Dr. T.M. Paul Vs City Hospital (Pvt.) Ltd. and Others

Court: High Court Of Kerala

Date of Decision: Dec. 10, 1998

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 9
Companies Act, 1956 â€" Section 10, 283(1), 299, 300, 397

Citation: (1999) 97 CompCas 216

Hon'ble Judges: N. Dhinakar, J; K.V. Sankaranarayanan, J

Bench: Division Bench

Advocate: Antony Dominic and A.M. Shaffique, for the Appellant; P.C. Chako, Senior Advocate, Roy Chacko and K.N. Narayana Pillai for respondents Nos. 1 to 3, P. Santhalingam, for respondent No. 5, Subhash Syriac and Benoy Thomas, for the Respondent

Judgement

K.V. Sankaranarayanan, J.
These appeals are against the common judgment and decrees passed by the First Additional Sub-Judge,

Erna-kulam, in O. S. Nos. 723 of 1992, 41 of 1993, 897 of 1992 and 901 of 1992. O. S. No. 723 of 1992 has been treated as the main suit and

evidence recorded therein. The reference hereinafter to the ranks of the parties is according to their ranks in O. S. No. 723 of 1992 except

otherwise indicated.

2. The City Hospital Private Limited, the first defendant in O. S. No. 723 of 1992 is a private limited company incorporated under the Indian

Companies Act as per exhibit-A1 memorandum and articles of association and registered on July 12, 1971. The total share capital was originally

Rs. 5 lakhs divided into 500 equity shares of Rs. 1,000 each later enhanced to Rs. 10 lakhs consisting of 1,000 equity shares. The number of

members of the company is limited to 50. The articles of association provides for a board of directors consisting of not less than three and not

more than 11 directors. The subscribers to the memorandum and articles of association were the first directors of the company. Subsequently, the

directors were elected in the general body meetings. The four plaintiffs and defendants Nos. 2 to 4 in O. S. No. 723 of 1992 were elected

directors of the company as on August 18, 1992. The second defendant. Dr. T.M. Paul, was the managing director. The eighth defendant, Dr.

Aravind Babu, was also an elected director, but was abroad for some period and had not attended the previous three meetings of the board of

directors and had thus incurred a disqualification u/s 283(1)(g) of the Companies Act. Some shareholders of the company had given a notice to the

managing director on August 6, 1992, requesting him to convene an extraordinary general body meeting. The second defendant, in his capacity as

the managing director, convened a director meeting to be held at 11 a.m. on August 18, 1992, and issued exhibit-A2 notice dated August 15,

1992, for the purpose. The business proposed to be conducted on August 18, 1992, as disclosed by the agenda in exhibit-A2 notice were : (1)

passing the minutes of the previous meeting, (2) approval of the balance-sheet for the period ending March 31, 1991, (3) transfer of shares and (4)

any other matter permitted by the chair.

3. The meeting was held as scheduled in the hospital premises, It was attended by defendants Nos. 2 to 4 and 8 in O. S. No. 723 of 1992. The

first plaintiff who was also one of the doctors working in the hospital had made a written request for postponement of the meeting. That request

was rejected. The meeting passed the balance-sheet for the year ending March 31, 1991, and resolved to transfer the shares standing in the name

of the late Dr. K.M. Joseph to his wife and also transfer 20 shares held by her to the third defendant and another. The meeting also took up for

consideration the following matters not included in the agenda and resolved (1) to co-opt defendants Nos. 5, 6 and 7 as directors, (2) to purchase

certain equipment standing in the name of defendants Nos. 2 and 3 and Dr. K. K. Abraham with the liability to clear the outstanding dues to the

Bank of India, (3) to lease the hospital to a person prepared to pay Rs. 1 lakh as advance and Rs. 1 lakh as rent per month, for a period of five

years, and (4) to hold an extraordinary general body meeting of the shareholders on September 19, 1992, at Neelima Hall in Edacochin. The

plaintiffs did not attend the meeting. According to the plaintiffs, the second plaintiff was away in Pondicherry and did not get notice of the meeting.

The first plaintiff had already fixed up an operation at about the time of the meeting, and, hence, she made the written request for postponement.

Plaintiffs Nos. 3 and 4 also received notice only late on August 17, 1992, night and so could not attend the meeting and had telephonically

requested for a postponement.

4. There was yet another meeting of the board of directors on August 29, 1992, which was attended by plaintiffs Nos. 1 to 3 and also by

defendants Nos. 5 to 7 besides defendants Nos. 2 to 4. In that meeting despite the opposition from the plaintiffs, a resolution was passed to sell

the shares held by the first plaintiff for the alleged dues owed by her to the company. O. S. No. 723 of 1992 was filed by the plaintiffs therein on

September 4, 1992, challenging the validity of the meetings held on August 18, 1992, and August 29, 1992. They alleged that plaintiffs Nos. 1 and

2 had actually met the second defendant on August 15, 1992, in the hospital where he was convalescing after an operation. The second plaintiff

indicated that he will be away in Pondicherry in connection with a meeting of the board of examiners for L. L. M. and was expected back only on

August 18, 1992. Knowing that the second plaintiff will not be available in the locality, and that it will be inconvenient for the first plaintiff to attend

the meeting, the second defendant had convened a meeting consisting of himself and defendants Nos. 3 and 4 who were none other than his wife

and brother-in-law and manipulated and fabricated resolutions, highly detrimental to the interests of the plaintiffs and the company. They also

alleged that the eighth defendant had ceased to be a director and could not have been permitted to attend and participate in the meeting. The

plaintiffs further alleged that the first plaintiff had not taken any money from the hospital as alleged and the decision taken in the meeting on August

29, 1992, to forfeit and sell her 97 shares for realisation of the alleged debt was also illegal. On these allegations, the plaintiffs in O. S. No. 723 of

1992, prayed for a declaration that the board meetings held on August 18, 1992, and August 29, 1992, were illegal and void and also for a

declaration that the eighth defendant was not a director and his participation in the meeting held on August 18, 1992, was illegal. They also sought

a permanent injunction restraining defendants Nos. 1 and 2 (company and the managing director) from leasing out the hospital and taking over the

equipment pursuant to the resolutions passed on August 18, 1992. The plaintiffs also prayed for a declaration that the co-option of defendants

Nos. 5, 6 and 7 was illegal and prayed for an injunction restraining them from functioning as such. They also prayed for an injunction restraining

defendants Nos. 1 and 2 from implementing the resolution dated August 29, 1992, for forfeiting the first plaintiff"s shares and also removing her

from the directorship as also from the post of Assistant Superintendent in the hospital.

5. After the institution of O. S. No. 723 of 1992, on September 4, 1992, yet another meeting of the director body was held on September 5,

1992, in which a decision was taken to sell the 97 shares held by the first plaintiff to Binu George, the plaintiff in O. S. No. 901 of 1992. In O. S.

No. 723 of 1992, the sub-court had originally granted an interim injunction against implementing the resolutions passed on August 18, 1992. It was

later modified, The modified order of the sub-court permitted the defendants to hold a general body meeting fixed a fresh date and a venue, but

permitting the first plaintiff to exercise her voting rights as if her shares had not been forfeited or sold. That was the subject-matter of C. R, P. No.

2059 of 1992 before this court. There was an interim order of stay in that matter which was also later modified by order in C. M. P. No. 818 of

1993, dated March 23, 1993, confining the stay to the exercising of voting right in the meeting of the company with effect from that date. In the

meantime, the members who requisitioned a general body meeting proceeded to hold a general body meeting on November 6, 1992. In that

meeting, resolutions were passed removing the second defendant in O. S. No. 723 of 1992 from the post of chairman and managing director and

electing Dr. V. K. Thomas, the second plaintiff in O. S. No. 41 of 1993, as chairman and managing director in his place. The second defendant

had chaired that meeting at the beginning, but declared that the general body meeting could not be held as there was a stay order from the

honourable High Court, but that was not accepted by the other members who proceeded with the meeting. Based on the resolution passed on

November 6, 1992, Dr. V.K. Thomas, claiming to represent the hospital along with the first plaintiff in O. S. No. 723 of 1992, filed O. S. No. 41

of 1993, inter alia, pray ing for an injunction against the first defendant therein (second defendant in O. S. No. 723 of 1992) from exercising the

functions of the managing director and also restraining the other defendants therein from functioning as directors and also restraining the eighth

defendant therein from acting as the lessee. There was also a prayer for a declaration that the third plaintiff therein who is the first plaintiff in O. S.

No. 723 of 1992 continued to be a shareholder holding 97 shares and the purported forfeiture and transfer of her shares by virtue of the

resolutions dated August 28, 1992, and September 5, 1992, were invalid.

6. In the meantime, the fourth defendant in O. S, No. 723 of 1992 had filed O. S, No. 897 of 1992 challenging the notice by some of the

members for holding the requisitioned extraordinary general body meeting on November 6, 1992. After the extraordinary general body meeting on

November 6, 1992, O. S. No. 901 of 1992, was filed by the plaintiff therein, who is the allottee of the shares of the first plaintiff in O. S. No. 723

of 1992, pursuant to the resolution dated September 5, 1992. He challenged the validity of the meeting held on November 6, 1992, without notice

to him.

7. The contesting parties filed written statement in all these cases. The defendants in O. S. No. 723 of 1992 who were the defendants in O. S. No.

41 of 1993 also, inter alia, contended that the civil court had no jurisdiction in the matter. They also denied the allegations made in O. S. No. 723

of 1992, against the validity of the meetings held on August 18, 1992, and August 29, 1992, and contended that they were perfectly valid. They

further contended that the requisitionists had no authority to conduct the extraordinary general body meeting on November 6, 1992, as there was

no failure on the part of the director board to comply with the request to hold the general body meeting and as the holding of the meeting was

stayed by the Honourable High Court, Both sides adduced evidence. The learned Sub-Judge dismissed O. S. No. 897 of 1992 and O. S, No.

901 of 1992. In O. S. No. 723 of 1992, the learned Sub-Judge granted a decree.declaring the meetings held on August 18, 1992, and August 29,

1992, as illegal and void. The learned Sub-Judge also declared that the eighth defendant had ceased to be a director before August 18, 1992. The

learned Sub-Judge also granted the prayers against leasing the hospital and purchasing the equipment as prayed for. In. O. S. No. 43 of 1993 an

injunction was granted prohibiting the defendants, from acting as managing director or directors or from obstructing the second plaintiff therein from

acting as chairman and managing director. The court also declared that there was no valid forfeiture or transfer of the shares held by the first

plaintiff in O. S. No. 723 of 1992, and that she continued to be a shareholder.

8. A. S. Nos. 688 of 1994 and 756 of 1994 are filed by the plaintiffs in O. S. No. 897 of 1992 and O. S. No. 901 of 1992, respectively, against

the dismissal of those two suits. A. S. Nos. 757 of 1994, 689 of 1994 and 706 of 1994 are filed by the defendants in O. S. No. 723 of 1992

challenging the decree and judgment therein. Defendants Nos. 1 and 2 in O. S. No. 723 of 1992 are the appellants in A. S. No. 757 of 1994,

defendants Nos. 4 to 7 therein are the appellants in A. S. No. 689 of 1994, and the eighth defendant is the appellant in A. S. No. 706 of 1994. A.

S. Nos. 480 of 1994, 489 of 1994, 497 of 1994, 498 of 1994 and 680 of 1994 are by the different defendants in O. S. No. 41 of 1993,

challenging the judgment and decree in that suit. Counsel for the appellant in A. S. No. 688 of 1994, who is the first appellant in A. S. No. 689 of

1994 also has reported that he has no instructions from the party. A. S. No. 689 of 1994 is prosecuted by the other appellants therein. A. S. No.

688 of 1994 is not being prosecuted.

9. When these appeals came up for consideration before a learned single judge of this court, the learned judge noticed that the appeals involved an

important question of law as to the jurisdiction of the civil court to entertain the suits and the decisions of the various courts on the subject were not

uniform and the earlier decisions of this court also strike divergent notes. The learned judge also noticed that other important questions of law were

raised in the appeals, and hence the appeals should be considered by a Division Bench for entering an authoritative pronouncement in the matter.

The appeals have thus come before us. We have heard detailed arguments advanced by learned counsel on both sides on the question of

jurisdiction and other aspects of the case.

10. u/s 9 of the Code of Civil Procedure, civil courts have jurisdiction to try all suits of a civil nature except those of which cognizance hy the civil

court is either expressly or impliedly excluded. Such exclusion is not to be readily inferred, the rule of construction being that every presumption

should be made in favour, of the existence rather than the exclusion of jurisdiction of the civil courts. In Dhulabhai and Others Vs. The State of

Madhya Pradesh and Another, a five-judge Bench of the Supreme Court considered the earlier decisions on this aspect and laid down the

following propositions :

(1) Where the statute gives finality to the orders of the special tribunals, the civil court"s jurisdiction must be held to he excluded, if there is

adequate remedy to do what the civil courts would normally do in a suit. Such a provision, however, does not exclude those cases where the

provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of

judicial procedure.

(2) Where there is an express bar of jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the

sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express

exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the

inquiry may be decisive. In the latter case, it is necessary if the statute creates a special right or liability and provides for the determination of the

right or liability and further lays down that all questions about the said right or liability shall be determined by the Tribunals so constituted, and

whether remedies normally associated with action in civil courts are prescribed by the said statute or not . . . .

An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set out apply.

11. In Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), , the principle regarding implied exclusion of jurisdiction has been

explained as follows :

Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing in common law, is created by a statute and that

statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is

intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil courts" jurisdiction is impliedly

barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided,

without expressly excluding the civil courts" jurisdiction, then both the common law and the statutory remedies might become concurrent remedies

leaving open an element of election to the persons of inherence.

12. The above two decisions were rendered in cases questioning the validity of taxation statutes and refund of tax paid. Learned counsel on both

sides have also brought to our notice a number of decisions of the Supreme Court dealing with exclusion of jurisdiction of civil courts where

powers are conferred on special tribunals to deal with subjects like rent control, land reforms, co-operative societies, etc. But, no authoritative

pronouncement of the Supreme Court on the question of jurisdiction of civil courts in matters pertaining to companies coming under the Companies

Act has been cited. Learned counsel for the appellants have placed reliance on the decision in Sri Ramdas Motor Transport Ltd. and Others Vs.

Tadi Adhinarayana Reddy and Others, . In that case, a petition u/s 397 of the Companies Act was pending before the Company Law Board,

when the jurisdiction of the High Court under Article 226 of the Constitution was sought to be invoked. The application was dismissed by learned

single judge of the Andhra Pradesh High Court. But a Division Bench in appeal directed an enquiry by the Tadi Adinarayana Reddy Vs. Union of

India and Others, The decision of the Division Bench was quashed by the Supreme Court holding that where a shareholder had effective remedies

under the Companies Act for prevention of oppression and mismanagement, the High Court should not readily entertain a petition under Article

226 of the Constitution. The question of jurisdiction of the civil court vis-a-vis the Companies Act did not arise for consideration in that case.

However, it is rele-vant to consider the decisions of the Supreme Court as regards the jurisdiction of the civil courts regarding industrial disputes.

In The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , it is held (headnote) :

If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the civil court. If

the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Industrial Disputes Act, the

jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy ... But if an industrial dispute

relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication

under the Act.

13. In Sitaram Kashiram Konda Vs. Pigment Cakes and Chemicals Mfg. Co., , the Supreme Court held that a suit filed by a workman for a

declaration that the termination of service was illegal and for reinstatement and in the alternative for compensation for wrongful termination was

maintainable and the civil court could award compensation though it could not decree reinstatement. In Jitendra Nath Biswas Vs. M/s. Empire of

India and Ceylon Tea Co. and Another, , the Supreme Court held that the relief of reinstatement with back wages was available only under the

Industrial Disputes Act and such a relief could not be granted by a civil court and the provisions in the Industrial Disputes Act impliedly exclude the

jurisdiction of the civil court as regards such a relief. In Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, ,

a three-judge Bench of the Supreme Court considered all the earlier decisions and summarised the principles as follows (headnote) ;

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in

the civil court cannot be said to be not maintainable, even though such a dispute may also constitute an ""industrial dispute"" within the meaning of

Section 2(k) or Section 2A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Dis

putes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like the

Industrial Employment (Standing Orders) Act, 1946--which can be called ''sister enactments'' to Industrial Disputes Act--and which do not

provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided

they constitute industrial disputes within the meaning of Section 2(k) and Section 2A of the Industrial Disputes Act or where such enactment says

that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial

Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum

depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be

exercised to effectuate the object of the enactment and hence not unguided, The rule is to make a reference unless, of course, the dispute raised is

a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is

entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a workman

to approach the Labour Court/Industrial Tribunal directly--i. e. without the requirement of a reference by the Government--in case of industrial

disputes covered by Section 2A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the

effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified standing orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946, are statu-torily

imposed conditions of service and are binding both upon the employers and employees, though they do not amount to ''statutory provisions''. Any

violation of these standing orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the

civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from the Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism

to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon

appeals and revision applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more

extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

14. The Bench further directed that the principles enunciated in that judgment shall apply to all pending matters except where decrees had been

passed by the trial courts and the, matters were pending in appeal or second appeal, as the case may be, and all suits pending in the trial court shall

be governed by the principles enunciated therein as also the suits and proceedings to be instituted thereinafter.

15. From the decisions of the Supreme Court noticed above, it is clear that when there is no express provision excluding the jurisdiction of the civil

courts, such exclusion can be implied only in cases where the right itself is created and the machinery for the enforcement of that right is also

provided by the statute. If the right is traceable to general law of contract or it is a common law right, it can be enforced through the civil court even

though the forum under the statute also will have jurisdiction to enforce that right. Even the decision in Rajasthan State Road Transport

Corporation and Another Vs. Krishna Kant and Others, where the policy of law emerging from the Industrial Disputes Act and its sister

enactments is taken note of and the advantages in approaching the forums like the Industrial Tribunal or the Labour Court are noticed and resort to

such forums is directed, the jurisdiction of the civil courts is recognised and the decrees and orders passed by courts are saved.

16. Section 10 of the Companies Act prescribes that the ""court"" having jurisdiction under the Act shall be the High Court having jurisdiction with

respect to a company, except where it is specifically conferred on a District Court by the Central Government. The section also authorises the

Central Government to invest jurisdiction in the District Courts to deal with some of the provisions in the Companies Act. Section 2(11) defines

court"" as meaning the court having jurisdiction u/s 10 as regards all civil matters. As held by Jagannadha Rao J, (as he then was) in Avanthi

Explosives P. Ltd. Vs. Principal Subordinate Judge, Tirupathi and Another, Section 101010 of the Act only proceeds to enumerate or specify the

court having jurisdiction under the Act wherever such jurisdiction is conferred on the court by the other provisions of the Act. Section 10 by itself

does not confer jurisdiction on the High Court or the District Courts on all matters relating to companies. This is the view expressed by M. P.

Menon J. in R. Prakasam v. Sree Narayana Dhorma Paripalana Yogam [1980] 50 Comp Cas 611 (Ker) also which was accepted by a Division

Bench of this court in R.R. Rajendra Menon (No. 2) Vs. Cochin Stock Exchange Ltd. and Another, The view expressed by Dixit C. J. in Nava

Samaj Ltd. and Others Vs. Civil Judge, Class 1 and Others, , that the courts nominated u/s 10 have exclusive jurisdiction to take cognizance of all

matters covered by the Companies Act was not accepted by the other learned judge constituting the Bench. Learned counsel for the appellants

have also pointed out the decision of N.C. Mukherji J. in Hirendra Bhadra v. Titwin Engineering Co. (P) Ltd., 80 CWN 242 where the learned

judge held that the civil court could not grant a relief of declaration and injunction as regards the disqualification of a director u/s 299 of the

Companies Act. But the learned judge has not stated the specific provision by which the company court can grant such a relief. In Vitthalrao

Narayanrao Patil Vs. Maharashtra State Seeds Corporation Ltd. and another, , a learned judge of the Bombay High Court also held that a

director could not file a civil suit challenging a letter from the managing director to the effect that he had ceased to be a director. The learned judge

placed reliance on the decision of the Calcutta High Court noted above, and held that u/s 10 of the Companies Act essentially, it is the jurisdiction

of the High Court to entertain any dispute in respect of the affairs of the company except where the jurisdiction is conferred on the District Court

by the Central Government. But this court has consistently held that view that the jurisdiction of the civil court is not ousted by the provisions in the

Companies Act. In The Star Tile Works Ltd., Kallai and Others Vs. N. Govindan and Others, , a Division Bench of this court held that a suit filed

by some shareholders challenging the validity of the proceedings of an annual general body meeting and election of directors with a prayer for a

mandatory injunction for convening a fresh meeting of shareholders was maintainable and there was no provision in the Companies Act excluding

the powers of the civil court in respect of any matter. In Joseph v. Jos [1964] 34 Comp Cas 931 (Ker), K.K. Mathew J. (as he then was) on a

consideration of the authorities, held that there was distinction between individual membership rights and corporate membership rights of

shareholders and a shareholder had a right to move the civil court where the complaint was of infringement of individual membership rights.

Prakasam (R.) v. Sree Narayana Dharma Paripalana Yogam [1980] 50 Comp Cas 611 (Ker) noticed earlier was a petition under the Companies

Act challenging the validity of a meeting where the learned judge held that the grievance of the petitioner pertained to the realm of individual right

and his remedy was before the civil court and the petition under the Companies Act was not maintainable. The decision has been followed by a

Division Bench in R.R. Rajendra Menon (No. 2) Vs. Cochin Stock Exchange Ltd. and Another, also. In Avanthi Explosives P. Ltd. Vs. Principal

Subordinate Judge, Tirupathi and Another, Jagannadha Rao J. (as he then was) has considered all the earlier authorities including the decisions of

the Kerala High Court as also the decisions of the Andlira Pradesh, Madras and Punjab and Haryana High Courts in favour of the view that

Section 10 does not confer any exclusive jurisdiction on the company court. This is followed by the Karnataka High Court in P.C. Sriramulu Vs.

T.P. Sathyanarayan and others, also. We are in respectful agreement with the view that Section 10 of the Companies Act does not confer any

exclusive jurisdiction on the designated court and the jurisdiction is conferred on the designated company court only by the other provisions in the

Act and that the earlier decisions on this aspect do not require reconsideration.

17. In fact, the argument of the learned counsel for the appellants is not that the plaintiffs in O. S. Nos. 723 of 1992 and 41 of 1993 should have

approached the High Court for the reliefs sought for therein. The contention of the appellants is that the nature of the allegations in the two suits are

of oppression and mismanagement coming under the purview of Sections 397 and 398 of the Companies Act and they should have approached

the Company Law Board for the appropriate relief. It is contended that the Company Law Board has adequate jurisdiction and powers to enquire

into allegations of mismanagement including allegations of fraud in management and grant reliefs and hence the jurisdiction of the civil court is

impliedly barred.

18. Sections 397 and 398 provide for prevention of oppression and mismanagement of companies. Sections 397 and 398 read :

397. Application to Company Law Bard for relief in cases of oppression.--(1) Any member of a company who complain that the affairs of the

company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one

or more of themselves) may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in

virtue of Section 399.

(2) If, on any application under Sub-section (1), the Company Law Board is of opinion--

(a) that the company''s affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members

; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a

winding up order on the ground that it was just and equitable that the company should be wound up ;

the Company Law Board may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

398. Application to Company Law Board for relief in cases of mismanagement--(1) Any members of company who complain--

(a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the

company ; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture-holders, or any class of

shareholders of the company) has taken place in the management or control of the company, whether by an alteration in its board of directors, or

manager or in the ownership of the company''s shares, or if it has no share capital, in its membership, or in any other manner whatsoever and that

by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner

prejudicial to the interests of the company may apply to the Company Law Board for an order under this section, provided such members have a

right so to apply in virtue of Section 399.

(2) If, on any application under Sub-section (1) the Company Law Board is of opinion that the affairs of the company are being conducted as

aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the

company will be conducted as aforesaid the Company Law Board may, with a view to bringing to an end or preventing the matters complained of

or apprehended, make such order as it thinks fit.

19. The provisions in Sections 397 and 398 were first introduced in the Indian Companies Act, 1913, as Section 153C by the Amendment Act

LII of 1951, following the enactment of Section 210 of the English Companies Act, 1948. Section 397 provides against oppression of minority

shareholders and Section 398 provides for relief against mismanagement. The scope and ambit of Sections 397 and 398 has been elaborately dealt

with by Sri P.N. Bhagwati J. (as he then was) in Mohanlal Ganpatram v. Sayaji Jubilee Cotton and Jute, Mills Co. Ltd. [1964] 34 Comp Cas 777

: AIR 1965 Guj 96. It is held that the remedy provided by Sections 397 and 398 is of a preventive nature so as to bring to an end oppression and

mismanagement on the part of controlling shareholders and not to allow its continuance to the detriment of the aggrieved shareholders or the

company. The remedy is not intended to enable the aggrieved shareholders to set at naught what has already been done by the controlling

shareholders in the management of the company. The sections do not confer any power on the court (now the Company Law Board) to set aside

or interfere with past or concluded transactions between a company and third parties which are no longer continuing wrongs. The provisions are

essentially intended to control and prevent oppression of the rights of the minority shareholders and mismanagement by the majority. The

provisions in Section 397 are actually alternative to winding up proceedings. In order to invoke the jurisdiction of the Company Law Board u/s

397, it must be made out that the company"s affairs are being conducted in a manner prejudicial to public interest or oppressive to any member or

members of the company and the facts justify the making of a winding up order, but at the same time, making such winding up order would unfairly

prejudice such member or members. Thus, the only ground for winding up the company will be grounds for taking action u/s 397. There is no

similar restriction u/s 398. But, u/s 398 also, the member or members must make out that the affairs of the company are being conducted in a

manner prejudicial to public interest or the interests of the company or a material change has taken place in the management or control of the

company by an alteration in the board of directors or the ownership of company shares or the like. Section 399 provides that to maintain a petition

u/s 397 and 398, the complaining members must have a strength of not less than one-tenth of the total membership or one-tenth of the total

shareholding ; otherwise the Central Government must authorise them to make an application finding that it is just and equitable to do so.

20. In this case, it is pointed out that the plaintiffs in O. S. No. 723 of 1992 and O. S. No. 41 of 1993 have the requisite shareholding qualification

to apply under Sections 397 and 398. But, as noticed above, the scope of an application u/s 397 or Section 398 is limited. It is intended to

prevent only continuing wrongs and does not enable the shareholders to challenge concluded transactions. Moreover, the provisions, as already

noticed, are essentially intended against the tyranny of the majority against the minority shareholders. But, in this case, the complaint is that the

managing director and some of the directors of the company who do not have the backing of the majority, have conducted themselves in such a

manner to tilt the scales and create a majority for themselves. Some of the allegations may amount to mismanagement also within the meaning of

Section 398 giving jurisdiction to the Company Law Board to give appropriate reliefs u/s 397, 398 or 402 of the Act, but there too it is restricted

to bringing to an end or preventing the matters complained of or apprehended. In O. S. No. 723 of 1992 and O. S. No. 41 of 1993, the plaintiffs

have complained of acts affecting their individual membership rights as well as corporate membership rights. They have also complained of fraud in

the conduct of the meeting of the board of directors. They have alleged that the meeting was convened on August 18, 1992, without proper notice

to the second plaintiff and adequate notice to the other plaintiffs knowing that the second plaintiff will be away and the first plaintiff will not be able

to attend the meeting. They have challenged the decisions for leasing out the hospital and also taking over the equipment from defendants Nos. 2

and 3 and another, as detrimental to the interests of the company. The decision in the subsequent meeting to forfeit and sell the shares of the first

plaintiff and remove her from the service of the hospital are expropriatory in character and affecting her individual membership rights. The remedies

sought for by way of declaration and injunction in the above suits can normally be granted only by the civil courts. Some of the acts complained of

are not continuing wrongs also. That being the case, it is not possible to accept the argument that the appropriate remedy available to the plaintiffs

was to approach the Company Law Board and the suits are barred by the provisions in Sections 397 and 398 of the Companies Act. As noticed

above, the provisions in Sections 397 and 398 have been in the statute book from 1951 onwards. But those provisions have not been understood

as excluding the jurisdiction of the civil courts to entertain suits and grant reliefs of the nature sought for in these suits as held in a series of decisions

of this court as also the Madras, Andhra, Gujarat, Karnataka and Punjab and Haryana High Courts noticed earlier,

21. We are also unable to accept the argument advanced by learned counsel for the appellants that the plaintiffs in these suits are seeking to

enforce only the rights conferred on them by the Companies Act and not a common law right. In advancing their case and seeking reliefs the

plaintiffs have pointed out the contravention of some of the provisions in the Companies Act as regards the necessity to give notice for a meeting of

the board of directors, the necessity to disclose the interests of the directors in the resolutions, rules regarding co-option of directors,

disqualification from directorship u/s 283(1)(g), etc. But they are not seeking any relief that can be sought from other forums in enforcement of

these provisions. As observed by M.P. Menon J. in Marikar (Motors) Ltd. v. Ravikumar (M. I.) [1982] 52 Comp Cas 362 (Ker), the Companies

Act is not a complete and self-contained code, it only purports to consolidate collecting the statutory provisions relating to a particular topic and

embodying it in one enactment. As elucidated by Jagannatha Rao J. (as he then was) in Avanthi Explosives P. Ltd. Vs. Principal Subordinate

Judge, Tirupathi and Another, the rights and liabilities of the parties arise out of the general law of contract and not from the provisions of the

Companies Act. Also in the light of the general principles enunciated by the Supreme Court regarding exclusion of the jurisdiction of the civil courts

noticed earlier, it is not possible to accept the contention that the civil courts do not have jurisdiction to entertain the suits and grant relief in these

cases.

22. Nextly, it is contended that the civil courts cannot interfere with the internal management of a company. The argument is based on the principle

enunciated in Foss v. Harbottle [1842] 2 Hare 461. That was a case where the minority shareholders alleged that the company had a claim for

damages against some of the directors by reason of the fraudulent acts of those directors. But at the general meeting the majority resolved that no

action need be taken against them. The minority shareholders took legal proceedings against the directors to compel them to make good the loss

caused to the company. The suit was dismissed on the ground that the acts of directors were capable of confirmation by the majority of members

and the court should not interfere. It was for the majority to decide what was for the benefit of the company. That was an action on behalf of the

company itself, which could not find approval from the majority of shareholders. But subsequent decisions have recognised exceptions to the rule

in Fass v. Harbottle (1842) 2 Hare 461 where the majority cannot confirm the acts of the board of directors. The principle stated has no

application here as the plaintiff''s case is that the resolutions passed by the board of directors cannot have the approval of the majority of

shareholders in a general meeting. The acts complained of in this case are the attempt to place a heavy financial burden on the company by the

purchase of the equipment and also lease of the hospital, which, according to the plaintiffs, were against the interests of the company and could not

have been approved by the majority. The meetings held on August 18, 1992, and August 29, 1992, have passed resolutions creating a majority for

the second respondent in the board itself and also divest the first plaintiff of her shareholding so as to achieve a majority in the general body

meeting also. These were not acts which can be approved by the majority in a general body meeting. So the principle in Foss v. Harbottle [1842]

2 Hare 461 cannot be a bar for granting the reliefs sought for in these suits.

23. Coming to the merits of the case, the plaintiffs have challenged the board meetings held on August 18, 1992, and August 29, 1992, as illegal

and void. As already noticed, the meeting held at 11 a.m. on August 18, 1992, was preceded by exhibit-A2 notice. The agenda as per the notice

included :

(i) passing the minutes of the previous meeting,

(ii) approval of the balance-sheet for the period ending March 31, 1991,

(iii) transfer of shares, and

(iv) any other matter permitted by the chair.

24. It is also noticed that in that meeting apart from the matters specifically mentioned in the agenda, the board took decisions :

(a) to co-opt defendants Nos. 5, 6 and 7 as directors,

(b) to purchase certain equipment standing in the name of defendants Nos. 2 and 3 and Dr. K.K. Abraham with the liability to clear the

outstanding dues to the Bank of India,

(c) to lease the hospital, and

(d) to hold an extraordinary general body meeting on September 19, 1992, at Neelima Hall in Edacochin.

25. The validity of the meeting is, inter alia, challenged on the following grounds :

1. There was no proper notice about the meeting to the second plaintiff ;

2. The other plaintiffs also had only inadequate notice and the request of the first plaintiff for postponement of the meeting was rejected ;

3. The resolutions passed were not in the agenda ;

4. The board had no authority to co-opt defendants Nos. 5, 6 and 7 as directors ;

5. The decision to. purchase the equipment from defendants Nos. 2 and 3 and Dr. K.K. Abraham was detrimental to the interests of the company,

and defendants, Nos. 2 and 3 as directors had not disclosed their interest in the resolution as required by Section 299 of the Companies Act;

6. The eighth defendant, Dr. Aravinda Babu, had incurred a disqualification u/s 283(1)(g) and vacated office as he had not obtained leave of

absence for the earlier meetings.

26. The plaintiffs have specifically alleged that the resolutions were vitiated by mala fides, ulterior motives and fraud and were not in the best

interests of the company. The second defendant was aware that he could not command a majority in the board and adopted an illegal method of

unlawfully co-opting three of his close relatives as directors for creating an artificial majority for himself.

27. The specific contention of the plaintiff is that the second defendant convened the directors board meeting at 11 a.m. on August 18, 1992,

knowing that the second plaintiff was away from station and the first plaintiff had fixed up an operation in the hospital itself and will not be in a

position to attend the meeting. It is the admitted case that plaintiffs Nos. 1 and 2 had met the second defendant on August 15, 1992, in the hospital

room where he was convalescing after an operation, It was a courtesy call. According to the second plaintiff examined as P. W. 1, he had

indicated that he will be away in Pondicherry on August 18, 1992, as he had to attend a meeting of examiners. He was at that time working as the

director of the School of Indian Legal Thought in the Mahatma Gandhi University at Kottayam. The first plaintiff as P.W. 3 has also stated so.

According to the first plaintiff, the second defendant did not tell them anything about a proposal for a directors board meeting on August 18, 1992.

The defence version, as stated by D.W. 1, is that there was already a request from some shareholders to call an extraordinary general body

meeting, the accounts for the previous year had also to be finalised, the second defendant intended to leave the hospital on August 18, 1992, and

be away from Ernakulam for some time and so wanted to call the meeting on August 18, 1992, and had told plaintiffs Nos. 1 and 2 that the

meeting must be held before he left the hospital. But D.W. 1 has no specific case that he told plaintiffs Nos. 1 and 2 about convening a meeting on

August 18, 1992, itself. The notice for the meeting was not actually served on the second plaintiff. It was only left at his residence. According to

the second plaintiff he left for Pondicherry on the morning of August 16, 1992, and returned only on August 18, 1992, noon when he happened to

see the notice. By that time the meeting was over. He could not contact the first plaintiff also as she was in the operation theatre. The first plaintiff

had given a written request for postponing the meeting and that has been recorded in the minutes itself, The minutes also contain the reply rejecting

the request which was communicated to the plaintiff. As on August 18, 1992, the four plaintiffs and defendants Nos. 2 to 4 were the directors. The

second defendant did not have majority in the board of directors. Admittedly the eighth defendant, who was also a director, was abroad and had

not attended the previous three meetings and had thus incurred a disqualification u/s 283(1)(g). Of course, it could have been condoned by the

board of directors. But no such resolution was passed condoning his absence and allowing him to continue as a director. As already noticed, the

meeting held on August 18, 1992, passed a resolution to co-opt defendants Nos. 5 to 7 as directors by which the second defendant could

command a comfortable majority in the directors board meeting. Co-option of these defendants was not in the agenda. So also the proposal for

purchasing the equipment standing in the name of defendants Nos. 2 and 3 and Dr. K.K. Abraham. The proposal to lease the hospital was also

not in the agenda. It cannot be disputed that decisions on these aspects have far-reaching consequences affecting the company as also the plaintiffs.

According to the plaintiffs, the second defendant has taken advantage of the absence of the second plaintiff from the locality on August 18, 1992,

and hastily called a meeting without disclosing these proposals in the agenda and got them passed and also created a majority for himself by co-

opting defendants Nos. 5 to 7 in the directors board and it amounts to a fraudulent conduct.

28. Section 286 of the Act requires that notice of every meeting of the board of directors of a company shall be given in writing to every director

for the time being in India, and at his usual address in India to every other director. This was the legal position even before the Companies Act of

1956 as noticed in the decision reported in Shri Parmeshwari Prasad Gupta Vs. The Union of India (UOI), where it was held that notice to all

directors of a meeting of the board of directors is essential for the validity of any resolution passed at the meeting. That was a case where the

resolution passed by the board of directors was challenged by an employee of the company whose services were terminated by the resolution.

One of the directors had not been given notice of that meeting. The Supreme Court held that though the resolution passed by the board was

invalid, it was open to the regularly constituted board of directors to ratify the action. In this case, the first plaintiff had not been served with notice

of the meeting. It is contended that notice was left in his residence and it is sufficient service of notice in compliance with the provisions of Section

286 of the Act. But the provisions of Section 286 specifically state that notice must be given in writing to every director. The mode of service is not

prescribed. The plaintiffs/respondents contend that there must be actual service. Learned counsel for the appellants relied on the provisions for

substituted service in the CPC and also the provisions for service of notice on companies to contend that service on a close relative or leaving it at

the residence is sufficient. But those provisions were not relevant. In the case of a court notice, the court first attempts direct service and when it is

not feasible, substituted service of notice on a close relative or by affixture or by publication. In all those cases, it is open to the court to consider

such service as sufficient and declare that the party is duly served. In the absence of any such machinery for a company meeting, leaving the notice

in the residence of the director in his absence cannot be treated as proper notice. Hence, the contention of the first plaintiff that he had not been

given notice of meeting must be upheld. So he is entitled to challenge the validity of resolutions on that ground. He has attended the very next

meeting and recorded his objections. So there is no ratification of the resolutions also. As noticed earlier, the notice contained an agenda for the

meeting. But the vital resolutions passed on that day were not in the agenda. Learned counsel for the plaintiffs/respondents points out the general

principle stated in Kodiyathur Panchayat v. Dt. Panchayat Officer [1977] KLT 80 that notice of business must be specified and no other matter

should be considered unless the whole body corporate is present and consents. But the provisions in the Companies Act do not require that there

must be an agenda for a meeting of the board of directors. Learned counsel for the appellants have brought to our notice the decision of the Punjab

and Har-yana High Court in Suresh Chandra Marwaha v. Lauls Private Ltd. [1978] 48 Comp Cas 110 (P&h) and also the decision of the Delhi

High Court in Abnash Kaur Vs. Lord Krishna Sugar Mills and Others, and submitted that there is no necessity for an agenda for the meeting of the

board of directors. In Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. [1981] 51 Comp Cas 743 (SC) also co-

option of a director not in the agenda has been upheld. As noticed in these decisions there is a specification in Section 172 for issuance of an

agenda for general meetings. But there is no such provision for meeting of the board of directors. The matters not included in the agenda can be

considered in the meeting of the board of directors with the permission of the chairman under the residuary clause in the agenda. There was such a

residuary clause in the notice issued in this case also. Thus the power of directors board meeting to consider matters not included in the agenda

cannot be doubted. But the resolutions are not challenged merely on the ground that they were not included in the agenda. The contention of the

plaintiffs is that consideration of these resolutions which were not in the agenda amounted to fraud. Passing resolutions which are not in the agenda

by itself will not amount to fraud. But, if the second defendant had convened the meeting with the object of getting the resolutions passed, but

deliberately omitted to include them in the agenda, it will amount to active concealment of a fact by one having knowledge or belief of the fact and

will amount to fraud. In this case, the evidence adduced shows that the plaintiffs had met the second defendant on August 15, 1992. The notice for

the meeting is also dated August 15, 1992. Plaintiffs Nos. 1 and 2 have deposed that they had mentioned about the second plaintiff''s proposed

trip to Pondicherry, The second defendant as D.W. 1 has stated that the second plaintiff did not tell him about going to Pondicherry on August 18,

1992, but on the other hand, stated that he would not be going to Kottayam for his regular classes as there was a bus strike and gave the

impression that he would be available for the meeting on August 18, 1992. He has also stated that he had told the second plaintiff that he was

planning to lease the hospital on August 18, 1992, to take rest and about the need to hold a directors board meeting as there was a letter from the

Income Tax authorities threatening penal action and there was also the requisition for the extraordinary general body meeting. But, as noted earlier,

he has no case that he told plaintiffs Nos. 1 and 2 that he was proposing to call for a directors board meeting at 11 a. m. on August 18, 1992.

From the facts and circumstances, the irresistible conclusion can only be that when the plaintiffs met him on August 15, 1992, the second defendant

must have known that the second plaintiff will be away on August 18, 1992, and decided to call a meeting on that day itself. As D.W. 1 he has

stated that the first plaintiff had no justification for absenting from the meeting. But, if really plaintiffs Nos. 1 and 2 had any inkling that a meeting

would be called and these resolutions affecting the future of the company and their own personal interests would be passed, most likely the second

plaintiff would have cancelled his trip and the first plaintiff would have made necessary adjustments for attending the meeting. It is clear that the

second dei''endant had taken advantage of the absence of the second plaintiff and decided to call the meeting on August 18, 1992, itself without

disclosing the real agenda and in the absence of the plaintiffs got all the resolutions passed with the help of other directors who were siding with

him. The endeavour to alter other persons'' rights and to one''s own advantage by deception which constitutes fraud (vide The Barium Chemicals

Ltd. and Another Vs. The Company Law Board and Others,) is apparent in the conduct of the second defendant. The evidence adduced by the

second defendant shows that he has a grievance that on some earlier occasions the plaintiffs and the shareholders siding with them have adopted

similar methods to keep him out of management. He has also a grievance that the plaintiffs were behind the request for holding the extraordinary

general body meeting. But all those cannot justify the manner in which the board meeting was convened and held on August 18, 1992. Holding the

meeting and passing the resolutions must be held to be invalid for want of notice to the second plaintiff and also as adoption of these resolutions,

without including them in the agenda in the background and circumstances of the case, amounted to fraud.

29. The plaintiffs have a case that the board of directors had no authority to co-opt defendants Nos. 5 to 7 as directors. It is contended for the

plaintiffs/ respondents that as per Article 35 of exhibit A-1 the articles of association of the company, the board of directors has been authorised

only to fill up casual vacancies occurring in the board and not co-opt directors. As per the articles of association, the maximum number of directors

permissible is 11. As on August 18, 1992, there were eight directors including the eighth defendant. Article 26 of exhibit A-l, articles of association

of the company, states that all subsequent appointments (to the board of directors) shall be made by general meeting and they shall hold office for a

period of three years and Article 35 provides for filling up casual vacancies. So it is argued that the board of directors could have only filled up

casual vacancies arising between general body meetings. Section 260 of the Companies Act preserves the power conferred on the board of

directors by the articles to appoint additional directors. It is clear from the wordings of the section itself that it does not confer any right on the

board of directors to co-opt or appoint additional directors. The power can be conferred only by the articles of association of the company. This is

clear from the decision in Needle Industries (India) Ltd.''s case [1981] 51 Comp Cas 743 (SC) also. But it is pointed out by the

defendants/appellants that by Article 2 of exhibit A-l, articles of association, the regulations contained in Table A in the First Schedule to the

Companies Act have been adopted and are applicable to the company. Article 2B excludes only the application of regulations 21, 36 to 43, 64,

66, 70 and 71 of Table A. Regulation 72 of Table A to Schedule I confers the power on the board to appoint a per son as an additional director

provided the number of directors does not exceed the maximum strength fixed for the board by the articles. So, according to the defendants, by

adopting regulation 72 of Table A as part of the articles of association the power to co-opt and appoint an additional director has been conferred

on the board of directors, Learned counsel for the plaintiffs-respondents points out that even if regulation 72 is applicable, there is no power to co-

opt more than one member at a time as it speaks of the power to appoint ""a person"" as additional director only. But it cannot be understood as

giving power to appoint only one at a time or at one meeting. The regulation must be understood as conferring power to appoint additional

directors not exceeding the maximum strength fixed by the articles of association. Moreover, the second plaintiff as PW-1 in his cross-examination

has admitted that there were earlier instances in which the board of directors had co-opted directors. So the appointment of additional directors

cannot fail for want of power in the board of directors to co-opt. But, co-option of additional directors was also not in the agenda. Learned

counsel for the appellants have pointed out that in Needle Industries (India) Ltd."s case [1981] 51 Comp Cas 743 (SC), the co-option of

additional director at the time of the meeting without including it in the agenda was upheld. But the discussion in pages 815-816 of that judgment

makes it clear that co-option of additional directors, which was not in the agenda was unavoidable and could not be foreseen earlier. As observed

by the learned author Ramaiya in his Guide to the Companies Act (page 1679, 13th edition) the power should be exercised bona fide in the

interest of the company and not on extraneous considerations such as for strengthening the position of a majority in the board. In this case, there

was no necessity for the co-option except for gaining a majority for the managing director in the subsequent meetings, so the co-option cannot be

said to be bona fide. The co-option must fail for want of bona fides and also for the reason that the convening of the meeting and the resolutions

passed on August 18, 1992, were invalid for the reasons already noticed.

30. The plaintiffs have also contended that the eighth defendant, Dr. Aravind Babu, could not have been permitted to attend the meeting as he had

incurred a disqualification u/s 283(1)(g) of the Act. It is admitted that the eighth defendant who was abroad had not attended three consecutive

meetings of the board of directors and for a continuous period of more than three months as on August 18, 1992. According to the plaintiffs, the

disqualification is automatic and does not require any resolution by the board of directors to that effect. But, in this case, it is pointed out by learned

counsel for the respondents that there is no evidence that the eighth defendant had notice of the earlier meetings and was absenting himself or that

he was aware of his own disqualification. As per Section 286(1) of the Act, to a director who is outside India, the notice of the meeting must be

given at his usual address in India and there is no evidence that such notice was given to the eighth defendant. Of course, this plea is not covered

by the pleadings. It was within the power of the board to give leave of absence also and permit him to continue as a director. However, in our

opinion, this question is not very material for a decision in this case. The eighth defendant had attended the meeting held on August 18, 1992, He

did not attend the meetings on August 29, 1992, and September 5, 1992. The meeting held on August 18, 1992, had a quorum even without the

eighth defendant. It is stated that the resolution for taking the equipment was actually moved by him. But the records indicate otherwise. So, even

in his absence, the other three directors could have passed the resolutions. The resolutions cannot be held to be bad merely because the eighth

defendant is allowed to attend and participate in the meeting held on August 18, 1992.

31. Another resolution passed in the meeting held on August 18, 1992, was to purchase the equipment from defendants Nos. 2 and 3 and Dr.

K.K. Abraham, which, according to the plaintiffs, was highly detrimental to the interests of the company. The plaintiffs contend that this was also

not mentioned in the agenda and passing the resolutions in a meeting without proper notice and in the absence of the plaintiffs is lacking in bona

fides. Apart from these grounds stated in the plaint, it is argued by learned counsel for the respondents that there was a vital omission on the part of

defendants Nos. 2 and 3 and the eighth defendant to disclose their interests in the resolutions as required by Section 299 of the Act. Section 299

of the Act requires that every director of a company who is in any way directly concerned or interested in a contract or arrangements or proposed

contract or arrangements entered into or to be entered into by or on behalf of the company shall disclose his nature of concern or interest at a

meeting of the board of directors. Non-disclosure invites a penalty also. It is contended for the appellants that no such plea is taken in the plaint.

Learned counsel has also pointed out the decision in Venkatachalapathi v. Guntur Cotton, Jute and Paper Mills Co. Ltd., AIR 1929 Mad 353,

that formal disclosure is not necessary if all directors know of such interest. Prima facie, the provisions in Section 299 appear to be intended for all

contracts which do not disclose the interest of the directors. Here, the resolution was to purchase equipment from defendants Nos. 2 and 3

themselves. The resolution was also to the effect that the liability of defendants Nos. 2 and 3 to the Bank of India will be taken over by the

company. Of course, the resolution itself does not disclose the full liability which is admittedly more than Rs. 20 lakhs as per the averments in the

written statement. The plaintiffs have pointed out that the eighth defendant had also interest as he was a surety for K.K. Abraham, for his liability to

the bank and that too, had not been disclosed. The provisions in Section 300 of the Act that an interested director should not participate or vote in

the board''s proceedings, does not apply to private companies and has no application here. The decision may not be vitiated by non-compliance

with Section 299 of the Act, but must fail for the reason that it was not disclosed in the agenda and the convening of the meeting itself was invalid.

32. As regards the decision to lease the hospital also, it is pointed out for the plaintiffs that this is the only institution run by the company and the

decision was to lease it out for a period of five years and the board had no power to do so. But Clause 14 of Article 3 of the articles of association

provides for lease of all or any part of the property movable or immovable of the company. The power of the company can be exercised by the

board of directors by virtue of Article 36 of the articles of association. So the resolution cannot fail for want of authority with the board of

directors, but only for lack of propriety in passing the resolution without including it in the agenda and also for the reason that the meeting itself was

not validly convened as found earlier.

33. Another decision that is challenged is the venue fixed for the general body meeting on September 19, 1992. Here again, it was within the

powers of the board of directors to fix the place for holding the meeting. As the meeting itself did not take place, the validity of the decision need

not be considered.

34. Item No. 3 in the agenda for the meeting held on August 29, 1992, was ""cash taken by Dr. Rosaline Sebastian from the cash counter totalling

to Rs. 1,71,839.86"". In spite of opposition from the plaintiffs, the meeting held on August 29, 1992, passed a resolution to forfeit and sell the 97

shares held by the first plaintiff for realisation of the abovementioned amount. In the subsequent meeting held on September 5, 1992, another

resolution was passed allotting these shares to Binu George, the plaintiff in O. S. No. 901 of 1992. According to the plaintiffs, plaintiffs Nos. 1 and

2 had been advancing money from time to time as loans to the first defendant-company whenever it was in need of finance and it was

acknowledged in the accounts and records of the company also. A flat belonging to the first plaintiff''s brother, A.E. Thomas, had been taken on

rent by the first defendant-company on a monthly rent of Rs. 2,000. The first plaintiff had been authorised by her brother to receive rent from the

first defendant-company. The loan repayments and rent payments have been distorted as ""taking money from the cash counter"". The plaintiffs deny

the allegation that the first plaintiff took an amount of Rs. 1,71,839.86 as false. In the written statement, it is admitted that the first plaintiff had been

receiving money only as amounts due as principal, and interest to the second plaintiff and rent due to the first plaintiff''s brother, A. E. Thomas, It is

also submitted that all receipts are signed by the first plaintiff only. It is further alleged in the written statement that there were some other cases

against the company claiming amounts which had been paid to the representatives of the claimants and the company was facing the liability to make

a double payment. It is further stated in the, written statement that the first plaintiff received a total amount of Rs. 1,71,839.86 from the cash

counter and in fact the said amounts were due to the second plaintiff and also to A. E. Thomas, According to the defendants/appellants, the receipt

of the money by the first plaintiff was unauthorised and so the first plaintiff was a debtor to the company and the company had first and paramount

lien on the shares held by the first plaintiff.and only in exercise of the lien the shares of the first plaintiff were sold, and allotted to Binu George, the

plaintiff in O. S. No. 901 of 1992. It is pointed out for the defendants that Article 6 of exhibit A-1, articles of association, provides for a lien on the

shares held by the plaintiffs. It is made .clear, that it was not a case of forfeiture of the shares, but only exercise of the lien as provided by the

articles of association. But exhibit A-1, articles of association, does not prescribe how the lien is to be exercised. Learned counsel for the

appellants have pointed out some authorities that the lien can be enforced by the company without resort to a court of law. Article 9 of Table A of

Schedule I also provides for a lien. Articles 10 - 12 deal with the enforcement of the lien and application of the amounts received. In the case of a

public limited company, it may be possible to offer the shares for sale at the current market price in the stock exchange. But it is not possible in the

case of a private limited company. The provisions in Articles 9 - 11 in exhibit A-1, Articles of association, prima facie, apply only for voluntary

sales. In this case, the resolutions passed on August 29, 1992, and September 5, 1992, together have mixed up the provisions for enforcement of

lien and forfeiture of shares and its allotment which, prima facie, appear to be illegal. As noticed above, the facts proved in the case do not

establish that the first plaintiff was actually a debtor to the company. The amounts drawn by the first plaintiff were actually due to her brother and

the second plaintiff. There was no claim from them for those amounts. It is stated that the first plaintiff did not produce any authorisation. But no

such authorisation was insisted on when the amounts were actually paid to the first plaintiff. Thereafter, a claim can arise against the first plaintiff

only if her brother or the second plaintiff had made a claim against the company for the same amounts. There was no such case. Moreover, the

minutes of the meeting held on August 29, 1992, itself shows that the second plaintiff pointed out that the money was taken on his behalf and it was

the money that the company owed him. That being the case, there was no scope for making the first plaintiff a debtor for that amount and

proceeding to enforce a lien against her shares. The resolution was to the effect that the board resolved to dispose of her shares and recover the

proceeds thereof and also recover the deficit, if any, from the first plaintiff. There was also a direction that she should surrender her share

certificates for cancellation. In the next meeting the shares are seen allotted to the plaintiff in O. S. No. 901 of 1992 who was none other than an

employee in the hospital, taking the face value for the shares. There is nothing to show that it was offered to any one else. It is not clear how the

plaintiff in O. S. No. 901 of 1992 came to know that the shares were available for allotment, and made an application for consideration by the

board of directors. It is elementary that the face value of shares of the company cannot be its real worth. It may, at times, be much more than the

face value according to the assets of the company or it may be much less. There is nothing to indicate how the value of the shares was fixed by the

meeting held on September 5, 1992. Even assuming that the first plaintiff was a debtor to the company and the company wanted to exercise its

lien, the principles of natural justice require a notice to be issued to the first plaintiff calling upon her to discharge the debts and the proposal to

exercise the lien and sell the shares before such a step is taken. Article 10 in Table A to Schedule I also mandates that in order to exercise a lien

and sell the shares of a member, the sum in respect of which the lien exists must be presently payable and a minimum 14 days" notice in writing

demanding payment of such amount must be made. Admittedly, no such notice has been issued. The argument that notice is not mandatory if the

amount is presently payable cannot be accepted. Reading Article 10 as a whole, it is clear that no sale shall be made unless both requirements are

complied with. The plaintiff in O. S. No. 901 of 1992 has a case that he is an innocent purchaser and even if there is any defect in the sale, his title

to the shares will not be affected. But, in this case, the entire proceedings are illegal and invalid. There has, in fact, been no proper sale of the

shares to the plaintiff in O. S. No. 901 of 1992. The company was not possessed of the shares at any time to make an allotment in favour of the

plaintiff in O. S. No. 901 of 1992 and so he cannot derive any right for the shares by the procedure. At best, he can claim refund of the amount

allegedly paid by him. The first plaintiff continues to be a holder of the 97 shares in the company.

35. The other point in dispute is about the validity of the general body meeting held on November 6, 1992. The requisition for the meeting had

been made by three members, namely, V.K. Thomas, N.V. Poulose and Vinu Thomas, u/s 169 of the Companies Act. As per Section 169(6) if

the board does not, within 21 days from the date of the deposit of a valid requisition, proceed duly to call a meeting on a day not later than 45

days from the date of deposit of the requisition, the meeting may be called by the requisitionists themselves. The meeting held on November 6,

1992, was one called by the requisitionists. It is argued by learned counsel for the appellants that there was no failure on the part of the board of

directors to call a meeting. In fact, a decision was taken on August 18, 1992, to hold a general body meeting on September 19, 1992. So,

according to learned counsel, the requisitionists had no right to call a meeting by" themselves. In this case, as noticed above, the board meeting

held on August 18, 1992, had taken a decision to call a general body meeting on September 19, 1992. But there were other developments like the

decision to sell the shares of the first plaintiff leading to the institution of O. S. No. 723 of 1992 by the plaintiffs therein on September 4, 1992. In

O. S. No. 723 of 1992 the plaintiffs had initially sought for and obtained an interim injunction order against implementing the resolutions passed on

August 18, 1992, which included holding the general body meeting also. But, subsequently, the order was modified. The requisitionists had also

intervened in the proceedings before the court. The court, after a preliminary hearing permitted the general body meeting to be held fixing another

date and venue. But, by the order, the court also, prima facie, found that the first plaintiff had not been divested of her 97 shares and so she was

also allowed to participate and exercise her voting right subject to the final decision later. The defendants filed C. R. P. No. 3146 of 1992 against

that order and obtained a stay. The meeting was held when that stay order was in force. The stay order was later modified making it clear that it

operated only as regards the first plaintiff, as the subject-matter of the revision was only the permission given to the first plaintiff to participate and

vote in the meeting. However, there was no order from the court prohibiting the holding of a general body meeting of the company. The plaintiffs in

O. S. No. 723 of 1992 had only complained about the venue fixed for the meeting and excluding the first plaintiff from participation and voting.

The defendants had also only objection to the first plaintiff"s participation as they claimed that her rights have been transferred to the plaintiff in O.

S. No. 901 of 1992. But as found above, there was no proper sale and the first plaintiff had not been divested of the shareholding. O. S. No. 901

of 1992 has been filed complaining that the plaintiff therein had no notice of the meeting. But since he had not become a shareholder, he had no

valid claim to attend the meeting also. It is not possible to accept the contention of learned counsel for the appellants that the requisitionists will get

a right to call a meeting only if the directors failed to take necessary steps. In this case, they had taken some steps but, themselves have obtained a

stay order as they were not willing to proceed with the conduct of the general body meeting abiding by the directions given by the trial court. Such

being the case, the requisitionists were entitled to call the meeting. There is no case that the meeting was invalid for any other reason. So the

meeting held at the instance of the requisitionists on November 6, 1992, and the decisions taken therein milst be upheld.

36. The respondents/plaintiffs in O. S. No. 723 of 1992 have filed C. M. P. No, 6698 of 1997 praying for admission of additional documents in

evidence. The documents produced are copies of the plaints in three suits filed by the Bank of India against the company and others, the first

information and charge-sheet filed by the Central Bureau of Investigation against the second defendant in a case regarding purchase of equipment

and also electricity arrear bills. This court had also directed an audit of the accounts of the company for the period of pendency of these suits and

appeals. We do not find it necessary to place reliance on these documents for purposes of disposal of the appeals.

37. A. S. No. 497 of 1994 is by the eighth defendant in O. S. No. 41 of 1993 who claims to be a lessee pursuant to the resolution passed on

August 18, 1992. It is found, that the resolution is illegal. Even if the lease has been actually granted, its term must be over by this time. So he is not

entitled to any relief based on the lease. Similarly, the appellant in A. S. No. 668 of 1994 who is the eighth defendant in O. S. No. 723 of 1992

ceases to be a director with the meeting held on November 6, 1992. So he is also not entitled to any relief.

38. In the result of the above discussions and conclusions, the dismissal of O. S. No. 897 of 1992 and O. S. No. 901 of 1992 will stand.

Consequently, A. S. Nos. 688 of 1994 and 756 of 1994 are only to be dismissed. In O. S. No. 723 of 1992 the decree declaring the meeting

held on August 18, 1992, and August 29, 1992, as illegal and void is upheld for the reasons stated in this judgment. The decisions to lease the

hospital and purchase the equipment taken on August 18, 1992, will not bind the plaintiffs and the company. In O. S. No. 41 of 1993, the

declaration granted that there was no valid forfeiture or transfer of the shares held by the first plaintiff in O. S. No. 723 of 1992 and that she

continues to be a shareholder is upheld so also the validity of the meeting held on November 6, 1992, and the election of the plaintiffs in O. S. No.

41 of 1993 and others as directors. Consequential injunctions granted will also stand. Thus, the other appeals will also stand dismissed. A. S. No.

688 of 1994 is dismissed for non-prosecution. The appellants in A. S. No. 757 of 1994 will pay costs of the contesting respondents one set.

Parties to bear their costs in the other appeals.