club for themselves and also on behalf of the other members after obtaining the requisite leave under Order 1, rule 8, Civil Procedure Code. The learned judge was of opinion that the suit was incompetent as what is known as the rule in *Foss v. Harbottle* [1843] 2 Hare 461; 67 E.R. 189, applied to the case. The rule in *Foss v. Harbottle* is that a court will not interfere with the ordinary management of the company acting within its powers and has no jurisdiction to do so at the instance of the shareholders. A shareholder is entitled to institute a suit to enforce his individual rights against the company such as his right to vote, or his right to stand as a director of a company at an election. If the shareholder, however, intends to obtain redress in respect of a wrong done to the company or to recover monies as damages alleged to be due to the company, the action should ordinarily be brought by the company itself. In order, therefore, to enable a shareholder to institute a suit in the name of the company, in such a case, therefore, this principle majority for corporate action. In ordinary cases, therefore, this principle implies the supremacy of the will of the majority. It is open to a majority always to set right a thing which was done by the majority either illegally or irregularly, if the thing complained of was one which the majority of the company were entitled to do legally and was within the powers of the company by calling a fresh meeting. That is the reason why in such cases the court refuses to interfere at the instance of a shareholder even in a representative action brought by him. If the majority, however, act in an oppressive manner, it is not as if the minority, however, act in oppressive manner, it is not as if the minority are without a remedy. This possibility was foreseen by Sir James Wigram, Vice-Chancellor, who delivered the judgment in *Foss v. Harbottle* [1843] 2 Hare 461. At page 492, the Vice-Chancellor says :

"If a case should arise of injury to a corporation by some of its members, for which no adequate remedy remained, except that of a suit by individual corporators in their private characters and asking in such character the protection of those rights to which in their corporate character they were entitled. I cannot but think that the principle so forcibly laid down by Lord Cottenham in *Wallworth v. Holt* [1841] 4 Myl & (1841) Cr 619, and other cases would apply and the claims of justice would be found superior to any difficulties arising out of technical rules respecting the mode in which corporations are required to sue."

In such a case where action by a shareholder is permitted, the plaintiffs would not have a larger right to relief than if the company itself were the plaintiff and are not entitled to complain of acts which are valid, if done with the consent of the majority of the shareholders or are capable of ratification by the majority.

The latter decisions, however, have recognised exceptions to what is conveniently known as the rule in *Foss v. Harbottle* [1843] 2 Hare 461; 67 E.R. 189. James

L.J. in *Macdougall v. Gardiner* [1875] 1 Ch 13 considered the rule and stated the exceptions in the following passage at page 21 which has since become classic :

"I think it is of the utmost importance in all these companies that the rule which is well known in this court as the rule in *Mozley v. Alston* [1847] 1 Ph 790; 41 English Reports 833 and *Lord v. Copper Miner Co.* [1848] 2 Ph 740; 41 E.R. 1129 and *Foss v. Harbottle* [1843] 2 Hare 461 should be always adhered to; that is to say, that nothing connected with internal disputes between the shareholders is to be made the subject of a bill by some one shareholder on behalf of himself and others, unless there be something illegal, oppressive, or fraudulent-unless there is something ultra vires on the part of the company qua company, or on the part of the majority of the company, so that they are not fit persons to determine it; but that every litigation must be in the name of the company, if the company really desire it."

From this it follows that a shareholder or shareholders are entitled to bring an action (1) in respect of matters which are ultra vires the company and which the majority of shareholders were incapable of sanctioning (see *Burland v. Earle* [1902] AC 83; (2) where the act complained of constitutes a fraud on the minority; and (3) where the action of the majority is illegal. The decisions in *Baillie v. Oriental telephone and Electric Co. Ltd.* [1915] 1 Ch 503 and *Cotter v. National Union of Seamen* [1929] 2 Ch 58, recognised a fourth exception where a special resolution was required by the articles of the company and company obtained the assent of the majority to such special resolution by a trick, or even where a company authorised to do a particular thing only by a special resolution by a trick, or even where a company authorised to do a particular thing only by a special resolution does it without a special resolution duly passed as, in such a case, to deny a right of suit to the shareholders without using the name of the company would in effect result in the company doing the thing by an ordinary resolution. In other words, this means that where a special resolution was improperly passed, if the rule that the company alone is the proper plaintiff to institute a suit questioning such resolution were to be enforced, the shareholders by a bare majority could defeat and prevent the minority from using the name of the company. The result of such a course would be indirectly to uphold the validity of a special resolution which was otherwise invalid. To avoid this result this exception was recognised in the two decisions."

86. In *B. N. Viswanathan v. Tiffin's Barytes Asbestos and Paints Ltd.* [1953] 23 C.C. 29, after discussion of all the English authorities and other precedents, this court summed up the principles laid down therein thus : (headnote)

"A company has inherent power to take all steps to ensure its proper working and that, of course, includes the power to appoint directors. It can delegate this power to appoint directors to the board of directors and such delegation will be binding upon it, but if there is no legally constituted board which could function or if there is a board but that is unable or unwilling to act, then the authority delegated to the board lapses and the members can exercise the right inherent

in them of appointing directors."

87. On facts, we have already held that the family arrangement pleaded is not true, nor valid and binding. The general body of the company had, therefore, the power to elect the first and second defendants as directors and none of the prayers could be granted. Therefore, the suit is also maintainable.

88. The company petition u/s 397 and 398 of the Companies Act has been filed on two main grounds. (1) There was a family arrangement under which the exclusive right in the management and affairs of V. Ramakrishna Sons Ltd. was given to V. M. Rao (the company petitioner), his brother, V. L. Dutt, and/or their respective branches and their mother, Durgamba, during her lifetime. The substratum of the company which is a family or domestic company is comprised in the special relationship of the parties and the specific understanding between the parties and, in particular, the right of the company-petitioner and his brother and their respective branches to an exclusive right to the management and affairs of the company and that the sister, the second and her branch will have only a sleeping role in the seventh respondent company, V. Ramakrishna Sons Ltd. Any violation thereof amounts to an interference in the management of the company and manifests lack of mutual confidence and of probity. (2) The company's affairs are being conducted in a manner prejudicial to public interest and also in a manner oppressive to the members especially the petitioner. The petitioner has referred in paragraphs 26A to 26G of the company petition to acts of oppression and mismanagement affecting the rights of the minority shareholders like the petitioner. Before we deal with these contentions, it would be useful to refer to certain decided cases dealing with similar questions.

89. In *Shanti Prasad Jain v. Kalinga Tubes Ltd.* [1965] 35 C.C. 351, the Supreme Court had considered the provisions of sections 397 and 398 elaborately. The facts in that case were as follows. The company was floated as a private limited company on December 1, 1950, with an authorised capital of Rs. 25 lakhs. Originally, shares worth Rs. 21 lakhs were held by two groups of shareholders equally and the two groups were represented by one Patnaik and Loganathan. In 1954, the company was in financial difficulties. One S. P. Jain, the appellant in that case, was requested to help the company by providing finance and by arranging loans from banks and other sources. The appellant agreed to do so and, consequently, on July 27, 1954, an agreement was entered into between the appellant and Patnaik and Loganathan. To this agreement, the company was not a party. Besides these two groups, a French company and one Rath who between themselves held shares worth Rs. 4 lakhs, were also shareholders. These shareholders were also not parties to the agreement. The agreement provided that the appellant would be allotted shares in the company equal to those held by Patnaik and Loganathan after increasing the share capital of the company. The agreement further provided that these three groups of shareholders would have equal number of representatives on the board of directors of the company and that the appellant was to be the chairman of the

company. However, the articles of association of the company were not amended to bring them in conformity with all the terms of the agreement. Some time thereafter, the share capital was further increased to Rs. 61 lakhs. This increased share capital was subscribed to equally by these three groups. In January, 1957, the company was converted into a public limited company so as to enable it to borrow moneys from the Industrial Finance Corporation. In December, 1957 the Controller of Capital Issues sanctioned the issue of shares of the value of Rs. 39 lakhs and debentures of the value of Rs. 64 lakhs. The appellant proposed to the board of directors that the new shares should be issued to the existing shareholders as provided in section 81 of the Companies Act. On the other hand, Patnaik proposed that a general meeting should be called for the purpose of passing a resolution for the issue of new shares and for the manner and proportion in which shares were to be offered privately to the shareholders and other persons. This move was made apparently because Patnaik and Loganathan felt that if shares were offered privately to the existing shareholders, the appellant might get all of them, for the groups of Patnaik and Loganathan did not have the money to subscribe to the new shares if offered in the first instance to the existing shareholders. Thus, if the appellant got all the new shares, his group would become the majority shareholder and would thus get control of the company. The board passed a resolution rejecting the proposal of the appellant and accepting that of Patnaik. The general body also rejected the proposal of the appellant and passed a resolution that the new shares should not be offered or allotted to the existing shareholders or to the public and that they should be allotted privately in the best interest of the company at the sole discretion of the directors to such persons as might have applied or thereafter apply. On April 18, 1958, the appellant filed a suit praying for a declaration that the resolutions of the general body were ultra vires, illegal, void and not binding on the appellant, the company and its shareholders with a prayer for permanent injunction restraining the defendants in the suit from issuing and allotting the new shares in terms of the impugned resolutions of the general body. An ex parte interim injunction was granted. However, the injunction was vacated later on July 30, 1958. On the same day, a meeting of the board of directors was held and the new shares were allotted to 7 persons who had applied for the same. On the same day, the return as required by the Act was also duly filed with the Registrar of Companies. In September, 1960, an extraordinary general meeting of the company was also called with a view to increase the capital of the company from Rs. 1 lakh to Rs. 3 crores. Thereupon the appellant filed petition under sections 397 and 398 in the High Court. The contention of the appellant was that the allotment of new shares was made surreptitiously and deliberately with the sole idea of defeating the rights of shareholders represented by him and his group and this amounted to oppression of the minority shareholders. It was urged by the appellant that the proposal to increase the share capital from Rs. 1 lakh to Rs. 3 crores was in furtherance of the continuing and continuous process of oppression of the appellant and his group and was designed for the purpose of completely excluding the appellant and his group from all control in the affairs of

the company and it was also urged that the affairs of the company were conducted in a manner prejudicial to the interest of the company by the Loganathan and Patnaik group and that there was mismanagement in conducting such affairs. It was further alleged that the conduct of the Loganathan and Patnaik group towards the minority shareholders was oppressive, burdensome, harsh and wrongful. The appellant also pleaded that not offering the shares to the existing shareholders was also in breach and violation of the agreement dated July 27, 1954, to which the Patnaik and Loganathan groups were parties. It was his further case that although in form the company was a public company, in reality it was a partnership consisting of three groups, namely, the appellant's group and that of Loganathan and Patnaik groups. The last two groups had combined together against the appellant group which had resulted in justifiable lack of confidence on the part of the appellant and his group in the conduct of the affairs of the company by the other two groups. Such lack of confidence had been caused by lack of probity in the conduct of the affairs of the company by these two groups, which were acting to benefit themselves personally and were not concerned with the welfare of the company. With these pleadings, the appellant had prayed for the removal of the present board of directors and reconstitution of the same, for alteration of the articles by incorporating the provisions of the agreement and for a declaration that the resolutions passed by the board of directors on March 1, 1958, and at the general meeting on March 29, 1958, were null and void. To this application, the company and the seven persons to whom new shares were allotted were also made parties.

90. The Supreme Court held that for a petition u/s 397 to succeed, "it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application u/s 397". It was also held that the petitioner should further show "that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of the majority shareholders, continuing up to the date of the petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of a company "s affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder". The Supreme Court also held that the company was not bound by the management and that the mere fact that it was decided at the meeting in March, 1958, to offer the new shares to outsiders and not the existing shareholders did not necessarily amount to an oppression of the minority shareholders.

91. We have already in another context to the decision in *Viswanathan v. Tiffin's Barytes Asbestos and Paints Ltd.*[1953] 23 C.C. 29, that a company has inherent

power to take all steps to ensure its proper working and that, of course, includes the power to appoint the directors. Therefore, the election of directors by a majority of the shareholders of a company cannot be considered as beyond their power.

92. *Lundie Brothers Ltd., In re* [1995] 1 WLR 1051; [1965] 35 C.C. 827, was a case arising u/s 210 of the English Companies Act, 1948. It was held that "to make out a case for winding up u/s 210, the petitioner had to show that the affairs of the company were being conducted in a manner oppressive to him as a "member of the company" (at p. 833) "As a member of the company" means, of course, as a shareholder of the company". It was further held in this case that (at p. 833) : (It is not lack of between shareholders per se that brings section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company"s affairs, and oppression involves, I think, at least an element of lack of probity or fair dealing to a member in the matter of his proprietary right as a shareholders". Ultimately, the learned judge dismissed the petition on the ground that "His main grievance is, as he admitted in the witness box, that he has been ousted as a working director. That, it seems to me, has nothing to do with his status as a shareholders in the company at all. The same thing is equally true in regard to his complaint that his remuneration as a director of the company has been reduced. That relates to his status as a director of the company, and not to do his status as a shareholder of the company."

93. These decisions are, therefore, clear authority for the position (1) that the oppression complained of must affect a person in his capacity or character as a member of the company; harsh or unfair treatment in any other capacity, e.g., as a director or a creditor is outside the purview of the section; (2) there must be continuous acts constituting oppression up to the date of the petition; (3) the events have to be considered not in isolation but as a part of a continuous story; (4) It must be shown as a preliminary to the application of section 397 that there is just and equitable ground for winding up the company; (5) The conduct complained of can be said to be "oppression" only when it could be said that it is burdensome, harsh and wrongful; oppression involves at least an element of lack of probity and fair dealing to a member in matters of his proprietary right as a shareholder.

94. The contention of the petitioner is that as per the family arrangement, he, his brother and mother alone can manage the company and persons belonging to his and his brother"s branch alone can be elected as directors and that the election of his sister and her son though they are also shareholders, is invalid. Since the first respondent and second respondent in the company petition and their together own 52.3 per cent. of the total shareholding strength, they are in a position to be an engine of oppression as against the petitioner and his supporters.

95. Since the family arrangement pleaded is not true, and even if true it is not

valid, as we have held in this case, there is no restriction on the election of directors. The exercise of the inherent right of the shareholders, in such circumstances, to elect their directors cannot be contended as constituting oppression. The majority shareholders are not bound to accept the views of the minority shareholders. If it is a lawful exercise of power by the majority, the minority shareholder is bound by the same. Further, as held by the Supreme Court, oppression involves at least an element of lack of probity or fair dealing "to a member in matters of his proprietary right as a shareholders and not any harsh or unfair treatment in any other capacity". The contention of the petitioner relates to his position only as a director and not that his proprietary right as a share-holder is in any way affected. Therefore, the petitioner cannot maintain the petition u/s 397 on this ground.

96. In *Ebrahimi v. Westbourne Galleries Ltd.* [1973] AC 360 the House of Lords held that (at p. 379) :

"... a limited company is more than a mere legal entity, with a personality in law of its own : that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily sub-merged in the company structure."

97. The House of Lords further held (at p. 379) :

"The "just and equitable" provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."

98. The Law Lords further stated (at p. 379) :

"The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements :

(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company;

(ii) an agreement, or understanding, that all, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business;

(iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere."

99. The Supreme Court in *Hind Overseas P. Ltd. v. Raghunath Prasad*

Jhunjhunwalla [1976] 46 C.C. 91 considered the ratio of the English decisions including that in *Ebrahimi v. Westbourne Galleries Ltd.* [1973] AC 360 and held (at pages 104 and 105) :

"When more than one family or several friends and relations together form a company and there is no right as such agreed upon for active participation of members who are sought to be excluded from management, the principles of dissolution of partnership cannot be liberally invoked. Besides, it is only when shareholding is more or less equal and there is a case of complete deadlock in the company on account of lack of probity of the management of the company and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, there may arise a case for winding up on the just and equitable ground. In a given case, the principles of dissolution of partnership may apply squarely if the apparent structure of the company is not the real structure and on piercing the veil it is found that in reality it is partnership. On the allegations and submissions in the present case, we are not prepared to extend these principles to the present company."

100. It may also be pointed out that in this decision, the Supreme Court also observed that (at p. 102) :

"... although *Yenidje's* case [1916] 2 Ch 426 was a case of complete deadlock, that was not stated to be the sole basis for a conclusion to wind up the company."

101. The learned judges also quoted with approval the following passage in *Rajahmundry Electric Supply Corporation Ltd. v. A. Nageswara Rao* [1956] 26 C.C. 91 :

"It is undoubtedly true that at the foundation of applications for winding up, on the "just and equitable" rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business. Furthermore, the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company. On the other hand, when ever the lack of confidence is rested on a lack of probity in the conduct of the company's affairs, then the former is justified by the letter, and it is under the statute just and equitable that the company be wound up."

102. The principle of *Ebrahimi's* case [1973] AC 360 and the other English cases were not held applicable in *Jhunjhunwalla's* case [1976] 46 C.C. 91 on the ground that that was not a case where there had been an earlier partnership and partners later on formed into a company. The Supreme Court also pointed out that (at p. 107) :

"There must be materials to show when "just and equitable" clause is invoked, that it is just and equitable not only to the persons applying for winding up but also to the company and to all its shareholders. The company court will have to

keep in mind the position of the company as a whole and the interests of the shareholders and see that they do not suffer in a fight for power that ensues between two groups."

103. In our case, the company was started in the year 1949. The subscribers to the memorandum of association were V. Ramakrishna, I.C. S. (father of V. M. Rao and V. L. Dutt and Rajeswari Ramakrishnan) and Mrs. Rajeswari Ramakrishnan. The nominal capital of the company was Rs. 10 lakhs divided into 1,000 shares of Rs. 1,000 each. The issued and paid up capital was 500 shares of Rs. 1,000 each and they were subscribed by the following members as follows :

V. M. Rao ... 199 V. L. Dutt ... 199 Rajeswari Ramakrishnan ... 95 R. Prabhu ... 4
V. Ramakrishna, I.C.S. ... 1 P. R. Ramakrishnan ... 1 V. R. Durgamba ... 1

104. Rajeswari Ramakrishnan was even then married and was living with her husband at Coimbatore. V. Ramakrishna was living in Massolipatnam. It is, therefore, clear that at the time of formation of the company, there was no partnership, nor were there any groupings among the members. Nor do find any special features which would unquestionably lead to the conclusion that the company is in substratum a partnership. The distribution of the shares, however, shows that V. M. Rao and his brother, V. L. Dutt, have been allotted equal shares almost one-third of the total for each and their sister, Rajeswari, her husband and son a total of 100 shares forming one fifth of the total paid up shares. The remaining 2 shares were held by the parents. The same ratio has been maintained even when the further shares were allotted and the shareholding for each of them were doubled. Thus, V. M. Rao and his branch had 400 shares; V. L. Dutt - 400 shares and Rajeswari Ramakrishnan - 200 shares. There were some further transfers by V. L. Dutt to V. M. Rao's group and that is how their shareholding later came to be not equal. On the date of petition, V. L. Dutt was having only 323 shares and V. M. Rao's family was owing 473 shares. It may be seen, therefore, Rajeswari Ramakrishnan always had, by virtue of her shareholding, an advantage of tilting the power one way or the other between V. M. Rao and his brother, V. L. Dutt. In fact, that, probably had a sobering influence over the brothers in running the company on commercial lines with commercial probity and efficiency. The real grievance of the company-petitioner seems to be, therefore, that he is not able to have full control over the company to the exclusion of his brother and sister. Rajeswari Ramakrishnan could not have any control unless one of the brothers joined with her. Thus, there are mutual checks and balances in the distribution of the shareholding. The real fight is, therefore, for power that ensues between the two brothers and that could not be brought in within the category of the just and equitable and clause in section 433 of the Companies Act.

105. We may also point out that even after the suit and the company petition were filed, the company's affairs continued to be conducted efficiently and to the best interests of the members. It had declared a dividend at the rate of 66% for

the year ended September 30, 1975, and at the rate of 160% for the years ended September 30, 1976 and September 30, 1977. It is also seen that even though the company-petitioner did not attend the annual general meeting held on April 22, 1975, he was proposed as director by his sister and was unanimously elected. The petitioner's mother also continued to be a director. There are five directors of whom, the petitioner states, that he was not on speaking terms with V. L. Dutt, Rajeswari Ramakrishnan and R. Prabhu. This statement is also not wholly true. It is the petitioner who does not want to talk to them. But as seen from the evidence of V. L. Dutt and the affidavits of Rajeswari Ramakrishnan and Prabhu that they do not entertain any animosity against the petitioner. Therefore, the petitioner himself could not say that he is not on talking terms and then claim there is a deadlock in the management of the affairs of the company. Hence, there is no justification for the allegation of the petitioner that he was excluded from management or that there was any deadlock in the management.

106. We do not also agree with learned counsel for the petitioner that the substratum of the company is the family arrangement or managing agency business and that when there is a breach of the agreement and when the managing agency system is abolished, the substratum of the company should be taken as lost.

107. The objects of the company as set out in the memorandum of association are many and varied and not restricted to carrying on the business as managing agents alone. We may usefully quote clauses 3(b), (d) and (g) thereof which are so unconnected in any way with the carrying on of business as managing agents. Those clauses read as follows :

"3(b) To carry on the business of general merchants, importers and exporters, all kinds of agency business and business as sales agent and distributing agents, manufacturing representatives, stockist and distributors of all kinds of goods and merchandise;

(d) To acquire, establish and run any industrial concern, work-shop, factory or mill for the manufacture of ferrous and non-ferrous metals, alloys and products thereof such as steel, copper, brass, bronze tin, zinc, lead, and manganese; textile such as cotton, silk, jute, flex, and rayon; heavy chemicals such as sulphuric acid, soda ash and chlorine; electrical goods such as generators, motors, cables, fans and radios; building materials such as cement, bricks, doors and windows; products of agriculture such as vegetables, oils and fats, margarine, sugar, glucose, confectionery, rice and wheat flour; and such other products as household utensils, lamps, glass, refractories, porcelain and potteries, paper, paper pulp, card and baggages, boards, plastics, furniture, wood products, industrial and agricultural machinery of all description, prime-movers, machine tools, scientific and precision instruments, munitions, ship, aircraft and fertilizers :

(g) To carry on business as financiers which an individual may lawfully undertake and carry on."

The objects clause also shows that the objects are independent and separate.

108. In *Mohanlal Dhanjibhai Mehta v. Chunilal B. Mehta* [1962] 32 C.C. 970, Justice Bhagwati (as he then was) held that if the substratum of a company is gone, the court can wind up the company even though the majority of the shareholders are against winding up, on the ground that it is just and equitable to wind up the company, but to wind up a company on this ground "it must be shown that the whole of the business which the company was incorporated to carry on had become impossible"; and the principle on which this ground for winding up is based is that "the shareholders who subscribe money for one purpose are not bound to permit it to be used for another purpose", even though the majority of the shareholders desire that the company should be continued for the purpose of carrying on that business. The learned judge also held that the "question whether or not the substratum of the company is gone cannot be dependent on the intention of the board of directors or shareholders of the company", but should be decided by the court on the construction of the memorandum of association and the actual facts of the case, for the board of directors or shareholders may change their intention if the business had not become impossible. The learned judge further observed that "in order to bring the case within the principle undertaking substratum cases, it is not enough to show that the main or dominant object for which the company is incorporated has been abandoned or that there is no intention on the part of the company to carry out such object but it must be proved that such object has become impossible of fulfilment either by reason of the subject-matter of the company being gone or for any other reason." In that case, the company was formed to carry on the business of manufacturing hydrogenated vegetable oils, soaps, and other allied products, but as the company began to incur losses, the company thought that it would be better to give a lease of the factory for carrying on the same business for a period of years to another company, and leased the factory. On the ground that the substratum of the company was gone, a petition for winding up of the company was filed. The learned judge dismissed that petition holding that the substratum of the company was not gone as the carrying on of the business of manufacturing oils, etc., had not become wholly impossible and the company could not be wound up on the petition of the shareholders if the majority of the shareholders objected to the winding-up of the company. It may be seen from this decision that the substratum of the company is mainly decided with reference to the substance of the venture as conceived by the members of the company at its formation and as set out in the objects clause of the memorandum of association. When the objects of the company are mentioned in a series of paragraphs in the memorandum of association and it also states that each object should be treated as an independent object, full effect has to be given for each object.

109. A similar question also came up for consideration before the Supreme Court in *Seth Mohan Lal v. Grain Chambers Ltd.* [1968] 38 C.C. 543. In that case, a company which was formed in 1931 for the purpose of carrying on the business of an exchange in grains, cotton, sugar, gur, pulses and other commodities started its business in 1931. Under its articles of association, no person or firm could remain a member of the company, who did not transact and business through the company for a continuous period of six months. In 1949 and 1950, the company was carrying on business principally in futures in gur. On February 15, 1950, the Central Government issued a notification amending the Sugar (Futures and Options) Prohibition Order, 1949, and made it applicable to future and options for gur. One of the members of the company thereupon filed a petition for winding-up the company on various grounds. One of the grounds was that the substratum of the company ceased to exist as the company could not after the Government notification carry on business in gur. Though the Supreme Court found that the company was carrying on extensive business in future in gur, after referring to the memorandum and articles of association came to the conclusion that "the company was not formed with the object of carrying on business in futures in gur alone but several other commodities as well", that the object for which the company was formed has not failed and that "the company could always re-start business with the assets which it possessed and prosecute the objects for which it was incorporated." It would be very relevant to note that in coming to this conclusion, the learned judge also took note of the fact that there was no evidence that the company was unable to pay its debts, that the object for which the company was incorporated has not substantially failed and that it could not be said that the company could not carry on its business except at a loss nor that its assets were insufficient to meet its liabilities. It is also pertinent to note that during the pendency of the petition, the business of the company came to a grinding halt. But that was not given any weight, because, primarily, the circumstances existing as at the date of the petition must be taken into consideration for determining whether a case was made out for holding that it was just and equitable that the company should be wound up. The decision is, therefore, an authority for two propositions, namely, (i) that the substratum of the company is decided with reference to the objects of the company; and (ii) the possibility of the company re-starting the business with the assets which it possessed and prosecuting the objects for which it was incorporated shall always be taken into account in deciding whether the substratum is gone.

110. Reading *Jhunjhunwalla's case* [1976] 46 C.C. 91 and *Ebrahimi's case* [1973] AC 360 in the light of these decisions, we are of the view that the principle of the special relationship between the parties forming the substratum of the company and could be invoked only in a case where originally the business was partnership concern which was later on converted into a private limited company or where if the veil of corporate character of the company is lifted, it could be found that in reality it was a partnership. This is obviously for the reason that a partnership connotes equal status amongst partners, but the

individual shareholder's right, expectations and obligations to the company are generally governed by the memorandum and articles of association and the provisions of the Companies Act. The exercise of this right of the individual shareholder may be subjected to equitable consideration; but, as pointed out in Ebrahimi's case [1973] AC 360, these equitable considerations flow from the fact that it originally started as a partnership concern or that there was an agreement or understanding that all or some of the shareholders should participate in the conduct of the business. We have also held that the first plaintiff (company-petitioner) has not established the family arrangement pleaded. For the foregoing reasons, we do not agree with the argument of learned counsel either that the substratum of the company is gone or that it is a case for winding-up the company on the just and equitable ground.

111. The various acts of oppression and mismanagement complained of in support of the contention that the company's affairs are being conducted in a manner prejudicial to public interest and also in a manner oppressive to the minority shareholders are listed in paragraphs 26A to 26G of the company petition. However, at the time of argument of the appeal, learned counsel for the appellants pressed only the grounds in paragraphs 26A, E and G. We shall first deal with the ground in paragraph 26A.

112. At an extraordinary general meeting of Bajrangabali Iron and Steel Co. Ltd., which was a wholly owned subsidiary of V. Ramakrishna Sons Ltd., held on September 25, 1975, a special resolution was passed u/s 81 of the Companies Act, authorising the issue of further shares to any person whether he is a shareholder of the company or not. In accordance with the special resolution passed at the meeting of the board of directors of Bajrangabali Iron and Steel Co. Ltd. held on September 27, 1975, shares worth Rs. 5,00,400 were issued to the following persons :

Rs. M/s. Bajrangbali Engineering Co. Ltd.	4,00,400	K. N. Agarwal	10,000	
Kantidevi Agarwal	40,000	Murarilal Agarwal	50,000	----- Total 5,00,400

113. According to the company-petitioner, "the fixed assets of the company, namely, Bagrangabali Iron and Steel Co., are worth about Rs. 48 lakhs and there is absolutely no justification for allotting these shares to K. N. Agarwal and the members of his family and Bajrangabali Engineering Co. Ltd. at per, which was resulted in the dilution of the value of the shares for the existing shareholders. Further, this has been done arbitrarily without any reference to the board of directors or the shareholders of V. Ramakrishna Sons Ltd., who owned the entire shareholding of Bajrangabali Iron and Steel Co. Ltd. This amounts to 50% of the assets of Bajrangabali Iron and Steel Co. Ltd. having been alienated for Rs. 5,00,400, unauthorisedly without consulting or referring to the owners of the assets. Such an unbusinesslike and imprudent act has been put through by Mr. V. L. Dutt though the company and V. Ramakrishna Sons Ltd. have not derived any benefit therefrom. The only logical inference one could conclude from this is that

Mr. V. L. Dutt and his supporters have received substantial benefits on account of such transaction; otherwise it is not possible to imagine a person being a party to such an imprudent, illegal, fraudulent and unbusinesslike transaction which is also hit by section 81 of the Act. The entire transaction was put through in a clandestine manner, keeping the shareholders of V. Ramakrishna Sons Ltd. in darkness about it. The petitioner gained knowledge thereof from extraneous sources recently, to say the least, this action is prejudicial and oppressive to the shareholders like the petitioner.

114. In the counter-affidavit, V. L. Dutt contended, after setting out the facts relating to the transaction, that it was not an imprudent or unbusinesslike act in not applying for fresh shares in Bajrangabali Iron and Steel Co. Ltd. and that it was also wrong to say that the allotment of shares to K. N. Agarwal and the members of his family has resulted in dilution of the value of the shares of its existing shareholders. It was also denied that the allotments were either arbitrary or without reference to the board of directors or shareholders of V. Ramakrishna Sons Ltd. The counter further asserted that the insinuation of the petitioner that the logical inference to be drawn from this transaction is that V. L. Dutt and his supporters have received substantial benefit is wholly mischievous and untrue and slanderous. He also asserted that the petitioner had been a close ally of Agarwal and even at the time of the petition, he was acting in concert with the said Agarwal. The counter denied that there is anything prejudicial or oppressive to the shareholders in the allotment of shares to outsiders. He further stated that he had no personal interest in the transaction and it was only done in the normal course of business of Bajrangabali Iron and Steel Co. Ltd. in the bona fide belief that it is in the interest of the business of V. Ramakrishna Sons Ltd. also. Almost identical contentions are also raised in the counter-affidavit filed by Rajeswari Ramakrishnan.

115. The learned judge held that there was a justification for Bajrangabali Co. to allot further shares to persons other than its shareholders, that the valuation adopted for valuing the shares was in accordance with law, that there was no violation of section 81 of the Companies Act, that the increase of share capital or allotment of shares is a matter of internal management, that if the allotment is to be questioned, the allottees should have been made parties to the petition and in their absence, the allotment itself cannot be questioned and that, in fact, the allegation relating to this lacks bona fides.

116. Originally, a company known as Lal Steel Rolling and casting Ltd. was incorporated on April 6, 1970. The subscribers to the memorandum and articles of association were V. M. Rao (petitioner), K. N. Agarwal, A. V. Raghava Rao, A. V. Jayaraman and B. Kalyanasundaram. The original subscribed capital was Rs. 400 only. The first three of the subscribers to the memorandum each held 10 shares of Rs. 10 each, totalling Rs. 300. The remaining 2 shareholders each held 5 shares of Rs. 10 each. It did not carry on any business in 1971 and 1972. The name of the company was changed into Bajrangabali Iron and Steel Co. Ltd.

(hereinafter called "Bajrangabali") at an extraordinary general meeting of the company held on June 27, 1972. The reason for the change was that the said company proposed to take over the assets of a firm carrying on business under the name of Bajrangabali Engineering Works in which K. N. Agarwal was a partner. After the change of the name, a fresh certificate was obtained by the company on September 23, 1972. Even thereafter, the company did not have any activity. V. Ramakrishna Sons Ltd. held on September 19, 1973, the foundry unit of the company was agreed to be sold to Bajrangabali for a total consideration of Rs. 5 lakhs. The land, factory building and non-factory buildings were valued at Rs. 1,95,899 and the machineries at Rs. 3,34,101. Thus, the total value of the foundry unit was arrived at Rs. 5 lakhs. This consideration or Rs. 5 lakhs was paid by Bajrangabali by allotment of 50,000 shares of Rs. 10 each to V. Ramakrishna sons Ltd. The original 40 shares held in that company by the subscribers to the memorandum and articles of association were also transferred to V. Ramakrishna Sons Ltd. However, A. V. Jayaraman and B. Kalyanasundaram continued to have the five shares standing in their respective names as nominee shareholders of V. Ramakrishna Sons Ltd. It was in these circumstances Bajrangabali became the subsidiary of V. Ramakrishna Sons Ltd. The company-petitioner himself was authorised to execute the sale and he did so under exhibit R. -18, dated September 24, 1973. In the sale deed, the company-petitioner declared the value of the buildings at Rs. 1 lakh and the value of the land which was about 50 grounds at Rs. 94,219. The document was presented for registration on September 25, 1973. The petitioner was called to appear on a later date to enable the registrar to verify the value for the purpose of registration and after verification of the valuations, the same was registered on October 10, 1975. The sale of the foundry unit was, by a later resolution passed at the meeting of the board of directors of V. Ramakrishna Sons Ltd. held on February 8, 1974, approved.

117. The first question for consideration is whether the special resolution passed on September 25, 1975, at the extraordinary general meeting of Bajrangabali authorising the issue of further shares to any person other than an existing shareholder and issuing the further shares worth Rs. 5,00,400 by the board of directors in the meeting held on September 27, 1975, in favour of K. N. Agarwal and the members of his family was an imprudent, illegal, fraudulent and unbusinesslike transaction. It is seen from the documentary evidence produced in this case that for the year ended June 30, 1974, Bajrangabali made a profit of only Rs. 3,771.95. In the directors' report for this year, it was stated that the chances of working the re-rolling mill on economic lines are bleak. For the year ended June 30, 1975, the company sustained a loss of Rs. 2,53,575.17 and Rs. 1,25,736.66 and by way of amortisation of preliminary expenses amounting to Rs. 5,323.36. If these items are taken into account, the total loss for the year ended June 30, 1975, would be Rs. 3,82,625.19. The company had a huge liability amounting to Rs. 38,91,614 was on June 30, 1975. These liabilities included nearly about Rs. 6 lakhs due to Bajrangabali Engineering Co. (P.) Ltd. As

on June 30, 1974, the value of fixed assets and machineries held by Bajrangabali were as shown hereunder :

Rs. Properties acquired from V. Ramakrishna Sons Ltd. 4,75,285.92 Properties taken over from partnership firm, i.e., Bajrangabali Iron and Steel Co. 12,49,153.18 Machineries purchased from Bajrangabali Engineering Co. Ltd., Calcutta 1,10,937.39 ----- Total 18,35,376.49 -----

118. The value of additions to the buildings and purchase of other properties during the year was Rs. 1,48,133.23. The total in all Rs. 19,83,509.72. The total liabilities amounted to Rs. 24,59,188.92. Thus, there was an excess of liability over the assets by about Rs. 4.76 lakhs.

119. It may also be mentioned that the liabilities of Bajrangabali included liability to V. Ramakrishna Sons Ltd. itself to the extent of about Rs. 7,50,000. In the light of the report of the directors in the previous year ended June 30, 1974, at the time when V. Ramakrishna Sons Ltd. was in the control of the company-petitioner himself and no disputes between the parties that the chances of working the re-rolling mill on economic lines are bleak and that the loss accumulated in the next year has nearly wiped out the entire capital of Rs. 5 lakhs with no prospect of recovering Rs. 7.5 lakhs due by Bajrangabali to V. Ramakrishna Sons Ltd., if the board of directors of V. Ramakrishna Sons Ltd. did not think it prudent to apply for rights share in Bajrangabali, that could not be said to be an imprudent and unbusinesslike transaction. It may also be noted that it is only the loan already due to Bajrangabali Engineering Co. P. Ltd. that has been adjusted and converted into share capital. Conversion of the loan given by V. Ramakrishna Sons Ltd., on which no dividend would be payable except when profits accrued, was also considered by the board of directors as not beneficial to V. Ramakrishna sons Ltd. a special resolution of Bajrangabali as required u/s 81 of the Companies Act had also been duly passed. The increased of share capital or allotment of shares is also a matter of internal management. It is seen from the records as expected by the directors, that the company continued to sustain losses in the subsequent years also. For the year ended June 30, 1976, the loss incurred was Rs. 1,41,416.08 before depreciation and amortisation of preliminary expenses were provided for and they are taken into account; the total loss was Rs. 2,97,873.78. For the year ended June 30, 1976, the total loss was Rs. 4,40,687.84. The report of directors in both the years was that re-rolling industry is facing recession, selling rates have glided very much and the company is still in the throes of depression. In the circumstances, therefore, we agree with the finding of the learned judge that there had been a justification for V. Ramakrishna Sons Ltd. not opting for purchase of rights shares and allowing Bajrangabali to allot further shares to persons other than the shareholders.

120. It was then contended by learned counsel for the appellants that this special resolution was passed on September 25, 1975, by Bajrangabali without any reference to the board of directors or the shareholders of V. Ramakrishna Sons

Ltd. and, therefore, it is not valid. There is no dispute that notice of the extraordinary general meeting held on September 25, 1975, was sent to V. Ramakrishna Sons Ltd., as also to the other shareholders. At that meeting, one C. Ramanathan represented V. Ramakrishna Sons Ltd. This Ramanathan had not been duly authorised to represent the company in the case of the company-petitioner. On the other hand, the respondents contended that C. Ramanathan had been representing V. Ramakrishna Sons Ltd., at all general meetings of Bajrangabali and this was a well recognised and accepted course of conduct and convention of which the petitioner was fully aware and to which he never raised any objection. It is seen from the evidence of P. W. -1 himself that C. Ramanathan was representing V. Ramakrishna Sons Ltd., at the general meetings of Bajrangabali held on December 27, 1973, and December 30, 1974, also when he was in charge of the company. He had also been representing the company on July 30, 1975, prior to the extraordinary general body meeting and on December 30, 1975, subsequent to the meeting also. Therefore, the parties seemed to have taken for granted that this Ramanathan has due authority to represent V. Ramakrishna Sons Ltd. in all general meetings of Bajrangabali. In any case, we find that his action was ratified at the meeting of board of directors of V. Ramakrishna Sons Ltd. held on January 10, 1977. On such ratification, the representation of Ramanathan gets full validity. The resolution passed on September 25, 1975, was, therefore, valid, the invalidity, if any, having been cured.

121. In *Bamford v. Bamford* [1969] 39 C.C. 838, the board of directors of a company resolved to allot all the unissued shares to a third-party who is not a shareholder at par. One of the directors who did not agree for this resolution resigned and then questioned the validity of the allotment on the ground that it was made in bad faith and that it was not in the interest of the company. As a counter to that proceeding, the directors convened a general body meeting of the shareholders of the company and general body passed a resolution approving and ratifying the allotment. Plowman J. held that the allotment was capable of being ratified and approved by an ordinary general meeting of the company and since it has been so approved, the allotment was valid even if the directors had acted in bad faith and in an improper manner in making the allotment. The Court of Appeal also affirmed the judgment, holding that even if the directors had acted in bad faith and with improper motive in making the allotment, the impropriety can be waived and ratified by voting at the general meeting. The ratio of this decision is applicable to our case. At any rate, the increase of the share capital and allotment of shares being matters of internal management, this is not a matter in respect of which section 397 can be invoked. Further, the allottees themselves had not been parties to these proceedings and without impleading them the validity of the allotment cannot be questioned, vide *Smt. Jatan Kanwar Golcha v. Golcha Properties* [1971] 41 C.C. 230; *Shrimati Jain v. Delhi Flour Mills Ltd*, [1974] 44 C.C. 228 and *Jogesh Chandra Majumdar Vs. Durga Mohan Chakrabarty and Others*, . We, therefore, agree with the learned

judge that a special resolution dated September 25, 1975, was in accordance with law and it is not liable to be questioned by the petitioner in these proceedings.

122. The further submission of learned counsel for the petitioner was the fixed assets of Bajrangabali are worth about Rs. 48 lakhs and there is absolutely no justification for allotting these shares to K. N. Agarwal and the members of his family and such allotment of the shares at per has resulted in dilution of the value of the shares for the existing shareholders.

123. The evidence relating to the valuation of the shares of Bajrangabali are those of P.Ws. -4, 5, 7, 9 and 11. P.W. -4 claims to be a consulting engineer and a valuer. His report, exhibit P. -36, dated April 5, 1976, relates to the valuation in respect of the land and buildings of Bajrangabali. According to this report, the valuation of the land and building is Rs. 18,84,000. He has estimated the value of the land at Rs. 10,000 per ground. This is not based on any evidence. He had admitted that he did not verify any sale deeds in respect of neighbouring properties. On the other hand, we have documentary evidence in exhibit R. -21 which is a sale deed dated April 11, 1974, in respect of an adjacent land. That was a sale in favour of K. C. P. Ltd. The sale price paid was at the rate of Rs. 20,000 per acre. The report also is devoid of any material particulars and the estimation was summary. He has not produced any working sheet to show how he has arrived at the area for different dates and in respect of which buildings. Even if this type of valuation is to be permitted, the value adopted for small plots of land cannot be the basis for vast extent of lands. The evidence is meagre and does not advance the case of the petitioner in any way.

124. P.W. -5 is a retired engineer. He has produced exhibit P. -29 as the valuation of plant and machinery of Bajrangabali and this is stated to have been prepared at the request of Agarwal. There is complete lack of specification. Several machines are combined and value given under one item. The working sheets and data explaining how each item was valued by him are said to be missing. He admitted that he did not take into account the cost of each machine, the period during which it was working or the book value. He did not adjust depreciation for each item either based on cost or even the present estimated value. He claimed that he estimated the value based on output, but stated that he could not state as to how he valued the re-rolling machine at Rs. 3,30,000, because his papers were missing. It may be mentioned that this re-rolling machine was purchased on August, 1973, by V. Ramakrishna Sons Ltd. for Rs. 92,551 whereas the valuation as on March 31, 1976, was Rs. 3,30,000. This report is also of no value as we are concerned with the valuation as on June 30, 1975, and not as on March 31, 1976, which has been taken as the date of valuation. It is also seen from evidence that in 1973, he has submitted a report to the Punjab National Bank valuing the several of the items contained in exhibits P. -29 at cost. This evidence is, therefore, unreliable and not trustworthy.

125. P.W. -7 is the Sub-Registrar of Thiruvothiyur. He has stated that as per

guidelines book, the value of the land was Rs. 5,000 per ground. No documents were produced. Further, these guidelines values are only for the purpose of stamp duty covering a large area in a city without any particular reference to the value of any particular item of property within the area covered by that statement. Much reliance cannot, therefore, be placed on this evidence.

126. One Gatalia, a chartered accountant of Bombay was called as P.W. -9 to give evidence regarding the value of shares of Bajrangabali as on June 30, 1975. He had filed two computations, exhibits P-34 and P-35. It was admitted by him that they are mere arithmetical computations based upon the estimated value of land, buildings and machineries of the company as furnished to him by the petitioner who was stated to have obtained a report from an engineer. In exhibit P-34, he has computed the value taking the estimated value of the entire land at Rs. 5,000 per ground and in exhibit P-35 he has taken the value of the land at Rs. 10,000 per ground. These exhibits are not signed. When cross-examined on that, he admitted that they are mere computations and they are not to be taken as valuation reports and that is why he had not signed them. Again he stated that he asked for the balance-sheets for five years, namely, 1971, 1972, 1973, 1974 and 1975, but he got only for two years, i.e., 1974 and 1975. He accepted that the standard practice for arriving at the value of shares of a company is to call for the balance-sheets of a company for a period of at least five earlier years. But he admitted that he had not done so and that he did not carry out a full valuation either. He had stated that by adjusting losses and preliminary expenses from the share capital, he arrived at the value of the capital at Rs. 75,187. But he chose to arrive at a larger figure by two imaginary additions to the net assets. After having arrived at the value of the net assets on the figures contained in the balance-sheet of the company as on June 30, 1975, he proceeded to make two adjustments. One is a sum of Rs. 2,67,884 stated to be the tax benefit of 63% on the losses sustained by the company. The reason given by him for this adjustment was that in the event of the company amalgamating with any other successful one, there might be a tax benefit to the amalgamated company to the extent of 63% on the amount of losses. The amount so arrived at was added to the net assets of Rs. 75,187. Again he added another sum of Rs. 11,90, 695. According to him, this sum represents the increase in the value of assets less an adjustment of 63% on the increased value. There could be no doubt that this type of valuation is unrealistic and could not be accepted for finding the value of shares of a running concern. In fact, when he was questioned on the basis that even in the subsequent years the company had been incurring losses, he admitted that is calculations were wrong. On top of this the increased value adopted by him was based on the estimate of the value of the assets furnished to him by the petitioner as on March 31, 1976, though he was arriving at the value of the shares as on June 30, 1975. He said that he adopted the value as on March 31, 1976, on the assumption that the value as on June 30, 1975, and March 31, 1976, might be the same. He never cared to verify whether the assets were old or were recent purchases, nor had he taken into account what

represented the book value, the depreciation or the original cost. Though he admitted that the correct principle of valuation was to take into account the cost of the machine, the age and the present condition and to make adjustment for depreciation, he had not called for any of these particulars or verified the same and simply acted on the valuations provided by the petitioner, and that too, with reference to the date, March 31, 1976. He had not also cared to call for and look into the accounts relating to various practices such as dividends, if any, declared, the profitability of the company over a course of years, reasons for the losses sustained by the company, the prospects in future and whether the assets of the company are old or recent purchases. Though he admitted that the primary method of valuation of shares of a going concern is one based on yield or dividend and that in arriving at the value on the basis of assets, the balance-sheet figures should be taken into account and not on a revaluation item-wise, he has adopted the break-up value method on the basis of revaluation of the items provided to him by the petitioner himself. A reading of the entire evidence shows that he had himself conceded that the computation given by him is incorrect. This evidence is, therefore, worthless and could not be accepted.

127. P.W. -11 is a consulting engineer. His evidence is of a general nature. He speaks about the methods of valuation of plant and machinery of a company. It has no particular reference to our case on record. On this evidence, it is not possible for us to accept the case of the petitioner that the value of the assets of Bajrangabali would be Rs. 48 lakhs as claimed by him. We should also mention that the petitioner himself has executed the sale deed, exhibit R-18, dated September 24, 1973, in which he has given the value of the building as Rs. 1 lakh and the value of 50 grounds of land as Rs. 94,219. We have to keep in mind that, in view of the provisions of the Stamp Act, he is required to state in the document the real market value of the land irrespective of the fact that the bargain between the parties is for an amount less than the market value. In fact, the petitioner was called upon to appear to enable the Sub-Registrar to verify the value for the purpose of registration and after verification through the Revenue Officials, finding that the market value of the land was correctly stated, it was registered on October 10, 1973. If really the property value was more on that date and the petitioner had not given the true value, he shall be deemed to be a party to a fraud in evading payment of stamp duty and, therefore, he cannot contend that the value of the land as on June 30, 1975, is not the same as that was on September 25, 1973, and even if there was an increase, there was such a phenomenal increase of more than 3 times between that date and 1975. We, therefore, agree with the finding of the learned judge that the value given in the balance-sheet had not been shown to represent any unreal value of the assets of Bajrangabali. We also hold in the foregoing circumstances that the special resolution passed on September 25, 1975, authorising the issue of further shares and the allotment of those shares to K. N. Agarwal and the members of his family was not an unbusinesslike, imprudent, illegal or fraudulent transaction.

128. At this stage, it would be convenient to consider another allegation made in

the company petition against Rajeswari Ramakrishnan, her son, Prabhu, her brother, V. L. Dutt, and her husband, P. R. Ramakrishnan. The petitioner has stated that the conduct of these people as directors of Jeypore Sugar Co. Ltd., in relation to levy sugar allotted to various dealers in Andhra Pradesh, West Bengal and Orissa in diverting about 16,000 bags to the black market, though the same was shown in the company's books as though the goods had been despatched to the allottees, clearly establishes the lack of probity in them. He had further stated that such persons who have been unmindful of the public interest, particularly in relation to the affairs of a public limited company, have, by such lack of probity and their own oppressive conduct, forfeited their positions as directors. He had also contended that their conduct in relation to Bajrangabali Iron and Steel Company Ltd. has clearly proved that they are unworthy of any confidence being reposed in them whatsoever in relation to the affairs of V. Ramakrishna Sons Ltd. He has also made certain allegations relating to the election of directors in the thirty-fourth annual general meeting of K. C. P. Ltd. and the award of contract for transport of limestone and sugar. On the basis of these allegations relating to levy sugar allotment, issue and allotment of further shares in Bajrangabali to third parties and the allegation relating to the exercise of control over the affairs of K. C. P. Ltd., the company petitioner also contended that they (respondents) are not persons of exemplary character and rectitude.

129. Apart from meeting the allegations on facts, respondents Nos. 1 to 4 in their counter-affidavit, have characterised this allegation as false, malicious and even unworthy of the petitioner. They have also stated that the petitioner has chosen to make irresponsible allegations amounting to character assassination of the respondents and for such purposes, have freely indulged in distortion of facts concerning other public companies. They also contended that the several allegations in the petition make it clear that the petitioner's only desire is to dominate over others and for achieving this, he keeps on abusing others and harassing them. The learned judge, seeing that these allegations have not been proved, was inclined to hold that the present proceedings initiated by the petitioner lack bona fides and they do amount to an abuse of process of this court.

130. We have already seen that the allegation relating to issue and allotment of shares in Bajrangabali has no merit and that it was a bona fide transaction done in the best interest of the company and that it was valid. The allegation of fraud or unworthiness of any confidence being reposed in relation to the affairs of this company is, therefore, not made out. We see from the records that the Collector of Central Excise, in his order dated October 23, 1974, in the proceedings marked as exhibit R. -93 in this case, has held that the charges levelled against the Jeypore Sugar Co. Ltd. have not been proved and he dropped all further proceedings against them. This order was, however, set aside by the Central Board of Excise and Customs, in revision, vide order dated January 6, 1968, exhibit P. -25(a), and a fine of Rs. 6 lakhs was imposed as penalty against the company. A further revision was filed by the company against this order to the

Central Government and that is stated to be pending. The company also filed W.P. No. 374 of 1979 on the file of the High Court of Andhra Pradesh and obtained on January 19, 1979, an order staying "all further proceedings by respondents Nos. 1 and 2 herein, viz., the Special Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi, and the Central Board of Excise and Customs represented by its Secretary, New Delhi, in pursuance of the order dated December 26, 1979, in F. No. 196/11/289/78-CX-5 issued by the first respondent, including all proceedings for levy of duty, penalty or any proceedings relating to the release of sugar by the petitioner for the period from February to June, 1972, pending further orders. Even these proceedings are still stated to be pending. In the circumstances, therefore, we are of the view that it will not be proper to entertain or go into these allegations which are the subject-matter of proceedings in the High Court of Andhra Pradesh and the Government; nor can we permit the petitioner to rely on these allegations in this petition. We have also no doubt that these allegations are made in order to prejudice the Court though the appellants knew that they are pending proceedings and no finality could be attached to any finding.

131. The affairs of K. C. P. Ltd. are also the grounds relied on by the petitioner in the company petition against the respondents in support of the reliefs prayed for. In respect of the award of transport contracts by K. C. P. Ltd. for the transport of limestone and sugar for 1975, the grievance of the petitioner is that the contract for transport of limestone, cement, etc., has been given to M/s. Vadde & Co. at negotiated rates and likewise, the contract for transport of sugar has been given to M/s. Mahaveer Transport Company at negotiated rates and both these rates are excessive and if tenders are called for, according to the petitioner, there is a possibility of obtaining lesser rates. It is admitted by P.W.1 that Mahaveer Transport Company were the contractors for the transport of sugar right from 1971 onwards. They were also contractors for transport rates. Similarly, M/s. Vadde & Co. were the contractors for transport of limestone and cement, right from 1960. These contracts were sanctioned at the meetings of the directors of K. C. P. Ltd. even before the disputes arose. In 1975 also, the board had continued the same arrangement. When asked as to why now only for the first time he is raising this objection, the petitioner stated that he came to know that the transport operators are willing to transport at a lesser rate and that is why he objects. However, it is not necessary for us to pursue further this matter as learned counsel for the appellant did not press this ground.

132. In the foregoing circumstances, a character assassination has been made without any regard for truth and it makes the submission of learned counsel for respondents that these allegations against respondents Nos. 1 to 4 have been made fide and only with a view to prejudice the court and by pressurising the respondents to gain dominance over them somehow or other more probable and we cannot countenance such conduct. In this connection, we must also consider another contention of learned counsel for Rajeswari Ramakrishnan. He contended that the petition has not been filed in the interest of the company but in the

selfish interest of one shareholder to bring pressure on the opposite side to achieve a collateral purpose and that it amounts to an abuse of the process of this court. He further contended that the petitioner sought to achieve this collateral purpose by two ways; one by alleging a family arrangement and the other by initiating parallel proceedings before the Government and other courts which amount to contumacious conduct, disentitling him to ask for any relief in this court. We have already held that the family arrangement pleaded by the appellants had not been proved. Having failed in this attempt to project a family arrangement, according to learned counsel, the petitioner, with the connivance of P.Ws. Nos. 6 and 13 and others, tried to subvert the process of law by taking contemporaneous proceedings before the Government on the same allegations and for the same reliefs, but through his associate who has a common grievance as that of the petitioner against Rajeswari Ramakrishnan. Exhibit R. -92 dated May 9, 1977, is a petition presented by an advocate on behalf of P.W. -13 to the Central Government. The same allegation with regard to the excise fraud in Jeypore Sugar Co. Ltd. as alleged in these proceedings are contained in that petition. Almost identical allegations, as in the petition, alleging malpractice in the election of directors and in giving of contracts for transport of limestone, cement and sugar to K. C. P. Ltd. are made. The contention of learned counsel for the respondents was that this petition has been filed, since by that time the Janata Government had come to power and they would be able to prejudice the Government on the ground that respondents Nos. 1 to 4, and in particular the third respondent, belonged to the Congress party. There is great force in this argument. We find in the petition, exhibit R. -92, the following allegation :

"Likewise, one of the managing directors, Mr. Dutt, himself contributed by way of advertisements to the souvenirs of the Congress party during the recent elections to the Lok Sabha to the tune of Rs. 1,50,000 and is able to carry out such decisions because he is conscious of his voice and strength in the board."

133. The further suggestion was that V. M. Rao was the man behind this complaint. P.W. -13, Bhandarkar, on whose behalf a petition was filed, admitted in his evidence that he filed the petition, exhibit R. -92. When confronted further, he also admitted having filed another petition, exhibit C. -7, dated January 24, 1977. The subject-matter of this petition given there is "V. Ramakrishna Sons Co. Ltd., Company Petition No. 94 of 1976 u/s 397 and 398 of the Companies Act filed by V. M. Rao in the High Court of Madras." The allegations in these petitions to the Government and the allegations in the company petition are almost identical. To a suggestion made by counsel for Rajeswari Ramakrishnan stating : "Will I be right (in saying) that your advocate added it because the Janata Party was in power and any allegation of any donation to the Congress Party would prejudice them against the present management," the answer given by P.W. -13 was "Possibly so, I cannot say." We have read through the evidence of P.W. -13. We are left with a definite impression that this man belongs to the group of V. M. Rao and also has a common cause against Rajeswari Ramakrishnan and that all these allegations in the petition have been made with a collateral purpose and

lack bona fides.

134. The other allegation against V. M. Rao and P.W. -6, P. Punnaiah, is more serious. On October 25, 1978, the cross-examination of P.W. -1 was closed, giving liberty to counsel for the respondents to renew the request for further cross-examination. This was on the ground that counsel for Rajeswari Ramakrishnan could not complete the cross-examination for want of records and that after the receipt of records of Jeypore Sugar Co Ltd., he would like to further cross-examine the witness. It appears P. W. -6, P. Punnaiah, filed Company Act Case No. 11 of 1978 on the file of the High Court on Orissa of October 26, 1978, and obtained an interim order, exhibit R. -35, injunction Jeypore Sugar Co. Ltd., "not to remove any papers, documents and books of account until further orders" from its premises at Madras and Coimbatore and the premises of Mahaveer Transport Company at Vijayawada. This interim order further directed the opposite parties "not to invest funds of the Jeypore Sugar Co. Ltd. in any other company and not to implement any resolution of the board of directors without the court's sanction". It is also in evidence that this relief was not originally prayed for in the interim direction application, but when the petition came on for orders on July 26, 1978, a note was given to the learned judge that an order of that nature was necessary pending preparation of the inventories to be taken in the said places which was the other relief-prayed for and ordered in that petition. The argument of the learned counsel for the respondent is that the records are necessary for the purpose of using in the respondents' case in this court, that the petitioner set up P.W. -6 to go to Cuttack, initiate proceedings there and obtain interim order preventing production of records; and since P.W. -6 also is inimically disposed towards Rajeswari Ramakrishnan for various reasons, he did initiate proceedings and got the said order. P.W. -6 in cross-examination admitted that he filed the petition on October 26, 1978, and asked for interim relief and obtained an interim injunction preventing the records from coming to this court. Though he denied a suggestion that he was made aware on October 25, 1978, by S.T.D. that counsel for respondents Nos. 2 to 6 in this writ petition had mentioned to the court that he would like to summon the records of Jeypore Sugar for further cross-examination of V. M. Rao, it is seen from the petition which is marked as exhibit R. 97 (Company Act Petition No. 11 of 1978 on the file of the High Court of Orissa) that this denial cannot be true. The petitioners in that case are P. Punmaya (P.W. -6), Dr. Subha Rao and another. Dr. Subha Rao who is the second petitioner has filed an affidavit stating that the following statement in the petition is true to his knowledge and that he has been authorised by petitioners Nos. 1 and 3 therein to file the affidavit on their behalf also. The relevant portion in the petition reads as follows :

"2. That for quite sometime, the petitioners, have been collection materials, consulting lawyers in drafting the petition. The petitioners are aware that the opposite parties had also become aware of the proposed move of the petitioners and were keeping watch over the situation. Petitioner No. 2, Dr. Subha Rao, has received a telephonic message during these two previous days from petitioner

No. 1 that the opposite parties have become aware that the petitioners have gone to Cuttack with their advocates. Petitioner No. 2 has further received information that opposite parties, more particularly opposite parties Nos. 2 and 3, are taking steps to remove/destroy vital papers, records and documents which disclose fraud, misappropriation and other criminal activities, etc. The petitioners also genuinely apprehend that unless some immediate action is taken to ensure preservation of the papers and records of the company and prevent the respondents from syphoning off the funds of the company, the petitioners and the company would suffer irreparable loss. The petitioners apprehend that unless some interim orders are passed, funds of the company may be misappropriated."

135. It is, therefore, clear that they have obtained an interim injunction on October 26, 1978, without disclosing that this court had at the request of the counsel for Rajeswari Ramakrishnan closed the cross-examination of V. M. Rao with liberty to the counsel to further cross-examination him after the records relating to Jeypore Sugar Co. Ltd., are made available to him to complete the cross-examination and the interim injunction was just to thwart this attempt to further cross-examine P.W. -1. In fact, when summons was sent to produce records, the company produced the order of injunction. Of course, later, on a petition being filed to vacate the interim injunction by consent of parties, the order was vacated. Having initiated proceedings here, putting forth grievances touching on the affairs of Jeypore Sugar Co. Ltd., it was not proper on the part of the petitioner and P.W. -6 to attempt to stifle the defence in this manner and we agree with the learned judge that their conduct is highly reprehensible.

136. In this connection, we may usefully quote two decisions cited at the bar. The first one is *Belladar Silk Ltd., In re* [1965] 1 All ER 667. In that case, a petition was presented u/s 210 of the Companies Act, 1948, alleging oppressive conduct of the company's affairs by two of the directors. The petitioner was one of the three directors of the company. The state of friction between the petitioner and his co-directors, and certain conduct on the part of his co-directors, were assumed to be such as would justify, apart from other circumstances, an order to wind up the company on the ground that it was just and equitable so to do. However, during cross-examination of the petitioner, it appeared that the real object of presenting the petition was to get repayment of a loan owed by the company to the petitioner's group of companies. The financial position of the company was such that, on a winding-up, the assets would not realise enough to leave anything for the contributories after the creditors' claims were met. It was held that the petitioner was not entitled to relief u/s 210 because "A petition which is launched not with the genuine object of obtaining the relief claimed, but with the object of exerting pressure in order to achieve a collateral purpose is, in my judgment, an abuse of the process of the court."

137. In *In Re: Sulekha Works Ltd.*, a petition for winding-up of a company was filed. The petition was admitted and various interim orders were made. On the next day, an application was moved on behalf of the company for an order for

dismissal of the winding-up petition and for an order recalling or setting aside the orders of advertisements and stay of further proceedings. Along with the petition, the company-petitioner had pressed for an interrim order restraining the holding of the annual general meeting of the company. But the learned judge had declined to make an order, but ordered that no effect should be given to any resolution that would be passed at the annual general meeting. However, the petitioner sought redress of his grievances by filing a petition in the Police Court at Alipore. He induced the learned Magistrate to issue a search warrant under an order for judicial enquiry. Deprecating this practice, the learned judge observed (at p. 114) :

"No words are strong enough to censure his conduct in taking recourse to the criminal law at a time when the identical allegations on which he moved the police court were the subject-matter of a pending application in this court. One of his charges in the winding-up petition is manipulation and falsification of accounts and a specific charge was that the cash in hand was found to be short upon a surprise checking done by him. Apart from the total falsity of the charge and apart altogether from the fact that he recorded in writing that the cash in hand agreed with the entires in the books, this court must take a serious view of his conduct in going to the police court to seek redress on identical allegations which formed the subject-matter of a pending application in this court for winding up the company."

138. It may be mentioned that against the order of the Magistrate issuing the search warrant, a criminal revision was filed and it came before another learned single judge. He also deprecated this practice and made the following observations (at p. 114) :

"In the view I have taken as discussed above, I think the opposite party should not be allowed an indulgence of moving the machinery of the criminal law to satisfy his personal vendetta. I consider that in the facts of the present case, the proceeding before the criminal court was really an abuse of the process of the court".

139. The learned Judge who decided In Re: Sulekha Works Ltd., quoted these observations with approval.

140. Though the order of interim injunction granted by the Orissa High Court was vacated on February 8, 1979, by that time, P.Ws. Nos. 1, 6, 8, 13 and 15 had already been examined and the learned counsel for the respondents therefore rightly contends that he was prevented illegally from an effective cross-examination by the action of the appellant and P.W. -6 has interfered with the proceedings in this court at the instance of P.W. -1. We therefore, agree with the finding of the learned Judge that the present proceedings lack bona fides and that also amounts to an abuse of the process of this court.

141. The allegation in paragraph 26(E) relates to the resolution of the Board of Directors of V. Ramakrishna Sons Ltd., held on March 26, 1975. This resolution

has been passed to the effect that V. L. Dutt, or failing him, R. Prabhu, or failing him, A. V. Jayaraman be appointed as the company's authorised representative u/s 187 of the Companies Act to attend and vote on behalf of the company at the meetings of the shareholders of each of the other companies in which V. Ramakrishna Sons Ltd., holds shares. It is stated that at the annual general meeting of K. C. P. Ltd. held on January 29, 1976, V. L. Dutt himself exercised the voting power of the company and voted against the retiring director, A. V. Subramanyam, and in favour of V. Veerabadra Rao and P. Koteeswara Rao. The passing of this resolution nominating the three persons is alleged as manifesting the intention of the respondents to consolidate themselves as a pivot of power and control excluding other directors such as V. M. Rao and Durgamba and the views of the minor shareholders. A limited company such as V. Ramakrishna Sons Ltd., holding shares in other companies can exercise its voting right in other companies by following the procedure prescribed in section 187 of the Companies Act. The resolution passed at the meeting of the board of directors on March 26, 1975, was in accordance with this provision in the Companies Act. Somebody will have to be authorised and if that somebody happens to be V. L. Dutt or Prabhu or Jayaraman, it could not be said that that would invalidate the resolution itself. The company petitioner is still a director of V. Ramakrishna Sons Ltd., and the managing director of K. P. C. Ltd. and if he is not able to persuade the other shareholders in K. P. C. Ltd. in the matter of election of the directors in place of the retiring director A. V. Subramanyam, that could not be a ground for questioning the nomination itself. We are unable to agree that this nomination manifests any intention on the part of the respondents to consolidate themselves as a pivot of power.

142. The allegation in paragraph 26(G) relates to the resolution passed at the board meeting held on December 3, 1975. The resolution reads as follows :

"RESOLVED to ratify the action of the office in furnishing copies of the company's records and other miscellaneous information to Mr. V. M. Rao, director of the company as per details in the list together with enclosures, containing the details of copies of documents handed over and initialled by the chairman of the meeting. Resolved further to furnish copies of the same records to all the directors of the company as furnished to Mr. V. M. Rao."

143. Resolved further that in future any such information or copies of documents connected with the company required by any one of the directors be placed before the board for approval and then only furnished to the concerned director. A requisition in writing by the director who wants any information should be furnished to the office 15 days before the actual date of requirement.

144. Resolved further that no original document can be requisitioned by any director and only copies thereof can be obtained. The original documents may be inspected at the office during office hours after giving due notice to the company".

145. The petitioner has contended that A. V. Jayaraman, the manager of V. Ramakrishna Sons Ltd., is an ally and close associate of V. L. Dutt, carrying out and acting according to his instructions. He has also been nominated in August, 1976, on the board of Bajrangabali. Thus, in practice, V. L. Dutt and others got whatever information they required from A. V. Jayaraman, the manager who is at their beck and call. But so far as the petitioner is concerned, such information which he is entitled to get is shut out from him until scrutinised by others and this is an instance of excluding the petitioner from the management and abuse of power by persons in majority.

146. The resolutions which we have extracted above show no discrimination against the petitioner. Nor have the resolutions in terms curtailed in any manner the rights of the petitioner. All the directors are entitled only to information and copies of the minutes of the board's proceedings and the annual general meetings and copies of other documents which they want. The resolution only prescribes a procedure for the office staff so as to enable them to follow a uniform pattern. The first respondent has further pointed out in his counter-affidavit that it was open to any director to visit personally the registered office of the company and exercise the unquestionable right of inspecting the registers and documents and such right of the petitioner was never sought to be interfered with either by a resolution or personally at any time. The resolution related only to furnishing of copies and information. The first respondent also has pointed out that whereas he was attending the office regularly, the petitioner was not attending the office. If he had attended the office, he could have got the information readily as and when he wanted it and if he had not attended the office, he has to blame himself. In the above circumstances, therefore, we agree with learned counsel for the respondents that the petitioner could not make out any grievance on the basis of this resolution.

147. In view of the findings in this case, we do not think it necessary to consider or give any finding as to whether the filing of the suit would amount to an election and, therefore, the company petition is not maintainable.

148. we are, therefore, of the view that none of the grounds urged by the petitioner-appellant for the relief asked for by him in the petition under sections 397 and 398 are sustainable. We are also not satisfied that there is any material change in the management and control of the company which has affected or is likely to affect it prejudicially so as to constitute a ground for an action u/s 398 of the Act.

149. In the foregoing circumstances, we confirm the findings of the learned single judge and accordingly dismiss these appeals. The parties to bear their respective costs.