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Madhya Pradesh High Court

Case No: Company Appeal No. 6 of 1983

Parmanand Choudhary and Others		APPELLANT
	Vs	
Smt. Shukla Devi Mishra and Others		RESPONDENT

Date of Decision: Jan. 29, 1987

Acts Referred:

- Companies (Court) Rules, 1959 - Rule 6, 9
- Companies Act, 1956 - Section 283(1), 397, 398, 485, 53(2)

Citation: (1990) 67 CompCas 45

Hon'ble Judges: S. Awasthy, J; C.P. Sen, J

Bench: Division Bench

Advocate: Y.S. Dharmadhikari, for the Appellant; M.M. Sapre and A.K. Khaskalanter, for the Respondent

Final Decision: Dismissed

Judgement

C.P. Sen, J.

This is an appeal u/s 485 of the Companies Act, 1956, by the appellants/petitioners against rejection of their petition under Sections 397 and 398 of the Act, for relief against oppression and mismanagement, by the learned single judge.

2. A partnership firm known as "Durga Pesticides" comprising petitioners Nos. 1 and 2, Paramanand Choudhary and Sunderlal Dalai, and respondent No. 2, Brijmohan Mishra, was constituted with effect from August 1, 1974, for carrying on the business of manufacture and sale of pesticides at Burhanpur, Khandwa District. The business was located at 13, Industrial Estate, Burhanpur. Each of the three partners contributed a capital of Rs. 25,000 and the profits and losses were to be shared almost equally between them. This firm was reconstituted with effect from April 1, 1976, by the addition of petitioner No. 3, Smt. Tara Devi and Smt. Padmadevi Gupta

also as partners. The shares of all the five partners as well as their contribution to the capital were equal. A further reconstitution of the firm was made with effect from August 10, 1979. By this reconstitution, respondent No. 2, Brijmohan Mishra, and Smt. Padmadevi Gupta ceased to be partners of the firm ; but Smt. Shukla Devi Mishra, wife of respondent No. 2, Brijmohan Mishra, became a partner along with the three petitioners. The capital of the firm was increased to Rs. 2,00,000 and each of the four partners'' contribution was Rs. 50,000 and the profits and losses were to be shared equally by all the four partners. The partnership was converted into a company, "Durga Pesticides Pvt. Ltd.", on November 18, 1980. The registered office of the company is situated at 13, Industrial Estate, Burhanpur, and the share capital of the company is Rs. 5,00,000 divided into 5,000 equal shares of Rs. 100 each. The main object of the company was to take over, purchase and acquire as a going concern the business of the partnership firm, ''Durga Pesticides'', together with all the assets and liabilities of that business and to carry on that business of manufacturing and selling of pesticides, insecticides and other plant protection chemicals. The other objects of the company are set forth in the memorandum of association of the company. The petitioners and respondent No. 1 were subscribers to the memorandum of association and had taken 10 shares each. Further shares were issued by the company and each of the petitioners and respondent No. 1 hold 520 shares making the subscribed capital Rs. 2,08,000. The said firm, Durga Pesticides, had taken a loan of Rs. 4,18,500 from the M. P. Finance Corporation and the liabilities were taken over by the company. Petitioners Nos. 1 to 3 and respondent No. 1 were made permanent directors with petitioner No. 1 as managing director. The M. P. Finance Corporation issued a notice dated April 13, 1981, demanding repayment of its loan with interest amounting to Rs. 4,89,608.14 as on December 1, 1980, and threatening legal action in the event of default. An extraordinary meeting of the board of directors was called on April 19, 1981, and a resolution was passed stating that there was no objection to the management of the company being taken over by the M. P. Finance Corporation so that it can recover its dues. Thereafter, petitioner No. 1 submitted his resignation as managing director on May 5, 1981. However, a meeting of the board of directors was again called on May 8, 1981 at Indore, apparently to facilitate the presence of S.K. Pandit, General Manager of the M. P. Finance Corporation. In that meeting, the resolution dated April 19, 1981, was superseded and, it was decided that respondent No. 1 be appointed as chairman-cum-managing director of the company for a period of five years with the other directors, i.e., the petitioners discharging an advisory role. The day-to-day working of the company was entrusted to respondent No. 1 and she was authorised to streamline the management and improve the working of the company. This arrangement was made to tide over the difficulties faced by the company which were accentuated by the M. P. Finance Corporation demanding repayment of its loan. It was mentioned that respondent No. 1 will ensure that all the directors get a reasonable return on their investment, i.e., Rs. 24,000 annually. A separate agreement was also executed by the petitioners and respondent No. 1, on

May 15, 1981, incorporating these conditions, but on August 17, 1981, the petitioners made a grievance that they were not permitted to enter into the factory premises and to discharge their advisory role as directors. This event was repeated on September 3, 1981. A meeting of the board of directors was called by petitioner No. 2 on September 22, 1981. This meeting was attended by the petitioners and not by respondent No. 1 who challenged the authority of petitioner No. 2 to call the meeting, saying that petitioner No. 2 has no power to call the meeting. In that meeting, the resolution dated May 8, 1981, was superseded and petitioner No. 2 was appointed as chairman-cum-managing director and the next meeting of the board of directors was fixed for September 29, 1981, but no such meeting took place. Respondent No. 1, by notice dated September 25, 1981, called a meeting of the board of directors on October 5, 1981, at the office of the M. P. Finance Corporation at Indore. On that day, the petitioners attended the meeting but not respondent No. 1 and so nothing happened on that day. Thereafter, a meeting of the board of directors was called by respondent No. 1, on November 30, 1981, at the registered office which was attended by respondent No. 1, Shukla Devi Mishra, and respondent No. 6, D.P. Khanna, who was nominated as a director by the corporation under the State Financial Corporations Act. In that meeting, a resolution was passed appointing respondents Nos. 2 to 5, Brijmohan Mishra, Girija Shanker Bhatnagar, Padamkumar Mazumdar and Chandra Gopal Sharma, as additional directors of the company u/s 260 of the Companies Act. In the next meeting held on December 3, 1981, attended by respondents Nos. 1 to 5, a resolution was passed to issue 2,920 equity shares of Rs. 100 each for the remaining part of the authorised capital and allot the same to the members of the company. It was further resolved that in case the existing members of the company did not subscribe individually to the shares, then the shares be allotted to the additional directors of the company, i.e., respondents Nos. 2 to 5. In the meeting held on December 26, 1981, attended by respondents Nos. 1 to 5, 650 shares were allotted to respondent No. 1, 1920 shares to respondent No. 2 and 150 shares to each of respondents Nos. 3 to 5, i.e., in all 2,920 shares. On January 25, 1982, the petitioners sent a registered letter to respondent No. 1, saving that they had come to know that a meeting of the board of directors has been called, but they do not know any other particulars though, as directors, they are entitled to that information. In the next meeting held on March 5, 1982, the allotment of new shares was confirmed and it was resolved that respondent No. 1 should take steps regarding the continued absence of the petitioners in the meetings of the board of directors commencing from November 30, 1981. In the next meeting held on March 19, 1985, respondents Nos. 1 to 5 alone were present and it was resolved that all the three petitioners had ceased to be directors of the company u/s 283(1) of the Companies Act on account of their continuous absence without leave and their failure to explain the reasons for their absence. Respondent No. 1 then gave a notice to the petitioners on April 19, 1982, saying that they had ceased to be directors of the company. The first annual general meeting of the company was held on May 17, 1982. In this meeting also, the

petitioners were absent and respondents Nos. 1 to 5 alone were present. By a resolution passed in the meeting, the appointment of respondent No. 1 as chairman-cum-managing director for a period of five years from May 8, 1981, was confirmed and respondents Nos. 2 to 5 were appointed as directors of the company. The petitioners then filed a petition under Sections 397 and 398 of the Companies Act on July 9, 1982, for relief against oppression and mismanagement. It is also alleged that petitioners Nos. 1 and 2 hold degrees of M. Sc. in Chemistry and being unemployed graduates obtained a loan from the M. P. Finance Corporation and also from the Director of Industries and a plot was allotted in the industrial area at Burhanpur in their names for establishment of a factory in the name of Durga Pesticides ; petitioners Nos. 1 and 2 were the active partners, the remaining two partners being ladies, they were sleeping partners ; the plot on which the factory is built was also allotted in the names of petitioners Nos. 1 and 2 as unemployed graduates ; petitioners Nos. 1 and 2 alone have the technical know-how for running the factory and the respondents were made permanent directors under Clause 18 of the articles of association.

3. The appellants''/petitioners'' case is that the resolution and the agreement dated May 8, 1981, contravene Clause 18 of the articles of association and the said resolution and agreement are not binding on the company. Besides, the said resolution stood superseded by the subsequent resolution dated September 22, 1981, in the meeting of the board of directors called by petitioner No. 2. In spite of the resolution dated May 8, 1981, being superseded, respondent No. 1 committed serious acts of oppression and mismanagement by taking complete control of the company and by preventing the other permanent directors from participation in the affairs of the company ; she is abdicating her functions as managing director by handing over the management to her husband, respondent No. 2 the petitioners were refused access to the books of the company and were not even allowed to play their advisory role in running the affairs of the company ; by the resolution dated September 22, 1981, respondent No. 1 ceased to be the managing director and petitioner No. 2 was made the managing director in place of respondent No. 1 ; respondent No. 1 illegally and unauthorisedly flouted the resolution dated September 22, 1981, the petitioners have no notice of the meetings held on November 30, 1981, December 3, 1981, December 26, 1981, March 4, 1982, and March 19, 1982, of the board of directors as well as the annual general meeting held on May 17, 1982 ; as such, the resolutions passed in those meetings are non est and not binding on the petitioners ; as there was no notice of meetings, there was no question of the petitioners attending those meetings ; and, consequently, they did not cease to be directors of the company; moreover, they being, permanent directors, they could not be removed from directorship ; in these meetings, respondents Nos. 2 to 5 were illegally-made additional directors and also allotment of 3,020 shares were made unauthorisedly ; no shares could have been allotted to respondents Nos. 2 to 5 without first offering those shares to the petitioners ;

respondents Nos. 2 to 5 are close relations and friends of respondent No. 1 and they have been made additional directors and shares were allotted to them mala fide and against the provisions of the articles of association ; respondent No. 1, as managing director, did not convene any annual general meeting within 18 months of the incorporation of the company as required u/s 166 of the Companies Act ; respondent No. 1 is refusing to recognise and acknowledge the creditors and depositors of the company affecting the credibility, reputation and goodwill of the company ; respondent No. 1 is guilty of falsifying the books of account by manipulating entries thereof by wrongly advising its auditor to change the entry of deposit or debt initially standing in the name of the relations of the petitioners by adjusting them against the names of the petitioners and forfeiting the said advances and deposits towards losses suffered by the company ; the petitioners are also not being paid their annual remuneration of Rs. 24,000 each ; respondent No. 1 was appointed as managing director in order that the dues of the M. P. Finance Corporation would be cleared but she did not care to pay anything to the corporation with the result, a civil suit has been filed by the corporation for realisation of the loan advanced by it with interest ; in that suit, the property of the company has been attached ; the overdraft facility from the bankers was misused and the raw material which was pledged with the bank was used for preparation of finished goods and which were directly sold to the customers without depositing payments in the bank as required ; the misuse of overdraft facility resulted in stoppage of the facility ; respondent No. 1 committed dishonesty and breach of trust amounting to criminal offence by secretly taking out raw material kept under the lock and key of the bankers in the factory premises for being used in the manufacture of the goods ; the cheques issued by her were dishonoured by the bank ; the course of action adopted by respondents Nos. 1 to 5 resulted in complete ruin of the company since it is a going company having immense potentialities of prosperity and further expansion, winding-up of the company would prejudice the petitioners and other shareholders ; besides the affairs of the company are being con ducted in a manner prejudicial to the public interest and object of the petitioners as members of the company ; the petitioners, therefore, prayed that the resolution dated September 22, 1981, be enforced and made binding on respondent No. 1 and all consequent proceedings of the company be declared null and void.

4. Respondents Nos. 1 to 5, in their return, denied each and every allegation of the petitioners. According to them, the petition is devoid of any merit and is liable to be dismissed with costs ; no case has been made out about oppression and mismanagement ; the affairs of the company are being conducted properly and to the best interests of the company ; respondent No. 1 has cleared the dues of the company to the extent of Rs. 10,00,000. So long as the company was in the management of petitioners Nos. 1 and 2, there was complete mismanagement and the company was running into heavy losses and they could not liquidate the liabilities of the company, nor could they show any progress in the manufacture of

pesticides and insecticides ; as a result, notice was sent by the M. P. Finance Corporation on April 13, 1981, demanding its dues amounting to Rs. 4,89,608.14 and threatening legal action ; the petitioners were so much upset, they wanted to hand over the management of the company to the M. P. Finance Corporation. On May 5, 1981, petitioner No. 1 submitted his resignation as managing director to the M. P. Finance Corporation which took a sympathetic view of the whole affair and in the presence of the general manager, the resolution dated May 8, 1981, came to be passed appointing respondent No. 1 as managing director for a period of five years and she was put in charge of the management of the company ; an agreement was also executed on the same day incorporating these terms ; petitioner No. 2 had no jurisdiction to call a meeting of the board of directors on September 22, 1981, and the petitioners could not have passed the resolution superseding the earlier resolution dated May 8, 1981 ; in faithful implementation of the resolution and the agreement, respondent No. 1 has streamlined the administration and improved the working of the company ; petitioner No. 2 and husband of petitioner No. 3 wanted to be employed in the company on a flat salary of Rs. 3,000 per month ; at all relevant times, they ceased to be directors of the company ; the petitioners have full access to the factory premises and to the books of account ; the respondents also offered to give them documents on depositing the fees ; notices of the meetings were sent to the petitioners under certificate of posting, but they deliberately remained absent ; and thereby they ceased to be directors of the company ; before offering the shares to respondents Nos. 2 to 5, the petitioners were given option to purchase the shares ; but they refused ; the petitioners have no right to repudiate the resolution and agreement dated May 8, 1981, which are perfectly valid and binding on them ; the articles of association filed by the petitioners is not a true copy ; the dues of the M. P. Finance Corporation was the legacy handed down to the company by the partnership firm and became the main source of worry to the company ; in fact, respondent No. 2 husband of respondent No. 1 was a partner in the firm "Durga Pesticides" and is an M. Sc. in agriculture and also holds a degree of M.A., LL. B. ; he was a member of the Legislative Assembly and it is entirely due to his efforts that the factory came into existence ; the first two petitioners had then just come out of college and they had no experience ; the working of petitioner No. 1 as the first managing director was a dismal failure ; it is incorrect to say that respondent No. 1 had, at any time, abdicated her functions as managing director ; in her absence, respondent No. 2 who was the additional director was authorised to manage the affairs of the company ; two cheques were issued by respondent No. 1 to the M. P. Finance Corporation ; the first cheque was cashed ; but the second one was dishonoured in view of the letter sent by the petitioner to the bank not to honour the cheques and not because there was no amount standing to the credit of the company ; it is true that, in the partnership firm, there was some amount in deposit to the credit of the mother of respondent No. 2 but in the books of account of the company, there is no such deposit in her name ; a notice was given to the petitioners to return an amount of Rs. 90,000 taken by them for such purchase of

raw material when no such purchases were made ; in fact, the petitioners were to render accounts and this had annoyed them ; respondents Nos. 1 to 5 would have shown far better results but for the mischief and obstruction put by the petitioner by passing the resolution dated September 22, 1981, and intimating the bank not to honour the cheques of respondent No. 1 with the result, the bankers had withdrawn all financial facilities and yet respondent No. 1 was able to clear off most of the liabilities of the company ; respondent No. 1 has not secretly taken out any raw material nor cheated the bank, nor misused any facility ; it is false to say that the account books have been manipulated in order to deprive the petitioners and their relatives of their dues ; it is denied that the affairs of the company are conducted in a manner prejudicial to public interest or oppressive to the petitioners.

5. The learned company judge, on consideration of the entire case, came to the conclusion that none of the contentions advanced in support of the petition could be accepted and none of the allegations of oppression of the petitioners as shareholders and mismanagement of the affairs of the company are made out ; the petitioners have not made out any case for grant of any relief to them either u/s 397 or u/s 398 of the Companies Act and the petition has, accordingly, been dismissed and the resolution dated May 8, 1981, has been upheld. It has further been held that the resolution is not contrary to Clause 31 of the articles of association nor contrary to Section 312 read with Sections 252 and 291 of the Companies Act ; the article in question permits the term of the managing director to exceed more than one year ; the resolution dated May 8, 1981, was passed unanimously and an agreement was also executed on that day incorporating the terms of the resolution ; though the meeting dated September 22, 1981, could have been called by petitioner No. 2 but in that meeting, the resolution dated May 8, 1981, could not have been superseded till such time the agreement which was validly executed on May 8, 1981, was cancelled or superseded by a competent court ; under that resolution and agreement, respondent No. 1 being the managing director, was given sole charge of the management of the company ; merely because the petitioners were given only an advisory role under that resolution, they did not cease to be directors and there was no assignment of their office ; as such there was no contravention of Section 312, nor was there contravention of any provision in the appointment of respondent No. 2 as managing director as a stop-gap arrangement ; respondent No. 2 was put in charge of the affairs of the company in the absence of respondent No. 1 ; Clause 31, as incorporated in the body of the articles of association furnished by the petitioners was not correctly reproduced as is evident from the certified copy produced by the respondent ; the resolution and the agreement dated May 8, 1981, are valid and binding on the petitioners and they cannot avoid the same ; the grievance of the petitioners about their equal participation in the management has no merit because they have voluntarily and freely passed the resolution and executed the agreement; Section 283(1)(g) provides that a director shall cease to hold office for his continuous absence in three meetings or for a continuous period

of three months ; merely because the petitioners were permanent directors under Clause 18 of the articles of association, Section 283(1)(g) would not be applicable to them is not correct and this section will apply to permanent directors also ; the probabilities of the case go to show that the petitioners had notice of the meetings held on November 30, 1981, and the subsequent meetings thereafter ; this is fortified by the certificate of posting showing issuance of notices ; the notices were properly addressed and stamped, though presumption of service is not so strong in case of certificate of posting, but the inaction on the part of the petitioners even after the receipt of notice dated April 19, 1982, which is not disputed, goes to show that these notices were duly received by them ; for the first time in the petition which was filed on July 9, 1982, it has been alleged that the petitioners had no notice of the meetings ; the petitioners had never defrayed the expenses as required u/s 53 of the Companies Act to send notices by registered post ; similarly, the petitioners were given option to purchase new shares, but they refused to purchase any share ; D.P. Khanna, respondent No. 6, was duly nominated as a director of the company on September 17, 1981, by the M. P. Finance Corporation under the State Financial Corporations Act, 1951, as amended by the Amending Act of 1972 ; the first act of mismanagement alleged was of not holding any meeting which has been falsified ; the next act of mismanagement alleged was failure to hold the annual general meeting within 18 months of the incorporation of the company on November 18, 1980 ; since the annual general meeting was held on May 17, 1982, it was within 18 months, as the resolution dated September 22, 1981, was invalid, respondent No. 1 was justified in flouting the same ; another act of mismanagement alleged was that a parallel company known as Amit Chemicals Pvt. Ltd. has been formed by the respondents in July, 1982 ; but that company has not commenced its business ; the petitioners have admitted that they had access to the company premises till September 22, 1981 ; it has not been proved that respondent No. 1 had manipulated the accounts or misused the overdraft facility ; the allegations are also not factually correct ; there is no material on record to indicate that the company used to get the goods released without informing the bank ; no grievance has been made by any of the creditors regarding non-payment of their dues ; some of the alleged creditors are relations of the petitioners but they are not being recognised by the company ; as such, there does not appear to be any just and equitable ground for winding-up of the company ; consequently, no case is made out for relief u/s 397 ; the total liabilities of the company is Rs. 20,00,000 and so the company was in a position to liquidate the liabilities with the available resources if it is permitted to function without any unnecessary obstruction.

6. Shri Y.S. Dharmadhikari, learned counsel for the appellants, has urged : (i) the learned company judge has given his findings without affording any opportunity to the parties to lead evidence, even issues were not framed and thereby, the appellants have been prejudiced in their case ; (ii) the learned company judge failed to consider that the company was nothing but an Extension of the partnership

business providing equal shares and equal participation in the business and all the partners were made permanent directors in the company and this arrangement could not be disturbed to the prejudice of the appellants, even by the resolution and the agreement dated May 8, 1981 ; (iii) it should have been held that the permanent directors appointed under Clause 18 of the articles of association could not have been removed, and as such the resolution dated March 19, 1982, removing them from the directorship is illegal and invalid ; (iv) it should have been seen that by resolution dated September 22, 1981, the earlier resolution dated May 8, 1981, stood superseded and respondent No. 1 acted illegally and without authority as managing director from which post she was removed by that resolution ; (v) it ought to have been seen that the certificate of posting produced by respondents Nos. 1 to 5 showing of sending of notices to the appellants are all forged and fabricated documents and since no notices were ever served on the appellants, they could not be penalised for not attending the meetings of the board of directors ; and no affidavit was filed in support of service ; (vi) respondents Nos. 2 to 5 were-illegally inducted as additional directors on November 30, 1981, and they were allotted 2,920 shares by resolution dated December 26, 1981, thereby reducing the appellants into a minority and the spirit of partnership was given a go-by ; (vii) various acts of mismanagement have been committed by respondents Nos. 1 to 5 manipulating the accounts, diverting the resources of the company, not paying the dues of the creditors and remuneration to the appellants as directors ; and (viii) in view of all these various acts of oppression and mismanagement, the company judge should have enforced the resolution dated September 22, 1981, arid should have put the appellant in charge of the management of the company.

7. Shri M.P. Sapre, learned counsellor respondents Nos. 1 to 5, on the other hand, submitted that the appellants are for the first time raising the issue of not being given opportunity to lead evidence, when in fact, before the learned company judge, the appellants never desired nor expressed any intention to lead evidence nor have they taken this matter in the grounds of this appeal ; the parties wanted the case to be decided on the basis of the affidavits and documents filed in the case ; it is true that the partnership concern was converted into a private limited company and the appellants and respondents Nos. 1 to 5 were made permanent directors ; but Section 283(1)(g) applies to permanent directors also and this provision is applicable to private limited companies as per Sub-section (3) ; since the appellants failed to appear in the meetings of the board of directors for a continuous period of three months in spite of service of notice on them, they automatically ceased to be directors under the aforesaid section ; the appellants having voluntarily, wilfully and unanimously passed the resolution dated May 8, 1981, appointing respondent No. 1 as chairman-cum-managing director for a period of five years after realising that appellant No. 1 was not in a position to run the affairs of the company which was in serious financial difficulties and production was seriously hampered ; in the absence of any misrepresentation, fraud or coercion, the resolution and agreement dated

May 8, 1981, voluntarily entered into by the parties could not be avoided ; under Clause 33 of the articles of association, the managing director can be appointed for a period of more than one year and there was nothing illegal in the resolution and the agreement dated May 8, 1981 ; on November 30, 1981, respondents Nos. 2 to 5 were appointed additional directors and the appellants now cannot take any grievance, as they have chosen to remain absent at the meetings of the board of directors in spite of service of notice ; since the company was in direct need of additional funds, it was decided to issue fresh shares in order to make up the paid-up capital of the company and before offering the shares to respondents Nos. 2 to 5, these shares were offered to the appellants ; but they declined to purchase any share ; the appellants were not in a position to purchase any share and that is one of the reasons why they remained absent from the meeting ; the appellants thus deciding that the management of the company should be solely in charge of respondent No. 1 in view of the resolution and the agreement dated May 8, 1981, and the appellants having refused to subscribe to further shares, they cannot now make a grievance that they have been reduced to minority shareholders ; there is no oppression of the minority shareholders nor is there mismanagement ; in fact, under the managing directorship of respondent No. 1, the liabilities of the company to the extent of Rs. 10,00,000 have been liquidated and the company is making progress; the appellants have not proved any mismanagement against respondents Nos. 1 to 5, nor is there any evidence of diversion of funds nor tampering with the records ; the learned company judge has given cogent and valid reasons while dismissing the petition and there is no case for interference ; this court should permit respondents Nos. 1 to 5 to purchase the shares of the appellants in order to bring the dispute to an end for all time.

8. This appeal is against rejection of the company petition under Sections 397 and 398 of the Companies Act. Section 397 gives relief in case of oppression and the petitioner has to show that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member and that winding-up of the company would unfairly prejudice such member. Section 398 gives relief in cases of mismanagement and the petitioner has to show that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company or that a material change has taken place in the management and control of the company. Before going into the merits of the case, it will be necessary to consider the grievance made by learned counsel for the appellants that they were not given any opportunity to lead evidence and even issues were not framed. Rule 6 of the Companies (Court) Rules, 1959, provides that save as provided by the Act or by these rules, the practice and procedure of the court and the provisions of the Code of Civil Procedure, so far as applicable, shall apply to all proceedings under the Act and these rules. Rule 9 gives inherent powers to the court to give such directions or pass such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of

the court. Therefore, it is necessary, while trying a company petition, that evidence has to be recorded. But it depends upon the facts whether any such evidence is required to be taken or the parties may desire that the petition be decided on the basis of the documents and affidavits filed. That is what has been done in the present case. No objection was taken by the appellants, nor any application made before the learned company judge by these appellants that they want to lead evidence. Even no ground is taken in this appeal that they were not given an opportunity to lead evidence. On April 1, 1983, the learned company judge fixed the case for hearing for April 15, 1983, but the case could not be heard on that day as no reply was filed by respondents Nos. 1 to 5 and so the case was adjourned to April 20, 1983, for hearing arguments. Arguments were commenced on that day and then it was heard on April 22, 1983, April 26, 1983, April 27, 1983, May 2, 1983, July 8, 1983, and September 26, 1983, to October 1, 1983, when the case was reserved for orders. It is evident that the parties wanted the petition to be decided on the basis of the documents and affidavits filed by them. That is the reason why, though the case was argued at length for several days, no prayer was made by any of the parties for leading evidence. Therefore, this grievance is without any merit.

9. The next contention is that initially there was a partnership between appellants Nos. 1 and 2 and respondent No. 2 ; but subsequently, this partnership was dissolved and a new partnership was formed between the appellants and respondent No. 2, in the name of Durga Pesticides doing the same business. This partnership business was converted into a private limited company with these persons as permanent directors. The contention is that the intention of the parties was to continue the partnership with equal shares in the management, profit and loss and share in the business of the company. But this basic agreement of partnership has been flouted by inducting subsequently, respondents Nos. 2 to 5 as additional directors and then allotting shares to them. This argument is based on the decision of the House of Lords in Ebrahimi v. Westbourne Galleries Ltd. [1972] 2 All ER 492 : [1973] AC 360 where the following guiding principles for application to private companies, of the "just and equitable" ground for dissolution as provided in the Partnership Act for dissolution of the partnership concern : (i) formation of the company based on personal relationship and mutual confidence (an essential feature of partnership business) ; (ii) an agreement or understanding that all or some of the shareholders will participate in the conduct of the business as in the case of a partnership concern ; and (iii) restriction on transfer of the members'' interest in the company. This case came up to be considered by the Supreme Court in Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla and Another, and the Supreme Court held that 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 the shareholding is more or less equal and there is a case of complete

deadlock in the company on account of lack of probity in 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 corporate veil it is found that in reality it is a partnership. The facts of the case, dealt with by the Supreme Court above, were : that a private company was formed, in which an employee who had gained the confidence of the employer was taken in as managing director ; and his family members held one-third of the shares while the employer and his family members held about two-thirds of the shares and the direction, control and financial responsibility were also in the latter''s hands. In such a case, the Supreme Court held that it was not a case in which the dissolution of partnership principle can be invoked in favour of the employee group of shareholders on the "just and equitable" ground, as several remedies such as those under Sections 397 and 398 were open to the minority shareholders under the Companies Act of 1956, and an application for winding-up the company would be unreasonable. A. Ramaiya in his Guide to the Companies Act, 10th edition 1984, at page 906, has observed : "Apart from the view expressed by the Supreme Court in the above case, it may well be contended that it is a matter for serious judicial consideration, whether having regard to the new provisions contained in the Companies Act, 1956, such as Sections 397, 398, 408 and Sections 388B to 388E, there should be any need at all to extend to private companies which have been deliberately incorporated as companies under the Companies Act and are legal entities."

10. Ebrahimi''s case [1972] 2 All ER 492 : [1973] AC 360 has no application here. Although the partnership business was converted into a private limited company, each partner having equal share in the management and profits of the company, but after running the business for about 1 1/2 years'' and appellant No. 1 appointed as managing director, it appears that he" was not in a position to run the company on sound lines and the company was not in a position to clear off its liabilities and was under serious financial stringency. Therefore, on April 19, 1981, it was resolved to hand over the management of the company to the M. P. Finance Corporation which had served a notice for recovery of Rs. 4,89,600.14. It may be mentioned that this liability was taken over by the company from the partnership which had borrowed a sum of Rs. 4,18,500 from the M. P. Finance Corporation on May 9, 1975. Thereafter, another meeting was held on May 8, 1981, in the presence of the general manager of the M. P. Finance Corporation at Indore, and it was resolved that respondent No. 1 be appointed as the managing director for a period of five years and the earlier resolution was superseded and it was resolved that respondent No. 1 will be in sole charge of the day-to-day business of the company and the appellants would work only in an advisory capacity as directors. An agreement was also executed on the same day, and it was further stipulated that

this arrangement will continue for a period of five years ; and in no case, they will be changed. Thereafter, a meeting was called by respondent No. 1 as managing director on November 30, 1981 ; but the appellants had chosen to remain absent at that meeting which was attended by respondent No. 1 and respondent No. 6 who was nominated as a director by the M. P. Finance Corporation with effect from September 17, 1981, in accordance with the provisions of the M. P. Finance Corporation Act, 1951, as amended by Amending Act of 1972. In that meeting, respondents Nos. 2 to 5 were appointed as additional directors. This has been necessitated because the appellants had refused to co-operate with respondent No. 1. In fact, appellants Nos. 1 and 2 called a meeting of the board of directors on September 22, 1981 ; and in that meeting resolved to remove respondent No. 1 as managing director and appoint respondent No. 2 in her place. It may be that because of this resolution, the appellants did not attend the meeting on November 30, 1981. As has been mentioned earlier, the company was in serious financial trouble ; and required additional finances and so it was resolved on December 3, 1981, to issue 2,920 new shares so as to make up the paid-up capital of the company. Respondent No. 1 wrote a letter to the appellants asking them to purchase the new shares but the appellant did not respond to this and so on December 26, 1981 ; 650 shares were allotted to respondent No. 1 ; 820 to respondent No. 2 and 150 each to respondents Nos. 3 and 5. The appellants again did not attend the meetings of the board of directors held on March 4, 1982, March 19, 1982, and the annual general meeting on May 17, 1982. In the meeting held on March 4, 1982, respondent No. 1 was authorised to take suitable action against the appellants for their continuous absence for over three months at the meetings of the board of directors. She, accordingly, wrote a letter to the appellants intimating about their default, but instead of showing cause, they again remained absent at the next meeting held on March 19, 1982, when it was resolved that they have ceased to be directors of the company. Accordingly, respondent No. 1 wrote a letter dated April 19, 1982, informing the appellants about the fact that they ceased to be directors. Therefore, the appellants themselves abstained from the management of the company on their own volition and respondents Nos. 1 to 5 are not at all responsible for the same ; firstly, the appellants handed over the complete management of the company to respondent No. 1 on May 8, 1981, and subsequently, they remained absent at the meetings of the board of directors, they ceased to be directors in view of Section 283(1)(g) read with Sub-section (3) of the Companies Act.

11. Now, the question remains as to whether the appellants had notice of these meetings. According to them, they never received any notice of these meetings and filed their affidavits to this effect. On the other hand, respondents Nos. 1 to 5 have asserted that notices of these meetings were despatched well in time by post under certificate of posting, and filed an affidavit of respondent No. 3, who was previously the secretary of the company and now a director. They have also produced the

certificates of posting in support. Section 53(2)(a) provides that a document may be served by a company on any member thereof either personally, or by sending it by post to him to his registered address by properly addressing, pre-paying and posting the letter containing the documents, provided that where a member has intimated to the company in advance that documents should be sent to him under a certificate of posting or by registered post and has deposited with the company, a sum sufficient to defray the expenses for it, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member. Clause (b)(i) provides that in the case of a notice of a meeting, the service will be taken to have been effected 48 hours after the despatch of the letter. Under this provision, a presumption has to be drawn as to whether the notices were sent by properly addressing, pre-paying and posting the notices to the members. According to learned counsel for the appellants, such a presumption can only be drawn if there is an affidavit on record to show that the notices were sent properly addressed, pre-paid and posted. It is true that in the affidavit of respondent No. 3, this has not been stated in so many words ; but he has verified as true the information received from the record. It has been mentioned in, the return that all these letters were sent under certificate of posting and in spite of notices, the appellants did not attend the meetings. Certificates of posting proved the fact that the notices were posted to the proper addresses after pre-paying postage. The addresses are given on the certificates and it is not the case of the appellants that the addresses so given are not correct. Besides, the appellants, in their letter dated January 25, 1982, mention that they had come to know that certain resolutions have been passed against them. All these appellants are residents of Burhanpur where the registered office of the company is located. It is difficult to believe that the appellants were not aware as to what was going on in the company during all this period ; but they deliberately remained absent after they found themselves to be in a minority ; and as has been observed by the learned company judge, took the plea later on, that they had no notice of the meetings. Curiously enough, the appellants have admitted the receipt of the letter dated April 19, 1982, informing them that they ceased to be directors of the company. According to the ordinary course of human nature and conduct, if the appellants had not received any notices of the meetings, they would have promptly protested about the same and challenged the resolution whereby they ceased to be directors. The total silence of the appellants belies the fact that they had no notices of the meeting. It is pertinent to note that respondent No. 6 who was a nominated director of the company did attend the meeting held on November 30, 1981, and he did not attend the subsequent meetings, but has been sending intimations and telegrams about his inability to attend the meetings showing that he had received the notices of the meetings which were despatched under the same set of certificates of posting. It is, therefore, clear that the appellants, deliberately did not attend the meetings which were held on November 30, 1981, December 3, 1981, December 26, 1981, March 4, 1982, and March 19, 1982, and, therefore, they ceased to be directors of the company u/s 283(1)(g) read with Sub-section (3) of the

Companies Act. Although respondent No. 1 had written to the appellants letters about their absence, they did not show any cause and their removal as directors was automatic. This provision applies to private limited companies also, as is clear from the wording of Sub-section (3) which further empowers a private company to provide that the office of the director shall be vacated on any grounds in addition to those specified in Sub-section (1). Out of the appellants, only appellant No. 1 wrote a letter dated November 14, 1981, informing respondent No. 1 that all notices be sent to him by registered post with acknowledgment due. Respondent No. 1, in his reply dated November 18, 1981, told appellant No. 1 that he should defray the expenses, if he wants all notices to be sent by registered acknowledgment due ; but no amount was defrayed, by appellant No. 1. So, respondent No. 1 was not bound to send the notice by registered acknowledgment due. Section 28 of the M. P. General Clauses Act has to be read along with this special provision contained in Section 53(2)(a) of the Companies Act. The Supreme Court in Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana, , has held that where a notice sent by registered post, was returned with the endorsement "refused", it is not always necessary to produce the postman who tried to effect service. A denial of service by a party may be found to be incorrect from its own admission or conduct. The Supreme Court in Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, : has held that neither Section 16 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, nor Section 114 of the Evidence Act compel the court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of the case, the court may refuse to draw the presumption. In that case, the Supreme Court had observed that after all, there have been cases in the past, though rare, where postal certificates and even postal seals have been manufactured. In that case, the detenu claimed that he had retracted his admission by sending a letter under certificate of posting ; but along with his representation against detention, he only appended the certificate of posting without enclosing a copy of the letter withdrawing his admission. Therefore, the Supreme Court refused to rely on the certificate of posting that the said letter was sent.

12. Now, we are to consider whether the resolution and the agreement dated May 8, 1981, are invalid because they contravene Clause 33 of the articles of association of the company and the resolution dated April 22, 1981, passed by these appellants is valid and binding on the parties. The only ground of attack on the resolution dated May 8, 1981, is that it contravenes Article 33 of the articles of association of the company but this article itself provides that the term of appointment of the managing director shall be for a period of one year at a time and he shall be eligible for reappointment and the term of appointment shall be subject to any contract or agreement between the directors. So, a director can be appointed under this Clause even for a period of five years. It is not the case of the appellants that the agreement dated May 8, 1981, was executed by undue influence, coercion or fraud. They, in their rejoinder, have further pleaded that they were forced to execute the

agreement under the circumstances. It has not been stated that any coercion was used. Therefore, the resolution and the agreement having been passed and executed voluntarily after due deliberation, they are binding on the parties. Normally, it is the managing director who is to call the meetings of the board of directors ; but this will not take way the right of a director also to call a meeting. Therefore, the meeting dated September 22, 1982, could be called by appellant No. 2 and the earlier resolution could be superseded but then so long as the agreement dated May 8, 1981, remains, it is binding on the parties unless it is quashed by a competent court ; and the appellants could not have resiled from their commitment under this document, more so because it has been stipulated therein that this arrangement will not be disturbed for a period of five years. Under the circumstances, the resolution and the agreement dated May 8, 1981, are valid and binding on the parties and the resolution dated September 22, 1981, is invalid and cannot be enforced against respondent No. 1 who was justified in ignoring this subsequent resolution. In view of the findings given above, it is clear that no case of oppression has been made out against the appellants.

13. Now remains the allegation of mismanagement made by the appellants against respondents Nos. 1 to 5. The first case of mismanagement is about not holding the first annual general meeting within 18 months from the incorporation of the company on November 18, 1980, as required under the provisions. The meeting was held on May 17, 1982, i.e., within 18 months of its incorporation. The second act of mismanagement is that a parallel company, known as "Amit Chemicals Pvt. Ltd." has been formed, but there is nothing to show that this company has commenced its business. The next act of mismanagement is that the appellants, as directors, were not given access to the company premises and its books of account, but it was conceded before the learned company judge that the appellants had access till September 22, 1981, and, thereafter, they themselves kept away from the affairs of the company. The next grievance is that the goods pledged with the State Bank of India were utilised in the manufacture of insecticides without the consent or knowledge of the bank and the sale proceeds were not credited to the bank account. No particulars have been given to substantiate this allegation and not even a single instance proved. The bank has not come forward to make any grievance about the same. The last act of mismanagement is regarding non-payment of the dues of the appellants and the creditors. The appellants contended, that under the agreement dated May 8, 1981, they are entitled to be paid Rs. 24,000 per annum in view of the investment made by them ; but nothing has been paid. The appellants cannot blow hot and cold in the same breath, after saying that the agreement is invalid and inoperative ; and they cannot say that they be paid on the strength of such an invalid document. According to respondents Nos. 1 to 5, there are outstandings due to the extent of Rs. 2,00,000 against these appellants and their remuneration has been adjusted against their outstanding dues. The appellants also claimed that these respondents were given advance amounting to Rs. 90,000 for

purchase of raw material ; but no raw materials were purchased, nor any accounts furnished. It is true that there was some amount outstanding to the credit of the mother of appellant No. 2 in the books of the partnership firm ; but in the company''s books, no such amount is outstanding to her credit. In the return of respondents Nos. 1 to 5, it has been mentioned that this was an amount belonging to appellant No. 2 and the deposit was made benami in the name of his mother. Whatever that be, this amount does not stand to the credit of Smt. Dalai in the books of the company ; and there is no question of acknowledging or paying her dues. It is also not necessary for us in this appeal to give any finding as to what is the amount due to these appellants and what are the outstandings against them ; because no material has been placed by either of the parties to come to any decision. So, the case of mismanagement has not been proved. On the other hand, it has been asserted by respondents Nos. 1 to 5 that they have cleared liabilities of the company to the extent of Rs. 10 lakhs and the company has made steady progress. The appellants themselves have admitted that it is a running concern, and it would not be in the interest of the shareholders to wind up the company. Respondents Nos. 1 to 5 have offered before the learned company judge that either they may be permitted to purchase the shares of the appellants or the appellants should purchase the shares of the respondents, as joint management with them is not possible. The appellants have expressed their inability to purchase the shares of respondents Nos. 1 to 5. This shows that the appellants are not in a position to subscribe to any shares offered to them. The learned company judge offered, during the course of arguments, to the appellants whether they are prepared to purchase the shares of respondents Nos. 1 to 5. Since the appellants are in a minority, it would be fair for them to sell their shares to respondents Nos. 1 to 5, if they so choose at the prevalent market rate.

14. With the result, the appeal fails and it is dismissed with costs, Counsel''s fee Rs. 1,000 if certified.