

Pesticides and Brewers Ltd. Vs Narendra kumar Berlia and Others

Court: Calcutta High Court

Date of Decision: June 16, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 2 Rule 2
Companies Act, 1956 â€” Section 111A

Hon'ble Judges: Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: S.N. Mukherjee, Ratnanko Banerji, T. Aich and Shaunak Mitra, for the Appellant; Anindyo Mitra and Sarbopriya Mukherjee, Sakya Sen, A.K. Dey for Respondent No. 7 and Sabyasachi Chowdhury, for the Respondent

Judgement

Bhaskar Bhattacharya, J.

This appeal under Clause 15 of the Letters Patent is at the instance of the Defendant No. 6 and is directed

against order dated 18th April, 2011 passed by a leaned Single Judge of this Court by which His Lordship passed an ad interim order of injunction

by restraining the Defendants Nos. 6 to 18 of the suit from transferring or alienating or otherwise encumbering any of their fixed assets without

previous leave of Court. The Defendants Nos. 6 to 18 were further restrained from changing the shareholding composition therein without previous

leave of the Court. The Plaintiff was also restrained from dealing with or disposing of or alienating any of the properties standing in the Plaintiff's

name or those otherwise under the control of the Plaintiff till the disposal of the application.

2. The learned Single Judge directed the parties to file affidavit-in-opposition within fortnight from the date of passing of such order with further

direction that the matter would appear as adjourned motion in the monthly list of June, 2011.

3. Instead of filing any affidavit-in-opposition, the Defendant No. 6 has straightway preferred this appeal.

4. The Plaintiff has also filed cross-objection against the selfsame order challenging that portion of the order by which some of the relief's claimed

in the application was refused.

5. Consequently, both the appeal and the cross-objection, mentioned above, were heard analogously.

6. The facts giving rise to filing of this appeal may be summed up thus:

The Plaintiff/Respondent filed in the Original Side of this Court a suit CS No. 79 of 2011 thereby praying for the following relief:

a) Declaration that the shares in the companies being the Defendant Nos. 6 to 18 particulars whereof are set out in schedule "A" hereto are assets

and properties of Berlia family comprised of five branches;

b) Declaration that the immoveable properties particulars whereof set out in schedule "R" hereto are assets of the Berlia family comprised of five

branches as mentioned in paragraph 77 above;

c) Partition of all the assets mentioned in prayers (a) and (b) amongst the five branches of the Berlia family in proportion to their respective 1/5th

share each;

d) Declaration that the shares of the parties in the joint family estate more fully described in paragraph 77 above are as follows:

i) Plaintiff No. 1 and his branch 1/5th;

ii) Defendant No. 1 and his branch 1/5th;

iii) Defendant No. 3 and his branch 1/5th;

iv) Defendant No. 4-1/5th;

v) Defendant No. 5-1/5th.

e) Partition by metes and bounds of the joint estate as more fully stated in paragraph 77 in the manner as indicated in paragraph 81 above;

f) Perpetual injunction restraining the Defendant from dealing with, disposing of or in any manner encumbering the assets and properties comprising

the joint family estate being those mentioned in paragraph 77 above as well as the immoveable properties and investment held by the Defendant

Nos. 6 to 18 more fully described in Annexure ""T"" above;

g) Declaration than the shares standing in the names of the Defendant Nos. 19 to 22 in the Defendant No. 6 form part of the joint family estate;

h) Appropriate decree be made against the Defendant Nos. 6 to 18 for recording the transfer of shares as may be necessary for partition of the

joint estate;

i) Mandatory injunction directing the Defendant No. 1 to 5, their agents, servants, assigns to exercise voting rights in respect of the shares

mentioned in annexure ""R"" in such a manner as to ensure that there is no transfer, alienation or creation of encumbrance of any asset of Defendant

No. 6 to 18;

a) Receiver;

b) Injunction;

c) Attachment;

d) Costs;

e) Such further and/or other relief or relief"s.

7. The case made out by the Plaintiff in the plaint of the aforesaid suit may be summed up thus:

1. One Gurdayal Berlia was born in or around 1917 at Jui, Haryana. His father"s name was Pokarmal Berlia. Gurdayal Berlia was a man of

modest means and he came to Calcutta in or around 1927 and started his business. Gurdayal Berlia did not inherit any wealth from his

predecessors.

2. In the 1930"s Gurdayal Berlia started business concerning textiles, chemicals etc. and in or around 1935, Gurdayal Berlia along with one Laxmi

Narayan Goenka formed and constituted a partnership firm, ""Pokarmal Gurdayal"". Gurdayal Berlia carried on his business in chemicals under the

auspices of the aforesaid partnership firm.

3. Thereafter, the business of Gurdayal Berlia flourished and he accumulated considerable wealth.

4. Gurdayal Berlia set up his family residence initially at 208, Cross Street, Kolkata which was taken on rent. The family residence was shifted to

premises No. 172, Chittaranjan Avenue, Kolkata, where a large dwelling house was constructed. Gurdayal Berlia and all his five sons lived

together in common mess and worship at the family house at premises No. 172, Chittaranjan Avenue, Kolkata, which was named as ""Berlia

House"".

5. Later on, Gurdayal Berlia also purchased premises No. 208, Cross Street (now known as Jamunalal Bajaj Street) in the names of his five sons

in the year 1969. The said property was already tenanted, save and except second floor thereof, which was used and is still being used as office of

the family businesses.

6. Gurdayal Berlia, his wife Smt. Sita Devi Berlia, his five sons namely, Satya Narayan Berlia, Shiv Kumar Berlia, Vijay Kumar Berlia, Om

Prakash Berlia, Narendra Kumar Berlia and daughter Bimla Berlia constituted a Hindu Undivided Family, governed by Mitaksara School of Hindu

Law of which Gurdayal Berlia was the Karta.

7. Gradually, Gurdayal Berlia promoted several companies and also acquired controlling block of shares in several companies. Gurdayal Berlia

gave the names of such of his sons and his relations, friends or associates as he decided, as promoters/subscribers to the Memorandum of the

companies newly incorporated and inducted his sons or friends, relatives or associates as directors in the companies where he acquired controlling

block of shares.

8. Gurdayal Berlia decided to diversify his business activities outside the State of West Bengal. One flat at Premkutir, 177, Marine Drive, Mumbai-

400020 was acquired and used as family residence. Gradually, two more flats at the same building were acquired and residential facilities for the

Berlia family were extended.

9. All the incomes and earnings of Gurdayal Berlia was brought into the hotchpots of the said joint family and the assets and business acquired

during the lifetime of Gurdayal Berlia were treated and accepted as assets of the said joint family and on record kept those in the names of such

members of the joint family as was decided by Gurdayal Berlia. Gurdayal Berlia, for convenience and economy of management of the assets of the

joint family, started preparing Income Tax files in the names of his five sons and wife.

10. As and when his sons were married, HUF in the name of the said married son was created by Gurdayal Berlia and Income Tax files were

prepared accordingly. The wife of Gurdayal Berlia never carried on any business and did not receive any assets or property from her parents. All

the sons of Gurdayal Berlia had no source of income or vocation and their father in his business activities allotted such post and activities as was

decided by Gurdayal Berlia. Gurdayal Berlia during his lifetime trained his sons for management of the business and companies under his control.

11. Gurdayal Berlia remained the Karta of the joint family until his death in the year 1983. His wife died in the year 1988.

12. Particulars of the companies promoted by Gurdayal Berlia including the names of the first directors of the companies upon promotion are set

out herein below:

Year Name of Company First Directors Relation

1969 Berlia Chemicals & Traders Pvt. S J Singhania Satya Close confident

Ltd. regd. Office at Rang Mahal, Narayan Berlia Son Brother's

212/216 Samuel Street, Mumbai Girdharilal C Berlia son

400003.

1972 Eastern PVC Products Pvt. Ltd. Upnet Singh Ramanlal Go down Keeper

regd. Office at 208, Jamunalal Raghvani Close Associate

Bajaj Street, Kolkata-700007.

1973 Satvijay Traders Pvt. Ltd. regd. Vijay Kumar Berlia SatyaSon

office at Rang Mahal, 212/216 Narayan Berlia Sudha

Samuel Street, Mumbai 400003. Berlia Son

Daughter-in-law

1974 Bichem Investments Ltd. regd. V K Berlia P Barai S G Son Close business

office at Rang Mahal, 212/216 More associate Family

Samuel Street, Mumbai 400003. friend

1980 Berlia Marketing Pvt. Ltd. regd. Om Prakash Berlia VijaySon

office at Rang Mahal, 212/216 Kumar Berlia Satya

Samuel Street, Mumbai 400003. Narayan Berlia NarendraSon

Berlia

Son

Son

1980 Pokarmal Gurdayal Pvt. Ltd. Vijay Kumar Berlia Om Son

regd. office at Rang Mahal, Prakash Berlia Narendra

212/216 Samuel Street, Mumbai Berlia Satya Narayan Son

400003. Berlia

Son

Son

1981 Sri Sailanath Investments Co. Pvt.R K Taparia] S Gopal Employee

Ltd. regd. Office at 7-1- Employee

71/A Dharmkaran Road,

Hydrabad 500016.

1983 Indorai Investments Pvt. Ltd. Raj Kumar Indoria G Employee

regd. Office at 7-1-71/A Brahma Reddy Employee

Dharmkaran Road, Hydrabad

500016.

13. Gurdayal Berlia acquired controlling block of shares in Barium Chemicals Ltd., the Defendant No. 8 from the Sahu Jain group in 1975 and in

1981 Pesticides & Breweres Ltd., the Defendant No. 6 from the Jalan group and got members to be appointed in the Board of Directors of the

companies being some of his sons, his friends, relations and associates to gain control over the same. All directors of the said two companies at the

time of take over resigned. The names of the first directors of the Defendant No. 6 upon acquisition of controlling block of shares of Defendant

No. 6 were as follows:

Mr. Narendra Kumar Berlia

Mr. Ramawatar Sharma

Mr. Bishwanath Jhunjunwala

As far as the Plaintiff has been able to ascertain, Defendant No. 1 and Defendant No. 3 were inducted in the board of directors of Barium

Chemicals Ltd., Defendant No. 8 herein when it was taken over by Gurdayal Berlia.

14. The shares in the companies promoted during the lifetime of Gurdayal Berlia and the controlling block of shares in the other companies

acquired during his lifetime, were all treated by him and members of Berlia family as assets of the joint family (hereinafter referred to as the "Berlia

Family") of which Gurdayal Berlia was the Karta.

15. After the death of Gurdayal Berlia, the said jointly family was continued and his eldest son, Satya Narayan Berlia became the Karta.

16. After the death of Gurdayal Berlia, in the year 1984 the said Berlia Family out of profits and funds of other family companies acquired

controlling block of shares in Wavin India Ltd., the Defendant No. 15 herein being 40% share in the said company from IDL Chemicals Ltd. with

the said 40% shareholding in the said company, the Berlia family took control of the said Wavin India Ltd. and upon such acquisition, caused the

Board of Directors of the said company to be reconstituted by substituting nominees of the previous management by the nominees of the said

Berlia Family, whose names as far as the Plaintiff has been able to ascertain are set out below:

Mr. Vijay Kumar Berlia

Mr. Om Prakash Berlia

Another company, Bervin Investments & Leasing Ltd. the Defendant No. 16 was incorporated in the year 1990 with the corpus coming from the

joint family funds.

17. All the aforesaid family companies of Berlia family were known as Berlia Group of Companies having common directors, common employees

and common places of business/office. The shareholdings in all the aforesaid companies were interlocked in such a manner as Berlia Family would

retain control over them. The interlocking pattern of the shareholdings in the aforesaid companies was set out in a Schedule annexed to the plaint

and marked with the letter "A".

18. Gurdayal Berlia was mainly carrying on business of trading in chemicals. All the places of business of the aforesaid companies were common,

that is to say, the companies located in Bombay had their office at Rang Mahal, 212/216 Samuel Street, Mumbai 400003. Similarly, the

companies located in Calcutta had their common office at 208, Jamunalal Bajaj Street. The only one family company, Wavin India, other

Defendant no 15, located in Madras had its office and factory at 65 & 66, Ambattur Industrial estate, Chennai 600058. The office of Sri Sailanath

Investments Company Private Limited and Indoria Investments Private Limited, being the Defendants no 13, and 12, which were promoted after

taking over Barium Chemicals Ltd., Defendant no 8, and their offices were located at the Hyderabad office of Defendant No. 8 at 7-1-71/A

Dharmaran Road, Hyderabad 500016. All the aforesaid companies are carrying on business as dealers and traders in different categories of

chemicals. When Pesticides, Defendant no 6, was taken over, the said company already stopped manufacturing chemicals (Pesticides) but had and

has a vast and valuable immoveable asset in the State of Maharashtra. Gurdoyal Berlia did not revive the chemical manufacturing business and only

started trading business through the said company.

19. All the non-Berlia directors of the said companies are really nominees of Berlia Family. Shares were also held by Berlia Family in the names of

their nominees and employees. All the controlling block of shares in the aforesaid family companies were in fact and were treated as assets of the

said Berlia Family.

20. Management of the business of the aforesaid Berlia Family companies was arranged amongst the sons of Gurdoyal Berlia in such manner as the

head of the family decided.

21. The relationship between the Plaintiff and the Defendant Nos. 1 to 5 will appear from a genealogical table annexed to the plaint and marked

with the letter "B". The Plaintiff, Defendants 1, 3, and 4 are brothers and the Defendant No. 5 is the widow of the pre-deceased eldest brother,

Satya Narayan Berlia. They have been impleaded in their capacity as the head of their respective family each having 1/5th undivided share in the

joint family estate comprising of moveable and immoveable properties more fully detailed hereinafter. The Defendant No. 2, son of the Defendant

No. 1, even though a part of Defendant No. 1's family, has been separately impleaded since several shares in Satvijay Traders Pvt. Ltd., the

Defendant No. 7, which form part of the joint family estate are standing in the name of the said Defendant which aspect is also dealt with in more

detail hereinafter.

22. The Defendants Nos. 6 to 18 are companies which form part of the joint family estate of the Berlias and are under the control of the members

of the Berlia family. All the shares in these companies viz. Defendants Nos. 7, 9, 10, 11, 12, 13, 14 16 and 17 are owned by the members of the

family and/or the nominees of the Berlia family. So far as the Defendants Nos. 6, 8 and 15 are concerned, the controlling block of shares in these

companies have been acquired with the monies derived from the corpus of the joint family and form part of the joint family estate.

23. The Plaintiff to the extent possible has summarized the facts which would go to show that the Defendants No. 6 to 18 and/or the shareholding

in these companies form part of the joint family estate. These facts are stated company wise hereinafter.

24. Pesticides and Brewers Ltd. Defendant No. 6: The assets of this company are the principal bone of contention which led to the institution of

the present suit as well as the prior suit being C.S. No. 12 of 2009 and is accordingly dealt with at the very outset.

25. In the year 1981, Gurdayal Berlia took over control of the Defendant No. 6 (a listed company) by purchase of approximately 36%

shareholding of the earlier owners. The balance shares were held by members of the public who are widely dispersed. The shares were purchased

by Gurdayal Berlia in the names of his sons and in the names of family owned companies. As a result of the takeover, Gurdayal Berlia stated to

control the affairs of the Defendant No. 6 exclusively and the Defendant No. 6 became a family company. Thereafter, Defendant No. 18, Bichem

Investments Ltd., another family owned company acquired 41,911 shares in the Defendant Nos. 6 increasing the Berlia Family Shareholding to

42.69%. Defendant No. 18 is under the control of the Defendant No. 6 which is under the control of the Defendants No. 1 and 2. During lifetime

of Gurdayal Berlia both these companies were under his control.

26. The Board of Directors of the Defendant No. 6, at all material times, has reflected the absolute control of the Berlia family. This is summarized

as follows:

a) Immediately after the controlling block of shares of the company was acquired by Gurdayal Berlia, there was a change in the constitution of the

Board of Directors. The Plaintiff was inducted as a director along with two other associates of Gurdayal Berlia viz. Ramawatar Sharma and

Bishwanath Jhunjhunwalla. All of them were appointed on the same date i.e. 1st October, 1981.

b) Thereafter Basant Bhoruka, a close friend and associate of the Plaintiff, was inducted as a Director on 15th November, 1984. The Defendant

No. 3 was also inducted on the same date. On 9th February, 1989, the Defendant No. 1 was inducted as a Director.

c) So as to enable Defendant No. 6 to freely deal with other family controlled companies without any restriction, the Plaintiff and the Defendant No.

3 had voluntarily resigned from the Board on 29th June, 1989 and 25th August, 1990 respectively so that only one family member remains on the

Board. Even then the Board was completely under the control of the family through the Defendant No. 1, Ramawatar Sharma, Biswanath

Jhunjhunwala and Basant Bhoruka.

d) Ramawatar Sharma was the right hand man and close associate of Gurdayal Berlia as well as the family which would be evident, inter alia, from

the fact that he was made director of three other family companies viz. Bichem Investments Ltd., Defendant No. 18 Sapphire Chemicals & Fibres

Ltd., Defendant No. 17 and Bervin Investments and Leasing Ltd., Defendant No. 16. Ramawatar Sharma is residing in a flat being Flat No. 403,

Siddharth Building, Jitendra Road, Malad, Mumabai-400064 owned by another family company viz. Berlia Marketing Pvt. Ltd., the Defendant

No. 10 above named. Since the family took over the company, he also held shares in the Defendant No. 6. He was also Defendant No. 32 in the

earlier suit but chose not to oppose the Plaintiff's application filed in the suit and did not deny and thus deemed to have admitted all the statements

made in the earlier suit regarding joint family estate and joint family companies. Inasmuch as Ramawatar Sharma happens to be a close associate of

the Defendant No. 3 after filing the C.S. No. 12 of 2009, the Defendant No. 1 caused Ramawatar Sharma to be removed from the list of directors

in the annual return filed subsequent thereto. In all the annual returns of the Company, which had been filed prior to the institution of the earlier suit,

Ramawatar Sharma has been shown as a director of the company.

e) Three new Directors have been appointed of which two viz. Annie Fernandes and Damodar Vyas were appointed before institution of C.S. No.

12 of 2009 and one director viz. Rajendrakumar Kishanlal Agarwal, was inducted as a Director allegedly sometime on or about 3rd November,

2007 but Form 32 was filed only on 2nd February, 2009. This has been certified by Sailesh Kachalia, company secretary, a copy whereof is

annexed to the plaint and marked "C". Rajendrakumar Kishanlal Agarwal is an associate of the Defendant No. 1 and is the person in control of

Infotech Era (India) Ltd., the Defendant No. 19 herein. The latter happens to be the allottee of 1,00,000 shares preferentially issued in their favour

sometime in the year, 2004.

f) Annie Fernandes is the regular lawyer of the Defendant No. 1. while Damodar Vyas is his close associate.

27. Even after the Plaintiff ceased to be a director of the Defendant No. 6, a General Power of Attorney was given to the Plaintiff by the Board of

Directors of the Defendant No. 6 sometime in January, 1996, a copy whereof is annexed to the plaint and marked with the letter "D". At that point

of time, the Plaintiff on record was not even an officer of the Company.

28. The Plaintiff without being either a Director or Officer of the Defendant No. 6 has been and still is the authorised signatory of the account of the

company maintained with Indian Overseas Bank, India Exchange place Branch, Kolkata, Account No. 001502000030109. This was an often-

used bank account of the company so long as the company was doing substantial business in Calcutta i.e. till the year, 2007. The other authorized

signatory of this account was the Plaintiff's manager, Mr. Shankar Lal Kandoi, who even after serious disputes amongst the family members has

continued to remain with the Plaintiff.

29. The Defendant No. 6 is for all matters and purposes an asset holding company, the asset being the 21 acres (approx) of land at Thane,

Maharashtra, where previously there was a factory. This factory was non functional since prior to Gurdayal Berlia acquiring the controlling block of

shares in the Company. From the Annual Accounts of the Defendant No. 6 as disclosed by them in their affidavit dated 20th February, 2009 filed

in the previous suit, it appears that the company is showing trading business in its books. This trading business is derived almost entirely from

related party transactions meaning thereby transactions with other family Companies like Pokarmal Gurdayal Pvt. Ltd., the Defendant No. 14

herein. Copies of these annual accounts are annexed to the plaint and collectively marked with the letter ""E"".

30. The Defendant No. 6 has substantial investments by way of shares in Defendant No. 15, Wavin India Ltd., another family company presently

under the control of the Defendant No. 3. Defendant No. 6 continues to hold 3,29,537 numbers of shares in Wavin India Ltd, even though the

latter is a non-dividend paying company whose shares are not even listed on any Stock Exchange. Similarly, Defendant No. 6 is holding shares in

two other family companies, viz. Defendant Nos. 7 and 9, even though these are also non-dividend-paying companies whose shares are not listed

on any Stock Exchange.

31. The Defendant No. 6 used to be a listed Company, its shares being listed on the Bombay Stock Exchange. However, it is the case of the

Defendant No. 6 in their affidavit affirmed on 20th February, 2009 that trading of shares on Bombay Stock Exchange has been suspended.

32. The Calcutta Office of the Defendant No. 6, at all material times, has been situating at 208, Jamunalal Bajaj Street, 2nd floor, Kolkata-

700007. These premises are the joint property of the Berlia family. That this is the branch office of the Defendant No. 6 will be evident from its

Import Export Code and Sales Tax Registration Certificates, copies whereof are annexed to the plaint and collectively marked with the letter ""F"".

Similarly, the Company's Administrative Office is situated at Prem Kutir, Ground floor, 177, Babubhai Chinai Marg, Mumbai -400420 which is a

property owned by late Satya Narayan Berlia and presently by his widow, the Defendant No. 5 above named. That this is the administrative office

of the Company will appear from notices received by the Plaintiff even in the recent past, a few copies whereof are annexed to the plaint and

collectively marked with the letter ""G"". No rent was ever paid by the Defendant No. 6 for the use of premises No. 208, Jamunalal Bajaj Street,

2nd floor, Kolkata-700007 property. As to Prem Kutir, the Defendant No. 5 has confirmed to the Plaintiff that she has never received any rent.

33. In 1993, the Berlia family decided to shift the Plaintiff to Kolkata to look after the Berlia family business in Kolkata. Since, 1993, the Plaintiff

has been posted in Kolkata. After the Plaintiff came to Kolkata, a branch office of the Defendant No. 6 had opened in Kolkata. The business

carried on by the Defendant No. 6 from Kolkata office was substantial. Particulars of the turnover of the company from its Kolkata office are

given herein below:

1994-1995 18,6056.00

1995-1996 77,94,609.78

1996-1997 132,48,857.57

1997-1998 2,08,53,105.54

1998-1999 2,29,05,640.86

1999-2000 2,62,55,736.92

2000-2001 1,87,29,738.82

2001-2002 1,47,74,091.82

2002-2003 2,09,66,668.03

2003-2004 1,58,40,203.54

2004-2005 92,48,950.11

2005-2006 32,44,283.00

2006-2007 19,53,437.20

2007-2008 NIL

34. The Defendant No. 1 continued to reside in Mumbai. The widow of Satya Narayan Berlia was living in Mumbai at the aforesaid family

residence and after his death, the widow is continuing to live in Mumbai. The mentally challenged brother, namely, the Defendant No. 4 has all

along lived in Mumbai at the said family residence.

35. In the early 1990, the family decided to shift Vijay Kumar Berlia, Defendant no 3, to Delhi and put in charge of Defendant No. 15. Since then,

the Defendant No. 3 has been residing at Delhi.

36. In 2003, the eldest brother Satya Narayan Berlia died.

37. In 2004, the Defendant No. 1 by taking advantage of the absence of the Plaintiff and Defendant No. 3 from Mumbai and his control of the

registered office and the records thereat, clandestinely caused preferential allotment shares of Defendant No. 6 in favour of his nominees whose

names are stated herein below:

No. of shares Percentage of paid up

share capital

a) Infotech Era (India) Ltd, Defendant No.221 lac 9.52%

b) Sujata Electronics Ltd, Defendant No.21 1 lac 9.52%

c) Ms. Preet Mittal, Defendant No.20 1 lac 9.52%

d) Mr Amitabh V W Mittal, Defendant 1 lac 9.52%

No.19

e) Satvijay Traders Pvt. Ltd, Defendant No.71 lac 9.52%

38. It has been admitted in the previous suit that Sujata Electronics Ltd is a company controlled by the Defendant No. 1's father-in-law, Mr P.D.

Gupta. Infotech Era (India) Ltd. is a company controlled by Rejendra kumar Kishanlal Agarwal who is the Defendant No. 1's inductee on the

Board of Directors of the Company and his close associate.

Satvijay is a family company presently under the control of Defendant No. 1

Preet Mittal & Amitabh v. W Mittal, the Defendant Nos. 20 & 19 are also nominees and close associates of the Defendant No. 1. They are

permanent residents of Canada and yet, they have been shown to have acquired shares in the Defendant No. 6.

39. Significantly, the private placements of shares in the said company were made at the face value thereof which was nominal having regard to the

value of the assets of the Defendant No. 6. The real and breakup value of the shares of the Defendant No. 6 could not be less than Rs. 1,800/- in

the year 2004. Those allotment of shares to the aforementioned persons are allotment to the Defendant No. 1 himself.

40. The aforesaid clandestine issue of shares has come to knowledge of the Plaintiff much later in January, 2009 and the suit being C.S. No. 12 of

2009 has been filed by the Plaintiff in regard to those issues of shares. Since the said suit is pending, the Plaintiff refrains from making any comment

in regard to the issue of the said new shares in this proceeding.

41. In any event, the Plaintiff states that the control of Berlia family over the Defendant No. 6 is borne out even from the fact that in the year 2004,

the Defendant No. 1 had caused preferential allotment of shares of the Defendant No. 6 in favour of his nominees although Berlia family held and

controlled only 42.69% shares in the said company.

42. Satvijay Traders Pvt. Ltd., the Defendant No. 7 was set up by Late Gurdayal Berlia in the year 1973 to carry on family business of trading in

chemicals. At the time of incorporation, the subscribers to the memorandum of the Defendant No. 7, were Vijay Berlia, the Defendant No. 3,

Sudha Devi Berlia, the Defendant No. 5 and the eldest son of late Gurdayal Berlia, Satya Narayan Berlia (since deceased). All the shares in the

Defendant No. 7 are owned by the members of the family and/or the nominees of the family and at all material times, have formed a part of the

joint estate. From the schedule indicating the share holding pattern of Defendant No. 7 at the time of incorporation, disclosed by Defendant No. 7

in it's affidavit dated 11th March, 2009 filed in the earlier suit, it appears that 2625 shares out of 3753 shares of the Defendant No. 7 were held

by persons who are not members of the Berlia family. According to the Plaintiff, such persons in whose names such 2625 shares have been issued

are all nominees of the family and such shares at all material times formed part of the joint estate. A copy of the said schedule indicating the share

holding pattern at the time of incorporation of the company is annexed to the plaint and marked with letter "H".

43. From the said schedule it appears that in all, there were 35 (thirty five) shareholders in Defendant No. 7, 9(nine) of which are Berlia family

members and balance 26 (twenty-six), being nominees of the Berlia family who have never exercised any rights or received any benefits as

shareholders. Of the twenty six (26) shareholders, 14 (fourteen) have been shown to be residing in and around the village Jui, Bhivani district in

Haryana, which is the ancestral Village of the Berlia family. According to the knowledge of the Plaintiff, these 14 (fourteen) are fictitious entities

and have never exercised any rights as shareholders. Three (3) other nominees have been shown to reside at 11, Nawabpatti Street, Cossipore,

Kolkata which is a go down used by the Berlia family. The said go down is a tenanted property and the tenancy is in the name of the family firm

M/s. Pokarmal Gurdayal and has been used by the Berlia family for more than 50 years. The said three nominees were in fact go down keepers

and employees of the Berlia family. Of the three nominees shown to reside at the said go down being 11, Nawabpatti, Cossipore, Kolkata, one of

them is Mr. Upnet Singh (since deceased) whose son, Mr. Ram Kumar Singh is presently the go down keeper at the said go down. The Plaintiff

annexes hereto a copy of an affidavit of Mr. Ram Kumar Singh dated 10th June, 2009, wherefrom it appears that Upnet Singh has passed away

on 22nd October, 1988 and that during his lifetime he worked as a go down keeper for the Berlia family at the said address being 11, Nawabpatti,

Cossipore, Kolkata, Ram Kumar Singh has also stated that he was never aware of such shareholding and as far as he is aware, his father Upnet

Singh never held any shares in the Defendant No. 7. A copy of the said affidavit affirmed by said Ram Kumar Singh dated 10.06.2009 is annexed

to the plaint and marked with letter ""I"".

44. Similarly, one (1) Mr. Rakesh Jain is shown as the owner of 10 shares. The Plaintiff after coming to know from the Defendant No. 1's affidavit

dated March 23, 2009 filed in the earlier suit that the Defendant No. 1/Defendant No. 2 has purchased shares from the nominees enquired from

Mr. Rakesh Jain as to whether he had sold his shares in Defendant No. 7 to Defendant Nos. 1 or 2. Upon such enquiry, Mr. Rakesh Jain has

confirmed by way of a letter dated 19th June, 2009 that he was not even aware of the fact that he held shares in the Defendant No. 7 and as such,

there is no question of his selling such shares. A copy of the letter dated 10th June, 2009 sent by the Plaintiff to Rakesh Jain and Rakesh Jain's

response by way of letter dated 19th June, 2009 are annexed to the plaint and collectively marked with the letter ""J"".

45. Amongst the remaining nominees, three (3) have been shown to be residing at 208, Cross Street, Kolkata - 700 007, which is owned by all

the 5 (five) brothers and used by the Berlia family since early 1930's as their dwelling house and also has been used as an office for the family

businesses. One (1) Omprakash Jalan, since deceased, is also shown to be holding shares in the Defendant No. 7. He is the Plaintiff's maternal

uncle who resided in Mumbai. Four (4) other nominees have been shown to reside at 172, C.R. Avenue, Kolkata which is the family residence of

the Berlia family since 1960 and is known as Berlia House owned by all the 5 (five) brothers.

46. The Plaintiff has prepared a schedule indicating the intrinsic connection of the shareholders of Defendant No. 7, at the time of its incorporation,

which the Berlia family. Copy of the schedule is annexed to the plaint and marked with letter ""K"".

47. Though the Plaintiff has become a director of the Defendant No. 7 only in 2003, a General Power of Attorney was given to the Plaintiff by the

board of directors of the Defendant No. 7 sometime in August, 1994, a copy whereof is annexed to the plaint and marked with letter ""L"".

48. The Plaintiff, although without being a director and/or officer of the Defendant No. 7 from 1994 till 2003 had been the authorized signatory of

the bank accounts of the said company maintained with State Bank of Bikaner and Jaipur, Brabourne Road Branch, Kolkata, being account No.

51082190187. In fact, majority of the business transacted by Defendant No. 7 was from Kolkata which will be evident from the duly audited

accounts of the company pertaining to its Calcutta business. The turn over of the said company at Kolkata from 2004-2005 to 2007-2008 has

been many times more than that of Mumbai, particulars of which are given herein below:

Year ended Kolkata Mumbai

31st March 2005 Rs.1,22,59,146 Nil

31st March 2005 Rs.2,11,41,015 Nil

31st March 2005 Rs.3,73,70,038 Rs.7,02,000

31st March 2005 Rs.1,22,59,146 Rs.61,75,000

Copies of the accounts of the said company for Calcutta businesses for the year 2007-2008 are annexed to the plaint and marked with the letter

M"".

49. The fact that majority of the business of the Defendant No. 7 was carried on from Kolkata under the control of the Plaintiff would be further

evident from the fact that though the registered office of the Defendant No. 7 is situated at Mumbai and all annual returns and other statutory

documents including income tax returns are filed in Mumbai, the sales tax registration for the Defendant No. 7 is only for Kolkata. A copy of the

sales tax registration certificates of Defendant No. 7 is annexed to the plaint and marked collectively with letter ""N"".

50. Gurdayal Berlia during his lifetime had been in exclusive control of Defendant No. 7. The board of directors of Defendant No. 7 at all material

times has reflected the absolute control of the Berlia family. Since 2004, the Plaintiff and the Defendant No. 1 have been the only directors of the

said company. One N.G.R. Menon, an old employee of the family, who used to act as per the dictates of the Defendant No. 1, was appointed as

a director of the Defendant No. 7, before institution of the earlier suit sometime on or about 27th March, 2007.

51. It is pertinent to mention that the Defendant No. 7 was promoted by Gurdayal Berlia. He named the said company in the names of his two

sons, Satya, since deceased and Vijay, the Defendant no 3 herein, and coined the name Satvijay Traders Private Limited.

52. From the annual return of the company in the year 2007, it appears that there has been an increase in share holding of the Defendant No. 1 as

also the fact that new shares have been obtained by the Defendant No. 2. in the affidavit filed by the Defendant No. 1 dated 23rd February, 2009

in the previous suit, the Defendant No. 1 has stated that the Defendant Nos. 1 & 2 have purchased 2520 shares in the said company from the

open marker. These shares are nothing but shares which have been held by the nominees of the Berlia family as stated hereinabove.

53. The fact that the Defendant No. 1 was the person placed in control of the Defendant No7 would also be borne from the fact that in the year

2004-05 he had caused preferential allotment of shares of Defendant No. 7 in favour of the family companies presently under his control being:

A) Pokarmal Gurdayal Pvt. Ltd. (Defendant No. 14) -800

B) Berlia Chemical and Traders Pvt. Ltd. (Defendant No. 9)-200

54. Defendant No. 1's control of Defendant No. 7 is also evident from the fact that Defendant No. 7 has purportedly acquired 1,00,000 shares of

Defendant No. 6 in the year 2004 in addition to the 54000 already owned by way of preferential allotment even though Defendant No. 7 is not a

dividend-paying-company. However, it is pertinent to state that from the balance sheets of the company as on 31st March, 2005 to 31st March,

2007, it appears that the Defendant No. 7 held on 54,000 shares only which is contrary to the balance sheet and the annual return of Defendant

No. 6 filed in 2007 which shows that the Defendant No. 7 held 1,54,000 shares of the Defendant No. 6. The balance sheet of Defendant No. 7

for the year 2006-07 is signed by the Defendant No. 1. A copy of the Balance Sheet as on 31st March, 2007 is annexed to the plaint and marked

with letter "O".

55. Barium Chemicals Ltd. is the Defendant No. 8. Satvijay Traders Pvt. Ltd., the Defendant No. 7, was an agent of Barium Chemicals Ltd. being

the Defendant No. 8. In or about 1974-75, erstwhile owners of the Barium Chemicals Ltd. being Sahu Jain Group wanted to sell their controlling

block of shares in the company. Late Gurdayal Berlia purchased all the shares held by said Sahu Jain Group being approximately 33.41% and

took over control of the Defendant No. 8 (a listed company). The balance shares are held by public, and are widely dispersed. The shares were

purchased by Late Gurdayal Berlia in the names of his sons and in the names of family owned companies. As a result of said takeover, Late

Gurdayal Berlia started controlling the affairs of the Defendant No. 8 exclusively and the Defendant No. 8 became a family company.

56. The Board of the directors of Defendant No. 8 at all material times has also reflected the absolute control of the Berlia family. Immediately,

after the controlling the block of shares of Defendant No. 8 was acquired by Late Gurdayal Berlia, there was a change of constitution of the Board

of Directors. Late Gurdayal Berlia inducted his sons, Vijay Kumar Berlia, Defendant No. 3 and Omprakash Berlia, Defendant No. 1 as directors

in Defendant No. 8. Since thereafter, the said Defendant No. 1 has resigned as a director from the said company. Presently Defendant No. 3 is in

control of the said company. This will be evident from the present members of the Board of the said company. Other than Defendant No. 3, the

three other persons, namely, Mr. Yuvraj M. Aggarwal, Mr. Ramesh A. Shroff and Shailen K. Reshamwala, are all family friends and close

associate of the Defendant No. 3 and under the control of the Defendant No. 3.

57. In the earlier suit the Defendant No. 8 did not contest the interlocutory application and did not dispute any of the statements concerning the

said Defendant.

58. Berlia Chemicals & Traders Pvt. Ltd., the Defendant No. 9, was incorporated in the year 1969, inter alia, for the purpose dealing in chemicals.

The subscribers to the memorandum of the Defendant No. 9 were Satyanarayan Berlia, since deceased, S.J. Singhanian, a close confidant of the

family and G.C. Berlia, Late Gurdial Berlia brother's son. 88.26% of the shares of the Defendant No. 9 are held in the names of family members

and family companies and the rest by nominees. The Plaintiff and the Defendant No. 1 are presently the only directors of the Defendant No. 9.

59. Berlia Marketing Pvt. Ltd., the Defendant No. 10, was set up by Late Gurdial Berlia in the year 1980 to carry on the family business. The

subscribers to the memorandum of the Defendant No. 10 were the four sons of Late Gurdial Berlia, viz. Satyan Narayan Berlia (since

deceased), Defendant No. 3, Defendant No. 1 and the Plaintiff. All the shares of the Defendant No. 10 are held in the names of the family

members and a family company. The Plaintiff and the Defendant No. 1 are presently the only directors of the Defendant No. 10. In the earlier suit,

the Defendant No. 10 did not contest the interlocutory application and did not dispute any of the statements concerning the said Defendant.

60. Eastern PVC Products Pvt. Ltd., the Defendant No. 11, was set up by Late Gurdial Berlia in the year 1972. This company was set up for

the purpose of carrying on the family business. The subscribers to the memorandum of the Defendant No. 11 were Upnet Singh (since deceased),

the go down keeper of Berlia family for the go down situated at 11, Nawabpatti, Cossipore, Kolkata and Mr. Ramanlal Raghwanian (since

deceased), an associate of the Berlia family, who has acted as a broker for trading activities for the Berlia family and resided at 208, Jamunalan

Bajaj Street, Kolkata - 700007. 97.67% of the shares of the said company are held by the Berlia family members and the rest by their nominees

or close associates. The Defendant No. 3 and the Defendant No. 1 are presently the only directors of the Defendant No. 11. In the earlier suit the

Defendant No. 11 did not contest the interlocutory application and did not dispute any of the statements concerning the said Defendant.

61. Indoria Investments Pvt. Ltd., the Defendant No. 12, was set up by Late Gurdial Berlia in the year 1983 to carry on the family business. The

subscribers to the Memorandum of the Defendant No. 12 were Rajkumar Indoria and G. Bramha Reddy, employees of the Berlia family, working

for Barium chemicals Ltd, Defendant No. 8. Despite best efforts, the Plaintiff has not been able to ascertain any particulars with regard to the

Defendant No. 12 since the records of the Defendant No. 12 are under the control of Defendant No. 3. Annual Returns and Balance Sheets of the

said company are not available on the official Website. Yet, the Defendant No. 12 has, however, an investment of 4,49,000 Nos. of shares in

Wavin India Limited, the Defendant No. 15 herein. In the earlier suit the Defendant No. 12 did not contest the interlocutory application and did not

dispute any of the statements concerning the said Defendant.

62. Sri Sailanath Investment Co. Pvt. Ltd, the Defendant No. 13, was set up by Late Gurdoyal Berlia in the year 1981 to carry on the family

business. The subscribers to the Memorandum of the Defendant No. 13 were S. Gopal and R.K. Taparia, both were the employees of the Berlia

family and working for Barium Chemicals Ltd., the Defendant No. 8. Despite best efforts the Plaintiff has not been able to ascertain any particulars

with regard to the Defendant No. 13 since the records of the Defendant No. 13 is in control of Defendant No. 3. The Defendant No. 3 is in

absolute control of this company's affairs. Annual Returns and Balance Sheets of the said company are not available on the official Website. Yet,

the Defendant No. 13 has, however, an investment of 4,49,000 shares in the Wavin India Limited, the Defendant No. 15 and also owns a building

known as ""Mehta Building"" in Mumbai. In the earlier suit, the Defendant No. 13 did not contest the interlocutory application and did not dispute

any of the statements concerning the said Defendant.

63. Pokarmal Gurdoyal Pvt. Ltd., the Defendant No. 14, was set up in the year 1980 by Late Gurdoyal Berlia. The subscribers to the

Memorandum of the Defendant No. 14 were the four sons of Gurdoyal Berlia, namely, Satya Narayan Berlia (since deceased), Defendant No. 3,

Defendant No. 1 and the Plaintiff. The company was set up to carry on the family business. The entire shares holding of the said company are held

by the family members and a family company. During his lifetime, Late Gurdoyal Berlia had exclusive control over the said company. At present,

the Defendant No. 1 is in control of the company which is evident from the fact that Defendant No. 1 has inducted K.J. Verma on the board of

directors of the company. Mr. K.J. Vema is a close associate of the Defendant No. 1 and was also the General Manager. The fact that Defendant

No. 14 is a family company is also evident from the fact that the Defendant No. 6 has purchased chemicals worth Rs. 7.05 crore from Defendant

No. 14 during the year 2007-08. Such transactions are reflected as Related Party Transaction in the Balance Sheet of Defendant No. 6 for the

year 2007-2008, a copy whereof is annexed to the plaint and marked with the letter ""E"". Defendant No. 14 has also issued 800 preferential shares

in the Defendant No. 7, a company presently under the control of the Defendant No. 1.

64. Wavin India Ltd., Defendant No. 15: Late Gurdayal Berlia was a major trader and importer of Chemicals and Polymers. Wavin India Ltd., the

Defendant No. 15, was a well known company engaged in the manufacture of PVC Pipes which is made out of polymers. With forward

integration in mind, in the year 1984, the sons of Gurdayal Berlia, from out of the corpus of the joint family, took over control of the Defendant No.

15 (a listed company) by purchase of approximately 40% of the shareholding in the Defendant No. 15. The shares were purchased in the names of

the family members and in the names of family owned companies. Thereafter, the family's shareholding in the said company was enhanced from

time to time and at present, the family shareholding is over 80% after taking into consideration the shares acquired and standing in the names of

Assean Limited and Chang Chemicals Pvt. Ltd. companies under the control of the Defendant No. 3 acquired from his father-in-law. In the earlier

suit, the Defendant No. 15 did not contest the interlocutory application and did not dispute any of the statements concerning the said Defendant.

65. Bervin Investments and Leasing Ltd., Defendant No. 16 was incorporated in the year 1990 with the corpus coming from the joint family funds.

The subscribers to the memorandum of the said company according to the knowledge of the Plaintiff were family members. However, the Plaintiff

does not have access to the records of the company since the same are in control of the Defendant No. 3. With the corpus and business

connections of the joint family, the Defendant No. 16 was incorporated on 2nd March 1990. At all material times, the Defendant No. 3 was

entrusted by the other members of the family to look after and manage the Defendant No. 16. The Defendant No. 3 has, thus, been a Director of

the Company since its incorporation. The other Directors of the Company include Mr. Ramawatar Sharma, a close associate and right hand man

of Late Gurdayal Berlia. The registered office of the Defendant No. 16 is at 607, Rohit House, 3, Tolstoy Marg, New Delhi- 110001, a property

belonging to the Defendant No. 15. On a regular basis, the meeting of the Defendant No. 16 has been held at the family dwelling house situated at

Delhi i.e. Premises No. 7/31, Roop Nagar, New Delhi-110007 owned by the five brothers. This would appear, inter alia, from the Notice dated

26th July, 2007 of the Annual General Meeting of the Defendant No. 15, a copy whereof is annexed to the plaint and marked as Letter ""P"". In the

earlier suit the Defendant No. 16 did not contest the interlocutory application and did not dispute any of the statements concerning the said

Defendant.

66. Sapphire Chemicals and Fibres Limited: The Defendant No. 17 was also taken over by purchase of shares by the Berlia family after the

demise of Late Gurdayal Berlia. The Berlia family members, from out of the joint family funds standing in the names of the different family members

and family companies purchased in their own names and/or in the names of the family companies the entire share capital of the Defendant No. 17.

In the earlier suit, the Defendant No. 17 did not contest the interlocutory application and did not dispute any of the statements concerning the said

Defendant.

67. Bichem Investments Ltd., the Defendant No. 18 was set up by Late Gurdayal Berlia in the year 1974 to carry on the family business. The

subscribers to the memorandum of the Defendant No. 18 were Defendant No. 3, Mr. P.N. Barai (since deceased) who was a business associate

of Late Gurdayal Berlia, Mr. Gopal More, also known as Mr. S.G. More, is a family friend, Mr Upnet Singh and Mr Baijnath Mishra (since

deceased), the go down keepers of Berlia family for the go down situated at 11, Nawabpatti, Cossipore, Kolkat. The entire shareholding of the

said company is with the Berlia Family members and/or their nominees or its close associates. Ramawater Sharma, Liladhar Bhanushali and

Padamakar M Sawant are the directors of the Defendant No. 18. In the earlier suit, the Defendant No. 18 did not contest the interlocutory

application and did not dispute any of the statements concerning the said Defendant.

68. The Plaintiff asserted that in case of the private limited companies, no share certificates have in fact been issued to any of the shareholders.

Even the so-called outsider shareholders were never issued share certificates.

69. So far as the listed companies are concerned, in case of pesticides, the Defendant No. 6, all the shares belonging to the family members, family

companies and nominees have remained with the Berlia family and at present, are in the possession of the Defendant No. 1.

70. So far as the private limited companies are concerned, these have always been run as an extension of the joint family estate. But for complying

with the basic statutory formalities which also in some case have not been fulfilled, these companies are merely on record shown as limited

companies. These companies do not in fact held board meetings or general meetings. These companies do not have any separate establishments

and are operated from out of the family offices and they share common staff as well as office space. So far as sharing of common staff and office

space is concerned, this even applies to the listed companies.

71. The nominees who hold shares in the Defendant Nos. 6 to 18 are all name-lenders of the family and at all material times, have acted as per the

dictates and instructions of the family members. The Defendants Nos. 19 to 22, as stated earlier, are the nominees of the Defendant No. 1. The

Defendant No. 3 in his affidavit dated May 5, 2009 filed in the previous suit has accepted the fact that in case of Wavin, the Defendant No. 15,

shares issued to outsider [i.e. the 1309900 number of shares issued to Assean Limited and Chang Chemical Pvt. Ltd., can be purchased back

from such outsider against cost price plus interest. A copy of such affidavit is annexed to the plaint and marked with the letter "Q".

72. According to the Plaintiff, the preferential allotment of shares in the Defendant Nos. 6 and 7 have been challenged in the previous suit for non-

compliance with the legal provisions and for declaring the same as null and void. Even if it is held that such issue of shares is valid and in

accordance with law, then and in that case, those shares should be treated as part of the joint estate and partitioned between the five branches in

equal proportion as part of the joint estate. The allottees of those shares by way of private placement are nominees of the Defendant No. 1. It is

really allotment of the shares to the Defendant No. 1 himself by way of private placement in breach of provisions of Companies Act and also in

breach of trust.

73. Similarly, the Plaintiff has also challenged the transfer of the 2520 out of the 2625 numbers of shares held by the nominees in the Defendant

No. 7 to the Defendant Nos. 1 and 2. Apart from the fact that the transfer of shares was not done in accordance with law, which is the subject

matter of the earlier suit, the Plaintiff states that these shares ought to have been allotted to the Berlia family in equal proportion. The Defendant

No. 1 was trusted by the Berlia family with the management of the Defendant Nos. 6 and 7 in Mumbai and placed in control of the registered

office of the said companies. The Defendant No. 1 was in a position as a trustee of the Berlia family and its members. The Defendant No. 1 has

acted in breach of trust and the shares so allotted in breach of trust should be followed and be resorted to the Berlia family and its five branches.

The Plaintiff is ready and willing to pay 1/5th of the amount of the price at which the said shares were allotted to the nominees of the Defendant

No. 1 as aforesaid. The Plaintiff has reasons to believe that the other branches are ready and willing to do so as well. Therefore, even if the

allotment of those shares are not held illegal, the Defendant No. 1 should not be allowed to take advantage of breach of trust committed by him

and is under obligation to restore those shares to the Berlia family. It is anyhow the obligation of Defendant Nos. 1 to 6 to exercise and/or caused

to be exercised rights in respect of the shares mentioned in annexure "R" in such manner as to ensure preservation of the joint estate.

74. In those circumstances, according to the Plaintiff, the joint estate encompasses all the shares held in the Defendant Nos. 6 to 18 in the names of

the family members the Defendant companies being the Defendant Nos. 6 to 18 as well as the nominees i.e. the Defendant Nos. 19 to 22. These

shares form part of the joint family estate and were acquired from out of the corpus of the Berlia family and profits and income arising there from.

The Plaintiff is entitled to and claims partition of all such shares in such manner that the controlling block of shares in the different companies are

allotted to the five branches such that they have under their control family concerns of the value proportionate to their respective shares in the joint

estate.

75. The demise of Late Gurdayal Berlia was unexpected since he was only 66 years old and was in reasonably good health. He died of a sudden

heart attack. Late Gurdayal Berlia, thus, did not have the chance to arrange his affairs in such a way that each of his sons is put in charge of specific

business/company with consequent majority share-holding in these companies/firms. This was applicable especially in the case of the Plaintiff No. 1

who was only 22 years old at that time.

76. Gurdayal Berlia died on 10th November, 1983 and his widow died on 19th June, 1988. Late Gurdayal Berlia and his wife Late Devi Berlia

both died intestate leaving behind their five sons and a daughter. The said daughter of Gurdayal Berlia was married in the year 1979 and since then

she lives with her husband in Mumbai and her husband is a well settled businessman. The said daughter has disclaimed her interest in the joint

family estate of Late Gurdayal Berlia.

77. The joint family estate apart of business and family companies comprises of the immoveable properties standing in the names of the family

members, Satyanarayan Berlia, Shivkumar Berlia, Vijay Kumar Berlia, Omprakash Berlia and Narendra Kumar Berlia, particulars whereof are

given in a schedule annexed to the plaint and marked with the letter "R" plus shares in the Defendant Nos. 6 to 18 held in the names of the family

members and their nominees particulars whereof have been given in the chart being Annexure "A" to the plaint.

78. All attempts at amicable partition have failed. Such attempts of amicable partition were lastly held in March, 2011 at Calcutta. Only the

Defendant No. 1 has not agreed to amicable partition.

79. The Plaintiff claimed that the valuation of all the assets of the Berlia family be made and division of the assets of the Berlia family be made in

such a manner as each of the aforesaid five branches have one lot each of equal value.

80. The Berlia family comprised of five branches each having 1/5th shares of the assets of the Berlia family namely the Plaintiff and his branch, the

Defendant No. 1 and his branch, the Defendant No. 3 and his branch, the Defendant Nos. 4 and 5.

81. The Plaintiff is therefore entitled to and claim partition of the joint estate as mentioned in paragraph 77 in the following manner:

a) Partition of the shares in the Defendant Nos. 6 to 18 held by Berlia family and its nominees in such manner that each of the five branches of the

family will have control over the different companies of equal and/or equivalent worth.

b) Partition of all the immoveable properties standing in the names of the members of Berlia family which have been either inherited from Late

Gurdayal Berlia or acquired from out of the joint family estate being the properties mentioned in a schedule being Annexure ""R"" hereto by dividing

the same in 5 lots and allotment of one lot to each of the five branches.

82. Immediately after the Plaintiff came to learn of the various misdeeds of the Defendant No. 1 vis-à-vis the joint family estate a suit being C.S.

No. 12 of 2009 was filed in this Hon'ble Court sometime on or about 21st January, 2009 claiming the following relief's:

a) Partition of the Defendant Nos. 9 to 21 in the manner as indicated in paragraph 60 hereto;

b) Partition of all the immovable properties as mentioned in annexure ""V"" hereto by metes and bounds and/or in the alternative by sale and division

of sale proceeds;

c) Partition of all the movables that constitute part of the joint family estate as more fully stated in Annexure ""F"" by metes and bounds and in the

alternative by sale and division of sale proceeds between the parties concerned in accordance with their shares;

d) Declaration that the share of the parties in the joint family properties mentioned in Annexure ""E"" and ""F"" are as follows:

i) Plaintiff No. 1 and his branch -1/5th;

ii) Defendant No. 1 and his branch -1/5th;

iii) Defendant No. 3 and his branch-1/5th;

iv) Defendant No. 7-1/5th;

v) Defendant No. 8-1/5th;

e) Declaration that the Defendant Nos. 9 to 21 are all family companies and constitute part of the joint family business and assets of the Plaintiffs

and the Defendant Nos. 1 to 8;

f) Declaration that the appointment of Defendant Nos. 22, 23, 24, 25 and 26 as directors of the Defendant Nos. 13, 15, 16 and 18 are illegal, null

and void;

g) All forms and returns filed in respect of the Defendant Nos. 13, 15, 16 and 18 concerning the appointments of Defendant Nos. 22 to 26 as

directors be adjudged void, delivered up and cancelled;

h) Declaration that the issuance and transfer of shares of the Defendant Nos. 13, 15 and 18 as more fully stated in paragraph 42 above is, null and

void;

i) All Returns/Forms filed in respect of and/or in connection with issuance and transfer of shares of Defendant Nos. 13, 15 and 18 be adjudged

void, delivered up and cancelled;

j) Perpetual injunction restraining the Defendants from giving effect or further effect to the issue and transfer of shares of Defendant Nos. 13, 15

and 18 as more fully stated in paragraph 42 above;

k) Perpetual injunction restraining the Defendants from giving effect or further effect to the appointment of the Defendant Nos. 22 to 26 as

directors of Defendant Nos. 13, 15, 16 and 18;

l) Perpetual injunction restraining the Defendants, their men, agents and assigns from in any manner dealing with, disposing of and/or encumbering

with the assets and properties being annexure ""E"" and ""F"" hereto;

m) Perpetual injunction restraining the Defendant Nos. 22 to 26 from in any manner holding themselves out as directors of Defendant Nos. 13, 15,

16 and 18 in nay manner conducting the affairs of the said companies;

n) Perpetual injunction restraining the Defendants from in any manner issuing any share or appointing any director in the Defendant Nos. 9 to 21

without the approval and consent of the Plaintiffs;

o) Perpetual injunction restraining the Defendant Nos. 1 and 2 from interfering with the right of possession, user and occupation of the Plaintiffs in

respect of the bed room situated on the western side of the 2nd floor of premises No. 2B Prem Kutir, 177 Babubhai Chinai Marg, Mumbai

400020;

p) Receiver;

q) Injunction;

r) Costs;

s) Such further or other relief.

83. In the suit, an interlocutory application was filed being G.A. No. 164 of 2009 wherein interim order was passed on 21st January, 2009 which

was thereafter modified. Copies of the interlocutory orders passed in such application including the order dated 6th April, 2011 are chronologically

annexed to the plaint and collectively marked with the letter ""S"".

84. By the order of 6th April, 2011, the interim application was dismissed on the ground that the earlier suit is a derivative and representative

action where claim for partition could not have been made. The merits of the case were not dealt with while passing such order. The Plaintiff has

abandoned and is not pressing prayers (a) to (e) and (o) in the earlier suit. A separate application has also been filed in the said earlier suit

recording this fact.

85. There are substantial immoveable properties as well as investments by way of shares standing in the names of the Defendant Nos. 6 to 18

particulars whereof to the extent the Plaintiff could ascertain are given in a schedule annexed to the plaint and marked with the letter ""T"".

86. The interlocking share holding of the Berlia family in the Berlia Family companies being Annexure ""A"" has been prepared by the Plaintiff on the

basis of records available to the Plaintiff. There may be more shares held by the Berlia family in the Berlia family companies which the Plaintiff has

not been able to ascertain. Similarly the particulars of the immoveable properties in the names of the family members marked as Schedule ""R"" as

also the particulars of the immoveable properties and investments standing in the names of the Defendant No. 6 to 18 being Schedule ""T"" have

been prepared on the basis of records available to the Plaintiff. There may be more properties or investments in this regard which the Plaintiff is not

aware of or has record of. In such circumstances, the Plaintiff prays for leave under Order 2 Rule 2 of the CPC 1908.

87. For all matters and purposes, these assets form part of the joint family estate since by virtue of the controlling block of shares in the Defendant

Nos. 6 to 18, the family at all material times has maintained absolute control over such assets. The Defendant Nos. 6 to 18 are for all matters and

purposes asset holding companies and as such preservation of these assets is necessary for effective partition of the joint family estate as more fully

stated in paragraph 77 in the manner as indicated in paragraph 81 above.

88. The Defendants and especially the Defendant Nos. 1 and 2 are invading and/or threatening to invade the rights of the Plaintiff in the joint estate

by trying to deal with, transfer and/or otherwise encumber the joint family estate comprising of immoveables mentioned in paragraph 77 above as

well as the assets standing in the names of the Defendant Nos. 6 to 18 mentioned in being Annexure ""T"" to the plaint.

89. The Defendant No. 1 is trying to immediately transfer the valuable immoveable property at Thane mentioned in Annexure ""T"" hereto which is

the principal asset of the Defendant No. 6. in the previous suit, the board resolutions of the Defendant No. 6 authorizing the Defendant No. 1 to

deal with the said immoveable property had been disclosed, by the Defendant in the affidavit dated 20th February, 2009 copies whereof are

annexed to the plaint and collectively marked with the letter ""U"".

90. The Defendant Nos. 1, 2, 3, 4 and Late Satya Narayan Berlia are not qualified and have never practised any vocation independent of the

family business. The assets standing in their names were either received by them as gift/virtual gift from Gurdayal Belia and other members of the

family including mother, Sitadevi Belia or acquired from the joint family corpus. The Defendant No. 1's control of the Defendant No. 6 and other

family companies is only because of his being able to set control other controlling block of shares held by the family in the companies.

91. The Defendant No. 4 is a person physically and mentally challenged and it is necessary to appoint a guardian for him in the present suit. In the

previous suit, by an order dated 6th October, 2010 Ms. Iti Dutta, Advocate was appointed as his guardian. A copy of the order dated 6th

October, 2010 is annexed to the plaint and marked with the letter "V". The Plaintiff is making a separate application for appointment of a guardian

for the Defendant No. 4. The Defendant No. 4 is unmarried. He is now about 63 years old and is now bedridden. Expenses for medical treatment

and maintenance of Defendant No. 4 are borne by Defendant No. 3. The Plaintiff states that out of the allotment to be made to the Defendant No.

4, arrangements and/or a scheme should be made for his proper treatment and maintenance.

92. The present suit is for partition of the joint estate which comprises, inter alia, of immoveable properties situated at premises No. 172,

Chittaranjan Avenue and 208, Jamunalal Rajaj Street both within the aforesaid jurisdiction.

93. The Defendant Nos. 6 to 18 have been impleaded in the suit so that this Hon"ble Court may grant effective relief's to the parties and partition

decree as may be passed by this Hon"ble Court can be effectively implemented.

8. After filing of the aforesaid suit, the Plaintiff came up with an application for injunction praying for an order of injunction in terms of the prayer for

permanent injunction made in the plaint of the suit till the disposal of the suit on the basis of selfsame allegations made in the plaint.

9. As pointed out earlier the learned Single Judge by the order impugned herein passed direction for filing affidavit and also granted the ad interim

order of injunction.

10. Being dissatisfied, the Defendant No. 6 has come up with the present appeal and the Plaintiff has filed a cross-objection.

11. Mr. Mukherjee, the learned Senior Advocate appearing on behalf of the Defendant No. 6/Appellant, strenuously contended before us that the

learned Single Judge while passing the order impugned granted ad interim order of injunction against his client which was beyond the subject-

matter of the suit and as such, the order is ex facie illegal. Mr. Mukherjee further contends that in the past, in the earlier suit filed by the Plaintiff

along with other two persons, on the basis of almost selfsame allegations, the interim order passed in the said suit having been vacated, the learned

Single Judge should not have granted ad interim order of injunction even to a larger extent than the one previously granted and subsequently

vacated. Mr. Mukherjee further contends that it appears that the earlier suit is still pending and as such, his client should not be vexed twice for the

selfsame allegations when in the earlier round of litigation, his client succeeded in vacating the interim order of injunction. At any rate, Mr.

Mukherjee contends that the subsequent suit out of which the present appeal arises is also hit by the provision of Order 2 Rule 2 of the Code. Mr.

Mukherjee, therefore, contends that even if we for the time being assume all the statements made in the plaint and in application for injunction to be

true, it was not a fit case for grant of ad interim order. Mr. Mukherjee, therefore, prays for setting aside the order passed by the learned Single

judge. In support of such contention, Mr. Mukherjee relies upon the following decisions:

1 Amir Din Shahab Din v. Shiv Deb Singh reported in AIR 1947 Lah 102;

2 Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay,

3 Rustom Cavasjee Cooper Vs. Union of India (UOI),

4 V.B. Rangaraj Vs. V.B. Gopalakrishnan and others,

5 Kilpest Pvt. Ltd. and Others Vs. Shekhar Mehra,

6 R. Viswanathan Vs. Rukn-UI-Mulk Syed Abdul Wajid,

7 AIR 1949 78 (Privy Council)

8 Bengal and North-Western Railway Co. Ltd. Vs. Sadaram Bhairoran,

9 Smt. Pushpa Katoch v. Manu Maharani Hotels Ltd. and Ors. reported in (2006) 131 Comp Cas 42 (Del).

11. Mr. Mitra, the learned Senior Advocate appearing on behalf of the Plaintiff, has, on the other hand, opposed the aforesaid contentions of Mr.

Mukherjee and has contended that at this stage, if we accept that the statements made in the plaint or in the application for injunction filed by his

client to be true, the learned Single Judge not only rightly passed the order impugned but also should have granted the entire prayer made in the

application for injunction by his client by way of interim relief. Mr. Mukherjee submits that the suit being one for partition of joint family property,

the learned Single Judge rightly passed interim injunction, the effect of which is to maintain status quo as regards the shares of the company when

those shares were purchased from the common stock of the joint family. Mr. Mitra further submits that the learned Single Judge having fixed the

main application for injunction in the month of June, 2011, we should not upset the order impugned but only should modify the order of granting full

interim relief claimed in the application filed by his client.

12. Mr. Mitra tried to impress upon us that the decisions relied upon by Mr. Mukherjee are not applicable to the facts of the present case and in

support of his contention, Mr. Mitra relied upon the following decisions:

1 Hindusthan Motors Ltd. Vs. Monopolies and Restrictive Trade Practices Commission and Others,

2 Tapan Kumar Paul Vs. Krishna Kanta Paul and Others,

3 Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) thr. Lrs. and Others,

4 Life Insurance Corporation of India Vs. Escorts Ltd. and Others,

5 Kartikeya V. Sarabhai Vs. The Commissioner of Income Tax,

6 M.S.D.C. Radharamanan Vs. M.S.D. Chandrasekara Raja and Another,

7 Vimlesh Kumari Kulshrestha Vs. Sambhajirao and Another,

8 Dhannun v. Emperor reported in 1925 Lahore 459 (1).

13. Mr. Mitra, therefore, prays for dismissal of the appeal and allowing the cross-objection filed by his client.

14. Therefore, the only question that arises for determination in this appeal and the cross-objection is whether the learned Single Judge in the facts

of the present case was justified in passing the order impugned.

15. At the very outset, we keep it on record that this appeal having been preferred against the grant of ad interim order and the main application

for injunction being pending awaiting filing of affidavits by the parties, and the Defendant No. 6 having decided to prefer this appeal even before

filing of its affidavit, at this stage, we have accepted all the statements made in the plaint and the application for injunction to be true and proceeded

to consider whether the learned Single Judge was justified in passing the order impugned on the basis of the averments made in the plaint and the

application for injunction.

16. After hearing the learned Counsel for the parties and after going through the averments made in the plaint and the application for injunction, we

find that the Plaintiff has definitely made out a strong prima facie case to prove that the properties purchased in the names of the members of the

Berlia family were acquired from the joint fund of the parties and that various shares in the names of the members of the Berlia family were

purchased out of the joint family income of the Plaintiffs and Defendants Nos. 1 to 5. Thus, the description of shares mentioned in the plaint and the

application for injunction in respect of the Defendant Nos. 6 to 18 are really the part of joint family property.

17. Thus, the subject-matter of the present suit is not the entire assets of the Defendants Nos. 6 to 18, but the shares held therein by the members

of the joint family. We, therefore, find substance in the contention of Mr. Mukherjee, the learned senior advocate appearing on behalf of the

Defendant No. 6/Appellant, that the learned Single Judge should not have passed the order of injunction by restraining the Defendants Nos. 6 of

the suit from transferring or alienating or otherwise encumbering any of their fixed assets and from changing the shareholding composition therein

without previous leave of the Court.

18. Once we find that only limited shares of the Defendant No. 6 were the subject-matter of the suit, it is palpably clear that the learned Single

Judge erred in law in passing the order impugned by restraining the Defendant No. 6 from dealing with the entire share-composition which is not

even the subject-matter of the suit. Similarly, limited shares of the Defendant No. 6 being the subject-matter, there was no justification of the

learned trial judge to pass an order of injunction restraining the Defendant No. 6 from transferring or alienating or encumbering the fixed assets of

the company over which the parties have no right in the capacity of the shareholders. It is now settled law that a shareholder of a company has as

such shareholder no right over the assets of the company. In this connection, we may profitably refer to the following observations of the Supreme

Court in the case of *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, regarding position of a shareholder in a company with regard to

the assets of the company:

That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the

contention that the shares holder acquires any interest in the assets of the company. The use of the word "assets" in the passage quoted above

cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the

company and has any share in the property of the company.

A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the

company decides to divide them. The interest of a shareholder "vis-a-vis" the company was explained in the *Chiranjit Lal Chowdhuri Vs. The*

Union of India (UOI) and Others, . That judgment negatives the position taken up on behalf of the Appellant that a shareholder has got a right in

the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the

company and are entitled, as provided by the Articles of Association, to declare that dividends should be distributed out of the profits of the

company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate

in the profits of the company.

The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The

dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the

Appellant on a passage in Buckley's Companies Act (12th Ed., page 894) where the etymological meaning of dividend is given as dividendum, the

total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the

recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of

the company.

19. We, therefore, hold that even if we assume all the averments made in the plaint to be true, it is not a fit case for grant of injunction restraining

the Defendant No. 6 from dealing with or encumbering its assets at the instance of Plaintiff having limited shares in the Defendant No. 6 and at the

same time, restraining the Defendant No. 6 from dealing with its entire share composition. Instead of such order, the learned Single Judge should

have directed the parties to maintain status quo with regard to the shares held by the Plaintiff and the Defendant Nos. 1 to 5 in Defendant No. 6.

20. At this stage, we propose to deal with two technical points raised by Mr. Mukherjee as regards the maintainability of the present suit on

account of being barred by order 2 Rule 2 of the Code and that his client should not be vexed with the same case twice over the same subject-

matter.

21. We do not for a moment dispute that in the matter of grant discretionary relief in the nature of injunction, a court, if finds that in the past on the

basis of similar facts the Plaintiff failed to obtain the same relief and thereafter, has come up with a second litigation on the basis of same allegation,

will refuse to grant the relief. But the position will be different if on the earlier occasion, the relief was refused not on merit but on a technical

ground. In such a case, if the Plaintiff by removing the defect comes up with a properly constituted suit, the failure on the earlier occasion on

technical reason cannot be a ground for refusing the relief. In the case before us, the Plaintiff along with others filed a suit where interim relief was

granted but the same was vacated not on merit but on a technical ground that the earlier suit was a derivative and representative action where the

claim for partition could not have been made. The merits of the case were not dealt with while passing such order. It appears that the Plaintiff has

abandoned and is not pressing prayers (a) to (e) and (o) in the earlier suit and a separate application has also been filed in the said earlier suit

recording this fact. It was the Appellant before us, who raised such objection and such objection was upheld and thereafter, the present suit has

been filed removing the defect.

22. We, thus, find that the principles laid down in the case of Amir Din Shahab Din v. Shiv Deb Singh (supra), relied upon by Mr. Mukherjee has

no application to the facts of the present case.

23. The other points regarding maintainability of the second suit being barred by Order 2 Rule 2 are equally devoid of any substance. In order to

appreciate the scope Order 2 Rule 2 of the Code, it will be appropriate to quote the same:

2. Suit to include the whole claim.-(1) Every suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of

action; but a Plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.-Where a Plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not

afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several relief"s.-A person entitled to more than one relief in respect of the same cause of action may sue for all or

any of such relief"s; but if he omits, except with the leave of the Court, to sue for all such relief"s, he shall not afterwards sue for any relief so

omitted.

Explanation.-For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same

obligation shall be deemed respectively to constitute but one cause of action.

Illustration

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908

only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

24. In the case before us, the earlier suit was filed by the Plaintiff with other two persons, and the earlier suit was a derivative and representative

action and thus, the prayer of partition was foreign to such a proceeding. Therefore, in that suit there was no scope of claiming partition and

consequently, the provision of Order 2 Rule 2 of the Code does not stand in the way of the Plaintiff in filing an appropriate suit claiming the relief

which was not available in the earlier suit. We, thus, find no substance in the aforesaid contention of Mr. Mukherjee.

25. The other contention of Mr. Mukherjee that the order impugned was violative of the provisions of the Companies Act by placing reliance upon

Section 111A thereof, since we propose to modify the order of injunction by restricting the transfer of shares only to the extent held by the parties

and not in respect of other shares of the Defendant No. 6, Mr. Mukherjee cannot have any grievance.

26. Regarding the cross-objection filed by the Plaintiff, we are of the view, that the Plaintiff having proved strong prima facie case, it was a fit case

for grant of ad interim order of injunction restraining both the Plaintiff and the Defendant Nos. 1 to 5 from transferring or alienating or encumbering

any of the immoveable properties standing in their respective names but the learned Single Judge only restrained the Plaintiff from transferring the

properties in his control.

27. Thus, the appeal and the cross-objection both succeed in part. The order passed by the learned Single Judge is modified by directing the

Plaintiff and the Defendant Nos. 1 to 5 to maintain status quo in respect of the properties standing in their names and they are also directed to

maintain status quo as regards the shares held by them in respect of the Defendant No. 6. As the Defendant Nos. 7 to 18 have not preferred any

appeal against the order impugned, we do not pass any order of modification in respect of the assets standing in the names of those Defendants.

28. We make it clear that our observations made herein with regard to the prima facie case of the Plaintiff is based on the allegations made in the

plaint alone and we have at this stage not taken into consideration any factual denial of the Defendants as regards the plaint case. Thus, our findings

will not be binding on the learned Single Judge at the time of final hearing of the application for injunction when the same will be heard on taking

into consideration the versions of both the parties.

29. In the facts and circumstances, there will be, however, no order as to costs.

I agree-

Sambuddha Chakrabarti, J.