

## **M.S.D. Chandrasekar Raja Vs M/s. Jayabharath Textiles Pvt. Ltd. and M.S.D.C. Radha Ramanan**

**Court:** Madras High Court

**Date of Decision:** Nov. 6, 2013

**Citation:** (2014) 120 CLA 298 : (2014) 2 CompLJ 145 : (2014) 1 LW 139

**Hon'ble Judges:** V. Ramasubramanian, J

**Bench:** Single Bench

**Advocate:** R. Murari, for Mr. Thriyambak J. Kannan, for the Appellant; R. Sankaranarayanan Assisted by Mr. Kumarpaul Chopra, for the Respondent

**Final Decision:** Allowed

### **Judgement**

V. Ramasubramanian, J.

This appeal is filed u/s 10F of the Companies Act, 1956, challenging an order passed by the Company Law

Board, allowing an application filed by the second respondent herein u/s 10 of the CPC read with Regulation 44 of the Company Law Board

Regulations 1991. I have heard Mr. R. Murari, learned Senior Counsel for the appellant and Mr. R. Sankaranarayanan, learned counsel appearing

for respondents.

2. The appellant is the father of the second respondent. The first respondent-Company is a Private Limited Company, in which, there are only 2

equity shareholders and 5 preference shareholders. Both the appellant and the second respondent each hold 1,25,000 equity shares of Rs. 10/-

each in the first respondent-Company. The appellant was the Managing Director and the second respondent is the only other Director in the

Board. In other words, both the appellant and the second respondent hold 50% shares each and both of them are also the Directors. Therefore,

after disputes started between the appellant and the second respondent, neither a meeting of the Board of Directors nor a meeting of the General

Body could be held to transact any useful business, other than perhaps, to litigate.

3. The second respondent filed a civil suit in O.S. No. 10 of 2005 on the file of the Principal District Court, Virudhunagar at Srivilliputhur against

the appellant herein. The second respondent not only impleaded the appellant as a defendant in the suit, but he also impleaded his mother and 3

sisters as defendants 2 to 5. Two companies which were closely held by the father and the son, were also made the defendants 6 and 7 in the suit.

The first respondent in this appeal was arrayed as the seventh defendant in that suit.

4. The claim of the second respondent herein in his civil suit O.S. No. 10 of 2005 was that his grandfather (the appellant's father) executed a Will

in respect of the joint family properties, bequeathing half share in favour of the second respondent and that in order to defeat the bequest, the

appellant executed deeds of gift dated 24.10.2002, 12.12.2002 and 26.2.2004 in favour of defendants 2 to 5 (appellant's wife and daughters).

On the said premise, the second respondent prayed for a decree (i) of declaration that the gift deeds executed by his father (the appellant herein) in

favour of the wife and daughters are null and void; and (ii) of partition in respect of plaintiff's half share in the plaint "A" Schedule properties and

for separate possession.

5. It appears that the second respondent's son also filed a suit in O.S. No. 136 of 2008 on the file of the Principal District Court, Virudhunagar,

praying for a partition of his 3/8 share in the plaint second Schedule properties and 1/4 share in the plaint first Schedule properties and also for a

declaration that the gift deeds executed by the appellant were null and void. Both the suits, instituted by the second respondent and his son are now

pending.

6. After 6 years of the institution of the suit by the second respondent, the appellant filed a company petition in C.P. No. 37 of 2011 on the file of

the Company Law Board, under Sections 397 and 398 of the Companies Act, 1956, complaining of oppression and mismanagement against the

second respondent. Though the grievance of the appellant was labelled as one of oppression and mismanagement, the real grievance of the

appellant was that due to 50% shareholding in the Company and due to the second respondent being one of the 2 Directors in the Board, he had

paralysed the functioning of the Company and had created a deadlock. In the company petition, the appellant prayed for various reliefs, including a

direction to the Company to issue Share Certificates and to direct a division of his 50% share in the land and building, where the factory was

located.

7. After receipt of notice in the main company petition, the second respondent filed an application in C.A. No. 262 of 2011, under Regulation 44

of the Company Law Board Regulations 1991 read with Section 10 of the Code of Civil Procedure, praying for a stay of further proceedings

before the Company Law Board, till the civil suit O.S. No. 10 of 2005 is disposed of by the Court. This application was allowed by the Company

Law Board by an order dated 22.6.2013, on the ground that the reliefs sought by the appellant before the Company Law Board and the reliefs

sought by the second respondent before the Civil Court, are one and the same and that therefore, there is a likelihood of conflict of decisions if the

Company Law Board proceeded further with the hearing of the main petition. It is against the said order that the appellant has come up with the

above appeal, raising the following questions of law:-

(i) Whether the provisions of Section 10 of the CPC 1908 apply per se to proceedings before the Company Law Board?

(ii) Whether Regulation 44 of the Company Law Board Regulations 1991, which merely confers inherent powers upon the Board, could be used

to produce a result that could have been achieved only u/s 10 of the CPC, when no analogous provision is incorporated in the Regulations? and

(iii) Whether in the facts and circumstances of the case, the invocation of any such power, even if available, is warranted?

8. Except (i) a few decisions of the Company Law Board itself, (ii) one decision of the Calcutta High court confirming a decision of the CLB and

(iii) one decision of the Andhra Pradesh High court, there appears to be no authoritative pronouncement of any other court on the applicability of

section 10 CPC and the scope of the power under Regulation 44. Therefore, let me first take a look at these decisions, before venturing to go

deep.

9. In (2000) 100 CompCas 504 , the Principal Bench of the Company Law Board indicated that whenever proceedings were pending before the

Civil Court, the Company Law Board has been taking a consistent stand to stay the proceedings before it, to avoid conflict of decisions on

common issues.

10. Similarly, in (2000) 102 CompCas 292 , the Principal Bench of the Company Law Board again granted stay of its own proceedings, when it

was brought to its notice that a civil suit was already pending on the file of the High Court of Calcutta. The Company Law Board pointed out that

when the reliefs sought before both Forums are substantially the same, when the parties are also the same and the disputed issues requiring

adjudication are also the same, it would be better to stay its proceedings, to avoid conflict of opinion. The said decision of the Company Law

Board was upheld by a Division Bench of the Calcutta High Court by a decision rendered on 21.1.2000 in A.C.O. No. 180 of 1999. While

upholding the decision of the Company Law Board, the Division Bench of the Calcutta High Court pointed out that the proceedings before the

Company Law Board cannot go on, without the Civil Court deciding the lis on merits.

11. In *Sundeep Gupta vs. Indian Hardware Industries* {2008 (142) CC 552 (CLB)}, the CLB even went to the extent of dismissing a main

petition under sections 397 and 398 on the ground that a competent civil court was already seized of larger questions revolving around the validity

of nomination and that therefore, it would not be proper for the Board to deal with them. A similar view had been taken way back in 1993 by the

Principal Bench of the CLB in (1996) 85 CompCas 289 .

12. Thus there are several decisions of the CLB, one of which was also approved by the Division Bench of the Calcutta High court, to the effect

that when proceedings are pending in civil court, the CLB would switch over to the ""hands off"" mode. But a different tune was played by the

Andhra Pradesh High court in *Rdf Projects Limited and Others Vs. Mr. M. Murali Krishna, Shareholder and Others*, , by upholding one decision

of the CLB refusing to stay its own proceedings u/s 10 of the Code. This was on the ground that the proceeding before the Company Law Board

cannot be treated as a suit and that the Board can by no stretch of imagination be regarded as a Court. Apart from holding so, the Andhra Pradesh

High Court also pointed out that inasmuch as the power of the Company Law Board to deal with proceedings under Sections 397 and 398, is

exclusive and special in nature, the matter in issue therein cannot be said to be directly and substantially in issue in a previously instituted suit before

the Civil Court warranting a stay of the proceedings. To come to the said conclusion, the Andhra High Court relied upon the distinction between

Courts and Tribunals brought out in the earliest and oft quoted decision in *Shell Company of Australia vs. Federal Commissioner of Taxation*

{1931 AC 275}, which had earlier been followed by the Allahabad High court in *Prakash Timbers Pvt. Ltd. and other Vs. Smt. Sushma Shingla*

and another, to come to the conclusion that the CLB is only a Tribunal and not a court.

13. In view of the decision of the Andhra Pradesh High Court in *RDF Power Projects Ltd.*, the Additional Principal Bench of the Company Law

Board, dismissed an application for stay under Regulation 44 in (2007) 75 SCL 315 .

14. Thus on the question of applicability of Section 10 of the Code to the proceedings before the CLB, there appears to be no uniformity of

approach by various courts and fora. Hence it is necessary to go to the roots.

QUESTION No. 1:

15. As stated earlier, the first question raised for my consideration in this appeal is as to whether the provisions of Section 10 of the CPC would

apply, per se to the proceedings before the Company Law Board or not. In order to find an answer to this question, it is necessary to have a look

at some of the provisions of the Code of Civil Procedure, the Companies Act, 1956, the Company Law Board Regulations 1991 and a few

decisions as to how the Courts have treated the Company Law Board.

16. Section 10 of the Code prohibits a court from proceeding with (i) the trial of any suit, (ii) if the matter in issue is also substantially and directly in

issue in a previously instituted suit (iii) between the same parties and (iv) pending in the same court or any other court having jurisdiction to grant

the relief claimed.

17. Out of the above ingredients necessary to invoke section 10, two do not pose any problem in so far the case on hand is concerned. The lis in

this case is between the same parties, one before the civil court and another before the company Law Board. The jurisdiction of both the

Company Law Board and the civil court to grant the reliefs prayed respectively before them, is also not in dispute. There are only 3 areas where

there is a dispute. They are (i) whether the CLB is a court, within the meaning of the expression ""court"" appearing in section 10 of the Code (ii)

whether the proceedings before the CLB can be taken to be equal to a suit and (iii) whether, assuming that the answers to the first two questions

are in the affirmative, the matters in issue before both Forums can be said to be substantially and directly the same so as to stay the latter

proceedings.

18. Out of the above 3 questions, one can be disposed of easily. Therefore, I shall take it up first. This question is as to whether the proceedings

before the CLB can be taken to be equal to a suit or not.

#### WHETHER PROCEEDINGS BEFORE CLB CAN BE EQUATED TO SUIT

19. Though section 10 uses the expression ""suit"", the principle behind section 10 would be applicable even to ""proceedings"". This is in view of

section 141 of the Code. Section 141 makes it clear that the procedure prescribed by the Code in regard to suits, shall be followed, so far as it

can be made applicable, in all proceedings in any court of civil jurisdiction. The only exception to section 141 is a proceeding under Article 226 of

the Constitution, in view of the Explanation to section 141. Therefore, merely because the proceeding before CLB is not a suit, it cannot be said

that section 10 would not apply, provided CLB is found to be a ""court of civil jurisdiction"" and the matter in issue therein is found to be directly and

substantially in issue in a previously instituted suit.

20. Therefore, I shall now take up for consideration, the next question whether CLB is a ""court"" within the meaning of section 10 of the Code or at

least a ""court having civil jurisdiction"" within the meaning of section 141 of the Code.

## WHETHER CLB IS A COURT

21. Section 2(10-A) of the Companies Act, 1956 defines a Company Law Board to mean the Board of Company Law Administration constituted

u/s 10E. The expression "Court" is defined in Section 2(11) to mean (i) a Court having jurisdiction as provided in Section 10, with respect to any

matter as provided therein; and (ii) the Court of a Magistrate of First Class or a Presidency Magistrate, as the case may be, having jurisdiction to

try any offence under this Act.

22. Section 10(1) of the Act, deals with the jurisdiction of the High Court as well as the District Court, upon which jurisdiction is conferred by the

Central Government. Therefore, it is clear that the definition part of the Act, keeps the Company Law Board away from the definition of the

expression "Court".

23. The Company Law Board is constituted in terms of Section 10E, for the exercise and discharge of the powers and functions as may be

conferred upon it by the Central Government. Sub-section (4-C) of Section 10E, specifically confers some powers upon the Company Law

Board as are vested in a Court under the Code of Civil Procedure. Sub-sections (4-C), (4-D), (5) and (6) of Section 10E may be relevant for

determining the question on hand and hence they are extracted as follows:-

(4-C) Every Bench referred to in sub-section (4-B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of

1908), while trying a suit, in respect of the following matters, namely:-

(a) discovery and inspection of documents or other material objects producible as evidence;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;

(c) compelling the production of documents or other material objects producible as evidence and impounding the same;

(d) examining witnesses on oath;

(e) granting adjournments;

(f) reception of evidence on affidavits.

(4-D) Every Bench shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure,

1973 (2 of 1974), and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of Sections 193 and

228 of the Indian Penal Code, 1860 (45 of 1860), and for the purpose of Section 196 of that Code.

(5) Without prejudice to the provisions of sub-sections (4-C) and (4-D), the Company Law Board shall in the exercise of its powers and the

discharge of its functions under this Act, or any other law be guided by the principles of natural justice and shall act in its discretion.

(6) Subject to the foregoing provisions of this Section, the Company Law Board shall have power to regulate its own procedure.

24. Interestingly, the Companies (Second Amendment) Act, 2002, which is caught for the past nearly 11 years in the eye of a judicial storm and

which sought to create a National Company Law Tribunal and an Appellate Tribunal, for replacing the Company Law Board (apart from other

things), incorporated a very important provision in Section 10FZA. It may be useful to refer to it, to see how the law makers had understood the

jurisdiction of the Board that was to be replaced by the Tribunals. It reads as follows:-

10-FZA. Procedure and powers of Tribunal and Appellate Tribunal.--(1) The Tribunal and the Appellate Tribunal shall not be bound by the

procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the

other provisions of this Act and of any rules made by the Central Government, the Tribunal and the Appellate Tribunal shall have power to regulate

their own procedure.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested

in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document

or copy of such record or document from any Office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte; (h) setting aside any order of dismissal of any representation for default or any

order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by

a Court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send in case of its inability to execute such

order, to the Court within the local limits of whose jurisdiction,-

(a) in the case of an order against a Company, the Registered Office of the Company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193

and 228, and for the purposes of Section 196 of the Indian Penal Code (45 of 1860) and the Tribunal and the Appellate Tribunal shall be deemed

to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

25. The express provision contained in Section 10FZA(1) specifically making the National Company Law Tribunal and the Appellate Tribunal not

bound by the procedure laid down in the Code of Civil Procedure, is not to be found in Section 10E. Though Section 10FZA(2) contains

provisions somewhat similar to those contained in Section 10E(4-C), sub-section (1) of Section 10FZA make things very clear in so far as the

application of the provisions of the Code to the proceedings before the National Company Law Tribunal and the Appellate Tribunal are

concerned. Therefore, if the National Company Law Tribunal and the Appellate Tribunal had come into existence, the first question that has arisen

for consideration, would not have arisen at all.

26. Thus it is clear that after the Constitution of the National Company Law Tribunal and the Appellate Tribunal, the application of the provisions

of the CPC was to be specifically excluded in their application to the procedure adopted by these Tribunals. But such an express exclusion was

not found in Section 10E (4-C) of the Act, in so far as the Company Law Board is concerned.

27. One more important provision to be noted is Section 634A of the Act, which was inserted by Act 46 of 1977. By this provision, the orders of

the Company Law Board were made enforceable in the same manner as if they were decrees passed by Civil Courts in suits. If the Company Law

Board is itself a Court, there was no necessity for introducing a deeming fiction, to equate the orders of the Company Law Board to civil court

decrees, for the purpose of execution. Keeping this in mind, let me now move over to the Regulations.

28. The Company Law Board Regulations 1991, as it appears, seem to be a complete Code in so far as the procedure to be followed by the

Board is concerned. The Regulations cover many matters in an exhaustive manner, including (i) the jurisdiction of the Bench; (ii) language of the

Bench; (iii) sitting hours of the Bench; (iv) the method of presentation of petitions (v) the scrutiny of such petitions (vi) the documents that are

required to accompany the petition (vii) the rights of parties to appear before the Bench; (viii) the rights of parties to seek plural remedies; (ix) the



method of service of notice and process issued by the Bench; (x) the manner of filing of reply and documents by the respondent and the filing of

counter reply by the petitioner; (xi) the power of the Bench to call for further evidence or information, the procedure to be adopted by the Board,

when a party to a proceeding does not appear; (xii) the power of the Board to set aside ex parte orders; (xiii) the abatement of proceedings upon

the death of a party and the power of the Board to set aside the abatement; (xiv) the method of passing of orders; (xv) the supply of certified

copies; (xvi) enrichment of time; (xvii) inherent powers of the Board; (xviii) general power to amend etc.

29. Some of the important provisions of the Regulations require to be noted. The Regulations which came into force with effect from 31.5.1991

originally contained a provision under Regulation 27 conferring powers of the Company Law Board to review its own order. But Regulation 27

was omitted by the Amendment Regulations of 1992. But, Regulation 28 recognises the principle of abatement and the power of the Board to set

aside abatement, if an application is made within 30 days. Regulation 29(6) empowers the Company Law Board to make such order or give such

direction as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Regulation

29(7) empowers the Board to award costs of the litigation.

30. Regulation 38 contains a special provision relating to proceedings under Sections 397 and 398. It says that a petition u/s 397 or 398 shall not

be withdrawn without the leave of the Board. This is perhaps due to the reason that any petition under Sections 397 and 398 is construed as a

class action"" initiated on behalf of a group, which claims to be in the minority.

31. Regulation 43 confers power upon the Board to enlarge the time fixed for the performance of any Act or the filing of any document or

representation. Regulation 45 empowers the Board to correct its orders either suo motu or on an application by any party, if there are clerical or

arithmetical mistakes or any error arising from any accidental slip or omission. Regulation 46 contains a provision recognising the general power of

the Company Law Board to amend any defect or error in any proceeding before it. As a matter of fact, Regulation 46 empowers the Board to

make all necessary amendments for the purpose of determining the real question or issue raised by or depending on such proceeding.

32. Regulation 47 contains a deeming fiction that says that a Bench of the Company Law Board shall be deemed to be a Court or lawful authority

for the purpose of prosecution or punishment of a person, who willfully disobeys any direction or order of such Bench. In other words, a power to

punish a person for contempt is conferred upon the Board by Regulation 47.

33. Interestingly, Regulation 48 empowers the Board even to dispense with the requirement of any Regulations, but such a power has to be

exercised for reasons to be recorded in writing. In other words, the Company Law Board is conferred with a power under Regulation 48, to do

something that even a normal Civil Court cannot do. A normal Civil Court cannot dispense with the requirements of any specific provision of the

Code of Civil Procedure. To my mind, the CPC does not confer any such power upon a normal Civil Court. Therefore, it is clear that the

Company Law Board is made by these Regulations, to be a Master of its own procedure, apart from being the Master of ceremonies.

34. Coming to the more important Regulation viz., Regulation 44, around which the present dispute revolves, it reads as follows:-

Saving of inherent power of the Bench:-

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for

the ends of justice or to prevent abuse of the process of the Bench.

35. The language employed in Regulation 44 is in pari materia with Section 151 of the Code.

36. Having seen the relevant provisions of the Companies Act, 1956 and the Company Law Board Regulations 1991, let us now undertake a

journey into the provisions of the Code of Civil Procedure. The CPC does not define the expression "Court". But Section 5 makes the provisions

of the Code applicable to Revenue Courts, that are governed by the provisions of the Code, provided the State Government declares so by a

notification in the Official Gazette. More importantly, Section 4(1) of the Code states that in the absence of any specific provision to the contrary,

the provisions contained in the Code shall not be deemed to limit or affect any special jurisdiction conferred upon any body. Section 4(1) of the

Code, reads as follows:-

(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local

law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the

time being in force.

37. Therefore, it appears from Section 4(1) that if any Special Law confers any power or prescribes any Special Form of Procedure, the same

shall not be deemed to be limited or otherwise affected by anything contained in the Code. In other words, while construing the powers available

to a Quasi Judicial Forum, under a Special Enactment, one must always keep in mind that the boundaries prescribed by the CPC within which the

Civil Courts are obliged to function, would not apply to the Forum created by the Special Enactment.

38. Subject to what is saved by Section 4 of the Code, Section 141 of the Code stipulates that the procedure provided in the Code in regard to

suits shall be followed as far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction. The Explanation inserted u/s 141

makes it clear that the expression ""proceedings"" appearing in the body of Section 141 would include proceedings under Order IX, but not

proceedings under Article 226. Therefore, it is clear that the procedure prescribed in the Code are not made applicable by Section 141 to

proceedings under Article 226 of the Constitution.

39. Having thus seen the various provisions of the CPC, The Companies Act and the Regulations let us now see if the courts have considered the

CLB to be a court or not. In Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others, , the Supreme Court pointed out that u/s

111 of the Companies Act, 1956, the Company Law Board performs the functions that were till then performed by Courts of Civil Judicature u/s

155. In para 26 of the report, the Supreme Court pointed out that the word ""Court"" must be read in the context in which it is used in a statute and

that it is permissible, given the context, to read it as comprehending the Courts of Civil Judicature and Courts or some Tribunals exercising curial or

judicial powers. After extracting the meaning of the word ""Court"" as propounded in paragraph 701 and the exposition of what is a Court in Law,

as found in paragraph 702 of the Halsburys Laws of England, the Supreme Court held in paragraph 31 of the report, as follows:-

31. Now, u/s 111 of the Companies Act, as amended with effect from 31.5.1991, the CLB performs the functions that were theretofore

performed by Courts of Civil Judicature u/s 155. It is empowered to make orders directing rectification of the Company's Register, as to

damages, costs and incidental and consequential orders. It may decide any question relating to the title of any person who is a party before it to

have his name entered upon the Company's Register; and any question which it is necessary or expedient to decide, it may make interim orders.

Failure to comply with any order visits the Company with a fine. In regard to all these matters it has exclusive jurisdiction (except under the

provisions of the Special Court Act, which is the issue before us). In exercising its function u/s 111, the CLB must and does act judicially. Its

orders are appealable. The CLB further, is a permanent body constituted under a statute. It is difficult to see how it can be said to be anything

other than a Court, particularly for the purposes of Section 9A of the Special Court Act.

40. Though the question as to whether Company Law Board is a Court or not, did not arise directly for consideration in Manish Mohan Sharma

and Others Vs. Ram Bahadur Thakur Ltd. and Others, , the Supreme Court was concerned in that case about the enforceability of the orders of

the Company Law Board. Interestingly, the Supreme Court referred to the definition of the expression ""decree"" appearing in Section 2(2) of the

CPC and held that since an order of the Company Law Board is liable to be enforced by virtue of Section 634A of the Companies Act, 1956, in

the same manner as if it is a decree passed by a Court in a suit, the powers of the Company Law Board are subject to all limitations to which a

Court executing a decree is subject. Consequently, the Supreme Court held that in exercising powers u/s 634A, the Board cannot go beyond the

orders passed in the petitions under Sections 397/398, just as a Civil Court executing a decree cannot go beyond the decree.

41. Again in Kamal Kumar Dutta and Another Vs. Ruby General Hospital Ltd. and Others, , a question arose as to whether an intra court appeal

would lie under Clause 15 of the Letters Patent, against an order passed by the Company Judge on an appeal u/s 10F of the Companies Act or

not. While answering the question in the negative, the Supreme Court pointed out that prior to the amendment to the Companies Act, by Act 31 of

1988 and the Constitution of the Company Law Board, the power to adjudicate upon applications under Sections 397 and 398 vested with the

Company Judge in the High Court. But after the amendment and the Constitution of the Company Law Board u/s 10E, the jurisdiction and powers

exercised by the Company Court, vested in the Board. Thereafter, only one remedy of appeal and that too on a question of law, was provided u/s

10F. Subsequently, the CPC was also amended in 2002, whereby Section 100A was inserted prohibiting any further appeal from the judgment

and decree of a single Judge passed on an appeal. Therefore, the Supreme Court held in Kamal Kumar Dutta, that a Letters Patent Appeal would

no longer lie against the decision rendered on an appeal by the Company Judge. Thus the Supreme Court invoked Section 100A of the CPC to

come to the conclusion that it did, however without going into the question as to whether the provisions of CPC would apply or not.

42. Thus we have on hand, 3 decisions of the Apex court, one in Canara Bank, another in Manish Mohan Sharma and the third in Kamal Kumar

Dutta, dealing with the nature, powers and jurisdiction of the CLB. The ratio decidendi of these decisions, could be summarised as follows:-

(i) That in a given context, it is permissible to understand the expression ""Court"" to include within it, some Tribunals exercising curial or judicial

powers;

(ii) that since an order passed by the Company Law Board is deemed to be a decree passed by a Civil Court, the enforcement of the orders of the

Company Law Board are subject to the same limitation as Civil Courts have with respect to execution of decrees; and

(iii) that in view of Section 100A of the Code of Civil Procedure, an Intra Court Appeal would not lie to the Division Bench of the High Court as

against an order passed by a Company Judge u/s 10F.

43. Therefore, it is clear that in a given context, the Company Law Board could be equated to a Court. At all times, the orders passed by the

Company Law Board could be treated as equivalent to decrees of Civil Court, for the purpose of enforcement u/s 634A. For the purpose of

finding out whether an appeal would lie against an order passed by a Company Judge in an appeal u/s 10A, it is permissible to refer to Section

100A of the Code.

44. The rationale behind the decision in Kamal Kumar Dutta, could be deciphered easily in view of the fact that by virtue of Rule 6 of the

Companies (Court) Rules, 1959, the provisions of the CPC are made applicable to proceedings before the Company Court. Similarly, the ratio

behind Manish Mohan Sharma, can also be easily appreciated from the fact that Section 634A itself provides for the deeming fiction. But the

application of the ratio laid down in Canara Bank, poses some difficulty in view of the fact that the Supreme Court did not say that for all practical

purposes, the Company Law Board would be a Civil Court. The Supreme Court restricted such a construction only to certain contingencies by

using the expression "'given the context'". Moreover, the construction was with reference to Section 9A of the Special Courts Act. Therefore, I find

it difficult to come to the conclusion, merely on the basis of the decision in Canara Bank, that the Company Law Board is a Court, either within the

meaning of the CPC or within the meaning of the Companies Act.

45. But the question as to whether a Special Adjudicatory Body constituted by an enactment is a Court or not, has become a nagging and vexed

question and the Courts have attempted to deal with the said question from time to time. Let us now take a look at how the Courts have addressed

the said question in relation to various other quasi judicial bodies or Tribunals.

46. In Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others, a similar question arose in relation to the Consumer Forums constituted

under the Consumer Protection Act, 1986. What was in issue in the said case was the admissibility of certain documents in evidence, before the

Consumer Forum. While dealing with the issue, the Supreme Court held in paragraph 43 of its report that "'the proceedings before the National

Consumer Commission are although judicial proceedings, but at the same time, it is not a Civil Court within the meaning of the provisions of the

Code of Civil Procedure". Relying upon the previous decisions in The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and

The Bharat Bank Employees' Union, Delhi, and Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation, , the

Supreme Court pointed out that the National Consumer Commission may have all the trappings of a Civil Court, but yet it cannot be called a Civil

Court.

47. If anyone thought that the issue had attained finality in Malay Kumar Ganguly, they were thoroughly mistaken as seen from the fact that the

same question was raised once again as to whether the Consumer Forums are Courts or not in Trans Mediterranean Airways vs. Universal

Exports {2011 (10) SCC 316}. In this case, reliance was placed upon the decisions of the Supreme Court in Laxmi Engineering Works Vs.

P.S.G. Industrial Institute, , Charan Singh Vs. Healing Touch Hospital and Others, and State of Karnataka Vs. Vishwabarathi House Building

Coop. Society and Others, , in support of the contention that the Consumer Forum is not a Court. But the Supreme Court held that the word

Court"" must be understood in the context of a body that is constituted to settle disputes and decide rights and liabilities of the parties before it. The

Supreme Court further held that Courts are those bodies that bring about resolutions of disputes between persons. For coming to the said

conclusion, the Supreme Court relied upon 3 things viz., (i) the meaning of the expression ""Court"" as found in Oxford Advanced Learners

Dictionary (8th Edition), Oxford Thesaurus of English (3rd Edition), Chambers Dictionary (10th Edition) and Stroud's Judicial Dictionary (ii) the

decision of the Supreme Court in Canara Bank vs. Nuclear Power Corporation {1995 (Supp.) 3 SCC 81} and (iii) the observations of the

Constitution Bench of the Supreme Court in Union of India (UOI) Vs. R. Gandhi, President, Madras Bar Association, .

48. The observations of the Constitution Bench of the Supreme Court in Union of India vs. Madras Bar Association, extracted by the Supreme

Court in its decision in Trans Mediterranean Airways, may also be apt for our case and hence, they are reproduced as follows:-

38. The term "Courts" refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by

the State for administration of justice, that is, for exercise of the judicial power of the State to maintain and uphold the rights, to punish wrongs and

to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under

a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law.

Courts refer to Civil Courts, Criminal Courts and the High Courts. Tribunals can be either Private Tribunals (Arbitral Tribunals), or Tribunals

constituted under the Constitution [Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule] or Tribunals authorised by the

Constitution (Administrative Tribunals under Article 323A and Tribunals for other matters under Article 323B) or statutory Tribunals which are

created under a statute (Motor Accidents Claims Tribunal, Debt Recovery Tribunals and Consumer Fora). Some Tribunals are manned exclusively

by Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory Tribunals have

judicial and technical members (Administrative Tribunals, TDSAT, Completion Appellate Tribunal, Consumer Fora, Cyber Appellate Tribunal,

etc.).

45. Though both Courts and Tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences

between Courts and Tribunals. They are:

(i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals

are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all Courts are

Tribunals. But all Tribunals are not Courts.

(ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and

a technical member who is an "expert" in the field to which the Tribunal relates. Some highly specialised fact-finding Tribunals may have only

technical members, but they are rare and are exceptions.

(iii) While Courts are governed by detailed statutory procedural rules, in particular the CPC and the Evidence Act, requiring an elaborate

procedure in decision-making, Tribunals generally regulate their own procedure applying the provisions of the CPC only where it is required, and

without being restricted by the strict rules of the Evidence Act.

49. After citing the above passage from the decision of the Constitution Bench in *Union of India vs. Madras Bar Association*, the Supreme Court

also referred to various other decisions and eventually held in paragraph 57 of the report that the Consumer Protection Act, gives the District

Forums, State Commissions and National Commission, the power to decide disputes of consumers and that though these Forums decide matters

after following a summary procedure, their main function is still to decide disputes, which is the main function and purpose of a Court.

50. Thus, the question as to whether a Consumer Forum is a Court or not, took a detour from Laxmi Engineering Works to Vishwabharathi House

Building Cooperative Society to Malay Kumar Ganguly before it landed finally, at least for the present, in Trans Mediterranean Airways. But a

similar issue came up for consideration in relation to the Family Courts, in S.D. Joshi and Others Vs. High Court of Judicature at Bombay and

Others, . In the said case, a few persons who were appointed as Judges of the Family Courts in the State of Maharashtra, under the Family Courts

Act, 1984 read with the statutory rules framed by the Government in consultation with the High Court of Bombay called the Maharashtra Family

Courts (Recruitment and Service Conditions) Rules, 1990, filed a writ petition directly on the file of the Supreme Court of India under Article 32

claiming that they should also be considered for elevation to the high Court, on par with the District Judges. The Supreme Court formulated 3

questions for consideration, 2 of which are as follows:-

(i) What is the scope of the expression ""Judicial Office"" appearing in Article 217 (2)(a) of the Constitution?;

(ii) Whether a Family Court has the trappings of a Court and the Family Court Judges would be deemed to be members of the Higher Judicial

Services of the State?

51. While examining the second question, the Supreme Court pointed out in paragraph 28 of the report that the Family Court is a creature of

Statute and that it is vested with the power to adjudicate and determine disputes between the parties and that the Judges of Family Courts perform

all duties and functions which are akin to the functions performed by the Presiding Officer of a Civil or Criminal Court, though to a limited extent.

Relying upon the decision of the Constitution Bench in Hari Nagar Sugar Mills Ltd vs. Shyam Sundar Jhunjhunwala, the Supreme Court pointed

out that ""by Courts is meant Courts of Civil Judicature and by Tribunals, those bodies of men who are appointed to decide controversies arising

under certain special laws."" The Court also made a reference to the passage extracted in Hari Nagar Sugar Mills Ltd., from the opinion of Lord

Sankey L.C., in Shell Co. of Australia vs. Federal Commissioner of Taxation, where the following negative propositions were enumerated:-

(i) A Tribunal is not necessarily a Court in this strict sense because it gives a final decision;

(ii) Nor because it hears witnesses on oath;

(iii) Nor because two or more contending parties appear before it between whom it has to decide;

(iv) Nor because it gives decision which affects the rights of subjects;

(v) Nor because there is an appeal to a Court;

(vi) Nor because it is a body to which a matter is referred by another body.



52. Consequently, the Supreme Court pointed out that while all Tribunals are not Courts, all Courts are Tribunals. It further pointed out that if the

essential features that make an institution a Court are satisfied, then it will have to be termed as a Court. Taking such a view, the Supreme Court

held that the Family Court has all the trappings of a Court and that it is therefore, a Court and its Presiding Officer, a Judge, though of limited

jurisdiction.

53. If we are lucky enough not to get lost in the quicksand of these judicial precedents, it is possible to cull out the following tests, to find out if a

Tribunal or a quasi judicial body, is a Court or not:-

(i) Whether it is created by a special law, to adjudicate certain disputes carved out for adjudication under such special law itself;

(ii) Whether it is to be manned exclusively by Judges or by other persons either individually or sitting along with a judicial member;

(iii) Whether it is empowered to regulate its own procedure, including the power to apply some provisions of the Code of Civil Procedure, but

without being restricted by the strict rules of the Evidence Act.

54. While applying the above tests, which we could call as positive tests, the Court is also obliged to apply the negative tests formulated by Sankey

L.C., in *Shell Co. of Australia*. They are: that a Tribunal is not necessarily a Court in the strict sense (i) merely because it gives a final decision; (ii)

or because it hears witnesses on oath; (iii) or because two or more contending parties appear before it between whom it has to decide; (iv) or

because it gives decision which affects the rights of subjects; (v) or because there is an appeal to a Court.

55. If the aforementioned 3 positive tests and 5 negative tests are applied to the Company Law Board, it would be clear-

(i) that it was created by a special law viz., the Companies Act, 1956 to adjudicate only certain disputes that are earmarked by the Act itself;

(ii) that it is not to be manned exclusively by Judges, but predominantly manned by non-judicial members, either technical or otherwise; and

(iii) that the Company Law Board is vested with the power u/s 10E(6) to regulate its own procedure.

56. Though the procedure to be followed by the Company Law Board is also well laid out in the Company Law Board Regulations 1991, the

Board is vested with the power under Regulation 48 even to dispense with the requirement of any of the Regulations. This is a power that is not

available even to a Civil Court. Therefore, merely because the Company Law Board is empowered to give a final decision and merely because it

can hear witnesses and give a judgment that could affect the rights of parties and merely because its orders are appealable to this Court, it cannot

be contended that the Company Law Board is a Court. Therefore, I hold that the Company Law Board is not a Court either within the meaning of

the expression ""Court"" appearing in the Companies Act, 1956 or within the meaning of the expression appearing in the Code of Civil Procedure.

57. If the Company Law Board is not a Court, it follows as a necessary corollary that all the provisions of the CPC cannot be required to be

followed in the proceedings before the Company Law Board. It is only those provisions of the CPC which are made applicable under sub-section

(4C) of Section 10E and those provisions of the Company Law Board Regulations 1991, which are analogous to the provisions of the Code of

Civil Procedure, that can be applied to the proceedings before the Company Law Board. The first question arising for consideration in this appeal

is answered accordingly.

QUESTION No. 2:

58. The second question of law that arises for consideration is as to whether Regulation 44 which confers inherent powers, could be used by the

Company Law Board to produce the same result as could have been achieved only by taking recourse to Section 10 of the Code.

59. It is the contention of Mr. R. Murari, learned Senior Counsel for the appellant that the Company Law Board Regulations 1991 contains

several provisions, which are analogous to those contained in the Code of Civil Procedure. Regulation 44 itself is analogous to Section 151.

Therefore, it is contended by him that there is a conscious omission on the part of the Government, while framing the Regulations, to include a

provision similar to Section 10 of the Code. Therefore, invoking of the inherent power under Regulation 44 to produce the same result that could

be produced by invoking Section 10 of the Code, would, according to the learned Senior Counsel, go against the intent of the law makers.

60. In support of his contention that it is not permissible to invoke through Regulation 44, whatever was omitted from the Code, the learned Senior

Counsel for the appellant relied upon the decision of the Andhra Pradesh High Court in B. Subba Reddy Vs. S.S. Organics Limited and V.N.

Sundana Reddy, . It was held by a learned Judge of the Andhra Pradesh High Court in that case that it is not possible to import the provisions of

Order XIV, Rule 2, CPC, by taking umbrage under Regulation 44, to empower the Company Law Board to decide preliminary issues and that the

Board cannot exercise any power other than those conferred u/s 10E(4C) of the Act.

61. But disagreeing with the view expressed by the Andhra Pradesh High Court in Subba Reddy vs. S.S. Organics, it was held by this Court in

V.L. Sridharan and Another Vs. Econo Valves P. Ltd. and Others, , that the power given to the Company Law Board u/s 10E(4C) to do certain

things that the CPC empowers a Civil Court to do, is only in addition to the powers already available to the Company Law Board.

62. Therefore, the question as to whether a power not specifically conferred upon a Tribunal by the Rules/Regulations statutorily framed, could still

be exercised by the Tribunal by resorting to the inherent powers conferred upon it, appears to be one more question in the long list of vexed

questions.

63. To find an answer to this question, we may have to take, once again, a small detour.

64. A similar question repeatedly arose, before the High court and the Supreme court, with respect to the application of the doctrine of res judicata

to writ proceedings. As pointed out earlier, the doctrine of res judicata is enshrined in section 11 of the Code of Civil Procedure. By virtue of the

Explanation u/s 141 of the Code, the provisions of the Code are made applicable to all proceedings before all courts of civil jurisdiction, except the

proceedings under Article 226 of the Constitution.

65. But in any number of decisions, the High courts and the Supreme court have held the principle of res judicata is founded upon public policy

and that therefore, even without reference to section 11 of the Code, they can be invoked in writ proceedings, though not under all circumstances.

It was pointed out that res judicata is a rule of universal law pervading every well regulated system of jurisprudence and is based upon two

grounds, embodied in the Maxims of common law; the one, public policy and necessity, which makes it to the interest of the State that there should

be an end to litigation-interest republicae ut sit finis litium; the hardship on the individual that he should be vexed twice for the same cause-nemo

debet bis vexari pro eadem causa.

66. Section 11 of the Code is not the foundation of the principles of res judicata, but merely the statutory recognition thereof. The principle is a

recognition of both cause of action estoppel as well as issue estoppel.

67. Without getting into details, it can be pointed out that a survey of the law as it developed in the past 50 years, from the earliest Constitution

Bench decision in Daryao and Others Vs. The State of U.P. and Others, to the various decisions such as those in The Amalgamated Coalfields

Ltd. and Another Vs. The Janapada Sabha, Chhindwara, , Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam

and Others, , Bombay Gas Co., (1975) 4 SCC 690 , Lal Chand (Dead) by Lrs. and Others Vs. Radha Krishan, , G.K. Dudani and Others Vs.

S.D. Sharma and Others, , Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, , State of Karnataka and

Another Vs. All India Manufacturers Organization and Others, , would show -

(i) that Section 11 CPC is not the foundation of the principle of res judicata, but a statutory recognition of a principle of common law, founded on

the one hand upon public policy to ensure finality to litigation and on the other hand, upon private interest to ensure that an individual is not vexed

twice over the same cause;

(ii) that consequently, Section 11 CPC is not exhaustive of the general principles of the law;

(iii) that the principle is a recognition of the ""cause of action estoppel"" as well as ""issue estoppel"";

(iv) that since the principle of res judicata is not confined to the four corners of the Code of Civil Procedure, but is rooted on principles of public

policy, it is applicable even to writ proceedings, despite the insertion of the Explanation u/s 141 CPC by the Amendment Act 104 of 1976; and

(v) that on the same analogy, the principle of constructive res judicata is also applicable to proceedings under Article 226.

68. Therefore, it is clear that even where some of the principles enshrined in the CPC are specifically excluded in their application to certain

proceedings, the Courts have always made analogous principles applicable to those proceedings, if the foundation of those principles could be

traced to public policy. Keeping this in mind, if we have a look once again at section 4(1) of the Code of Civil Procedure, (to which I have already

made a reference in paragraph-above) it will be clear that the provisions of the Code do not limit or otherwise affect any special or local law or any

special jurisdiction or power conferred or any special form of procedure prescribed by any other law.

69. As indicated elsewhere, Regulation 25 of the CLB (Regulations), 1991, confers powers upon the Board to adjourn the hearing the case.

Regulation 44 confers, rather saves the inherent power of the Board, to make such orders as may be necessary for the ends of justice or to

prevent the abuse of the process of the Bench. Therefore, the same would naturally include a power to postpone the hearing of a case to a future

date beyond a date on which the civil court is likely to decide the substantial dispute between the parties. A stay in terms of section 10 of the

Code, is nothing but a postponement of the hearing of a subsequently initiated litigation till the previous one is decided. To say that the power to

postpone the hearing to a definite date is available to the CLB by virtue of regulation 25, but a power of postponement to an indefinite date is not

available, even under Regulation 44, in view of the absence of section 10 of the Code, does not appear to be the correct reading of the power of

the Board.

70. Therefore, I hold on the 2nd question of law that the power under regulation 44 of the CLB (Regulations) 1991, would include a power to stay

its own proceedings pending the adjudication of a dispute in a previously instituted suit. This is due to the fact that one test for the applicability of

Section 10 of the Code is whether or not, the final decision in the previous suit would operate as res judicata in the subsequent suit. Therefore, if

principles analogous to res judicata could be applied to proceedings to which CPC would not apply, then on the same analogy, the principles upon

which the power u/s 10 of the Code is based, could also be invoked by the Tribunals, to which CPC would not apply. The absence in the

Company Law Board Regulations 1991, of a provision similar to Section 10 of the Code, is not an indication of the restrictive nature of the

inherent power under Regulation 44. The inherent power under Regulation 44 encompasses within itself, a power to do something, which finds an

expression in specific terms in Section 10 of the Code.

QUESTION No. 3:

71. The third question of law arising for consideration is as to whether in the case on hand, the Company Law Board was justified in staying its

own proceedings, on account of the pendency of the civil suit between the appellant and the second respondent.

72. To find an answer to this question, it is necessary to take note of (i) the parties before the Civil Court and the Company Law Board (ii) the

issues directly and substantially arising for consideration before both Forums and (iii) the reliefs sought for. Therefore, these facts are presented in a

tabular column as follows:-

Before the Civil Court

Before the Company Law Board

Parties

M.S.D.C. Radha Ramanan

vs.

1. M.S.D. Chandrasekara Raja

2. Mrs. Anandhammal

3. Mrs. Hemalatha Devi

4. Mrs. Rajeswari Ammal

5. Mrs. Subashini Ammal

6. M/s. Sri Bharathi Cotton Mills (P) Ltd.

7. M/s. Jeya Bharathi Textile (P) Ltd.

Mr. M.S.D. Chandrasekar Raja

vs.

1. M/s. Jayabharath Textiles (P) Ltd.,

Registered Office at No. 113,

T.P. Mills Road, Cotton Market,

Post Box No. 117,

Rajapalayam 626 117.

2. Mr. M.S.D.C. Radha Ramanan

Reliefs sought

a) To declare that the gift deeds registered on 24th October 2002 reg. No. 3471/02, 24th October 2002 Reg. No. 3472/02, 12th December

2002 Reg. No. 4079/02, registered on 26th February 2004 Reg. No. 784/04 executed by 1st defendant in favour of defendants 2 to 5 are null

and void and will not bind the plaintiff's share in the suit property.

b) To partition of plaintiff's 1/2 share in plaint ""A"" schedule properties by metes and bounds and put plaintiff in possession of his half share.

c) To direct the defendants to pay costs of this suit; and

d) For such other relief or reliefs as this Hon"ble Court may deem fit and proper in the circumstances of the case.

a) Directing the Company to issue Share Certificates in respect of 1,25,000 Equity Shares issued and allotted to the petitioner and in respect of

100 preference shares issued by the Company.

b) Directing that the 50% share in the land, Building and Machinery situated at No. 113, T.P. Mills Road, Cotton Market, Post Box No. 117,

Rajapalayam 626 117 be divided in such manner as may be determined by an expert appointed for this purpose and be vested in the second

respondent or an entity nominated by him in this regard.

c) Consequent thereto and in consideration of the aforesaid transfer, to direct the second respondent to transfer his entire shareholding in the first

respondent company to the petitioner or to the person/s nominated by him for this purpose.

d) In the event that this Hon"ble Board does not for any reason deem it fit to direct the second respondent to transfer his entire shareholding to the

petitioner, then further directions may be passed to transfer 30% interest in the undivided share of the Land and Flat bearing No. 10, South Bishop

Waller Avenue, CIT Colony, Mylapore, Chennai-600 014, belonging to first respondent in favour of Shree Bhaarithi Cotton Mills Pvt. Ltd., who

is the owner of the remaining 70% interest in the undivided share of the said Land and Flat, in consideration of a sum of Rs. 27,07,318/- owed by

the first respondent company to the said Shree Bhaarathi Cotton Mills Pvt. Ltd.

e) To declare the redemption of preference shares as invalid.

f) Pass such further orders as this Hon"ble Board may deem fit and proper to grant relief from the acts complained of.

#### Schedule

1. Schedule "A" comprising of Houses, House Sites and Agricultural lands in Rajapalayam Town, North Venganallur Village, Sammanthapuram

village, Melapattam Karisalkulam village and the movable and immovable properties and equity shares of Shree Jayabharathi Textile Pvt. Ltd., at

Mudangiyaar Road, Rajapalayam. (1,25,000 shares out of 2,50,000 in the company having Registered Office at 133, T.P. Mills Road, Cotton

Market, Rajapalayam).

2. Schedule "B" comprising of lands, buildings, house sites etc., in Rajapalayam, North Venganallur, Sammanthapuram etc.

3. Schedule "C" comprising of 2,84,000 shares that stands in the name of the second respondent herein in Shree Bharathi Cotton Mills (Pvt.) Ltd.,

and the "B" Unit located in Mudangiyaar Road. (at Door No. 117, T.P. Mills Road)

73. A careful perusal of the parties who are before the Company Law Board as well as the Civil Court and a comparison of the reliefs sought both

before the Civil Court and before the Company Law Board would show that some of the reliefs sought before both forums, as between the same

parties, overlap a little. For instance, before the Civil Court, the son is seeking a partition, apart from other reliefs. Before the Company Law

Board, the father is seeking a partition of the land, building and machinery in the company. Therefore, on the surface of it, it may appear that the

parties are seeking identical reliefs before different forums.

74. But, I cannot lose sight of one important thing. The power of the Company Law Board under Sections 397 and 398, are very wide. The reliefs

that would be granted by the Company Law Board u/s 402 of the Companies Act, 1956, are very wide. As a matter of fact, what a Civil Court

could do after a very long journey in the form of a preliminary decree for partition, a final decree and the actual division of properties, is something

that the Company Law Board cannot do. But, what the Company Law Board can do u/s 402, is something that may even put an end to the civil

dispute, on completely different terms. For instance, the Company Law Board can always pass an order giving an exit option to any one of the two

warring parties, namely, the father or the son. In such an event, at least the company will not be put to any more dispute or hardship. The just and

equitable clause contained in Section 402(g) is too wide to find a solution to the long dispute that the father and son have had for more than a

decade. This will at least alleviate the sufferings of the company, if not the sufferings of the individuals behind the company. Once this is done, at

least a portion of the dispute pending before the Civil Court will get terminated and a possible solution for the resolution of the civil dispute may

appear in the distant horizon.

75. If looked at from the above angle, it would be clear that the issues directly and substantially arising for consideration before both forums cannot

be said to be the same. As a matter of fact, the whole purpose of Sections 397 and 398 read with Section 402 is to put an end to acts of

oppression and mismanagement, so that the smooth running of the company is ensured. The purpose of Section 402 is not to put an end to the

dispute between individuals, but to keep the company insulated from such individual disputes. The focus of the Company Law Board u/s 402 is on

the smooth running of the company and the provision of a protective gear to the company, to save it from the onslaught of individuals fighting

among themselves. Therefore, the issues arising directly and substantially before the Civil Court and the Company Law Board cannot be said to be

the same, so as to warrant a stay of the proceedings. In view of the above, the appeal is allowed and the impugned order of the Company Law

Board is set aside and the Company Law Board is directed to proceed with the hearing of the company petition C.P. No. 37 of 2011 and dispose

it of in accordance with law, preferably in a manner that would put an end to the sufferings of the company, if not the sufferings of the applicant and

the second respondent.