(1987) 08 DEL CK 0058

Delhi High Court

Case No: Company Appeal No. 6 of 1986

Gurnir Singh Gill and Another		APPELLANT
	Vs	
Saz International (P) Ltd. and Others		RESPONDENT

Date of Decision: Aug. 12, 1987

Citation: (1987) 62 CompCas 197 : (1988) 15 DRJ 358

Hon'ble Judges: T.P.S Chawla, C.J; Y.K. Sabharwal, J

Bench: Division Bench

Advocate: M.L. Bhargav and V.N. Kalra, for the Appellant;

Judgement

T.P.S. Chawla, C.J.

(1) This is an appeal u/s 483 of the Companies Act, 1956. It assails an order granting leave to amend the reply to a petition under Sections 397 and 398 of that Act. The order is dated 12th December, 1985. It deals with many applications which had been moved in the proceedings. But, the present appeal is confined to the decision on C.A. No. 746 of 1985, which sought leave to amend the reply, and was allowed. Although this application seems a simple one, the case is somewhat complicated and it seems necessary to give a resume to make the contentions comprehensible.

(2) Surjit Kaur and Adarsh Kaur are sisters. In 1954, they were married. Their husbands were brothers and had settled in Panama. Surjit Kaur had a son, G.S. Gill. Adarsh Kaur had a daughter, who is now married and is known as Mrs. Noorien Kaur Gill Vanlaer. These children were foreign nationals. In 1968, both the sisters were divorced from their respective husbands. But they remained non-resident Indians. They stayed in the United States of America and started a business there in high fashion garments. A company known as Saz Ltd. was formed in which they were equal share holders. The business prospered, and they set up another company named Shehnai Ltd. which ran a showroom in New York known as Saz BOUTIQUE. In this company, also, the two sisters were the only share holders.

(3) In 1976, these two ladies formed a company in India known as Saz International Private Limited (the ''Company''), The nominal capital of the company was Rs. 10 lakhs divided into 10,000 shares of Rs. 100.00 each. Since both Surjit Kaur and Adarsh Kaur were non-residents, they could not hold any shares in the company without the permission of the Reserve Bank of India. So, in the beginning there were just two inconsequential share holders : a Mr. K.K. Bindal, who was the nephew of the two ladies, and a Mrs. Rashmi Puri, the wife of Mr. S.P. Puri, the Chartered Accountant of the company. Each of them held only one share. Afterwards, the share held by Mrs. Rashmi Puri was transferred to Mr. G.C. Mittal, an advocate, and he, then, became a Director of the Company.

(4) In or about 1978, G.S. Gill, the son of Surjit Kaur, acquired Indian citizenship by registration. He could now hold shares in the company. By a resolution of the Board of Directors passed on 15th September 1978, he was allotted 2498 shares. The minutes of this meeting were confirmed at the next meeting on 22nd September, 1978. The first call on these shares was 15%. A second call of 15% was made at a meeting of the Board of Directors on 27th April, 1979. By complying with these calls, G.S. Gill had paid Rs. 30.00 per share. They remained only partly paid up. By another resolution passed by the Board of Directors on 5th December, 1978, G.S. Gill was appointed the Managing Director of the Company.

(5) The minutes of these various meetings were recorded in the minute book. They were signed both by G.S. Gill and Mr. G.C. Mittal as Directors.

(6) Various sums of money were remitted to the company by the two sisters from USA. As on 20th July, 1979, the company had received an aggregate sum of Rs. 5,50,794.03 from them. With the monies thus received, the company established two factories in Delhi and began to export ready- made garments. Most of the orders were received from the concerns of the two sisters in U.S.A. The export business of the company-made spectacular progress between 1980 and 1984.

(7) Meanwhile, steps were taken to allot shares to Surjit Kaur, Adarsh Kaur and Mrs. Vanlaer. There is a dispute as to how many shares were to be allotted to Surjit Kaur and Adarsh Kaur respectively. The undisputed fact is that, on 7th November 1984, the Reserve Bank of India approved the allotment of 1423 shares to Surjit Kaur, 1216 shares to Adarsh Kaur and 940 shares to Mrs. Vanlaer.

(8) Sometime in 1984, the two sisters fell out. Several litigations commenced between them in U.S.A., and the companies they had formed there were sought to be wound up. Inevitably, conflicts arose in the company they had started in India.

(9) On 28th December 1984, a meeting of the Board of Directors of the company was allegedly held. At this meeting, there was an allotment of shares as follows:

1. Mr. G.S. Gill Resident 1498 equity shares. 2. Mr. G.C. Mittal -do- I equity share. 3. Mr. K.K. Bindal -do- I equity share. 4. Mrs. S.K. Gill Non-resident 1423 equity shares.

5. Mrs. A.K. Gill -do- 4060 equity shares. 6. Mrs. N. Gill -do- 940 equity shares.''

Intimation of this allotment was sent to the Reserve Bank of India by a letter of the same date, 28th December 1984. The letter further stated that Adarsh Kaur had a sum of Rs. 3,51,823.11, lying with the company as an unsecured loan, and the Board had resolved to allot to her 2244 shares of Rs. 100.00 each and adjust the price against that sum. Approval for this additional allotment of shares to Adarsh Kaur was sought from the Reserve Bank.

(10) There was another alleged meeting of the Board of Directors on 31st January, 1985. At this meeting, Adarsh Kaur was appointed the Managing Director of the company.

(11) These, and other, developments caused G.S. Gill and his mother, Surjit Kaur, to move C.P. No. 35 of 1985 on 14th February 1985 under Sections 397 and 398 of the Companies Act. They say, in the petition, that they knew nothing about the alleged meetings on 28th December 1984 and 31st January 1985, and did not receive any notices of the same. G.S. Gill first learnt of them on 2nd February, 1985 when he happened to see a copy of the letter addressed to the Reserve Bank of India, and, also, came to know that Mr. G.C. Mittal had written a letter to the employees union telling them, that Adarsh Kaur had been appointed the Managing Director of the company at a meeting of the Board of Directors held on 31st January, 1985. It is alleged in the petition that, in furtherance of their designs, Adarsh Kaur and Mr. G.C. Mittal removed the minute book of the company, diverted and misappropriated its stocks, and prevented G.S. Gill from operating the bank account. In consequence, the wages of the workers were not paid. Some of them were dismissed by Adarsh Kaur and others were lured away to a separate business started by her. Thus, it was said, the affairs of the company were being mismanaged and G.S. Gill and his mother were being oppressed. It was, Therefore, prayed that the court should rescind and declare as null and void the resolutions dated 28th December, 1984 and 31st January, 1985 purporting to have been passed at the alleged meetings of the Board of Directors on those dates. Further, that it be declared that the constitution of the Board of Directors was as it existed prior to 28th December 1984, and that G.S. Gill was the Managing Director. A direction was, also, sought requiring Adarsh Kaur, Mr. G.C. Mittal and Mrs. Vanlaer, respondents Nos. 2,3 and 4 respectively, to return the minute book and all other records and properties of the company, which they had taken away.

(12) A joint reply to this petition was filed on behalf of Adarsh Kaur, Mr. G.C. Mittal and Mrs. Vanlaer. They affirmed that the two impugned meetings were properly held and the resolutions passed thereat were valid. It is not necessary to notice the rest of their pleas.

(13) Thereafter, there was a spate of applications to which I need not refer. At the very outset of the proceedings, there were attempts to settle the differences

between the parties, but they proved futile. In the meantime, Adarsh Kaur and Mrs. Vanlaer had also filed a Company Petition, being No. 66 of 1985, under Sections 397 and 398 of the Companies Act. Ultimately, D.R. Khanna, J., who was then the company judge, gave directions for getting both the company petitions ready for hearing, and ordered that they should be listed on'' 22nd May, 1985. But, on 21st May 1985, an application, C.A. 551 of 1985, was moved on behalf of the petitioners for leave to amend their petition, namely, C.P. 35 of 1985. It was a long application extending over 45 pages. Apart from other proposed amendments, it sought to alter paragraphs 7 and 9 of the petition so as to exclude the possibility of any admission being implied that the alleged meetings of 28th December, 1984 and 31st January, 1985 were being approbated or accepted by the petitioners.

(14) On 22nd May 1985, when the case came on before D.R. Khanna J., both parties submitted that the matter was urgent and should be decided expeditiously .. However, he recorded in his order of that date that his cause list was very heavy, and it would not be possible for him to hear the case before the long vacation which was to commence shortly. Since the parties considered the matter to be urgent, they ''sought that the controversy as to the shareholding'' of the company be referred to Mr. Justice V.S. Deshpande retired Chief Justice of this court ''who should submit his report after permitting the parties to place such material before him as they may consider proper''. He was required to submit his ''report'' by 19th July, 1985. The order went on to say :

"THE determination of the shareholding will naturally involve the going into the holdings of the meetings on 28-12-84, 1-1-85 and 31-1-85. Since the petitioners are seeking amendment of the main petition with regard to the shareholding of petitioner No. 2 (i.e. Surjit Kaur), this aspect will also be gone into by him. He will also be entitled to go into forgeries, if any, committed in the account books or the minute books."

Although no specific order was made on the application for leave to amend the petition, that is, C.A. 551 of 1985, it has been held by Ranganathan, J., that this order impliedly allowed that application insofar as it pertained lo the shareholding of Surjit Kaur, and his decision on this point has not been questioned.

(15) After the parties appeared before Justice Deshpande, he gave directions for filing affidavits and documents and so forth. Some affidavits and documents were filed on behalf of the parties. Meanwhile, the time for submitting the report expired. So, an extension of time was sought from the court. At this stage, various applications were filed in the court by the respondents. One of them was C.A, 746 of 1985, which has given rise to this appeal. The petitioners were called upon to file a reply to this application, There was no stay of proceedings before Justice Deshpande and time for submission of his report was extended to 5th September, 1985. The respondents moved some more applications before Justice Deshpande. In these, they raised questions regarding his jurisdiction, alleged that he was biased and

should not deal with the matter, and contended that he was appointed by the court to function merely as a commissioner and not an arbitrator.

(16) Justice Deshpande sent a report dated 3rd September, 1985 to the court in which he said that it would not be appropriate for him to deal with the allegation of bias made against him, and left it to the court to rule upon the point. However, he proceeded to express his opinion on the question whether he had been appointed a commissioner or an arbitrator in the case. He was of the view that he had been appointed an arbitrator.

(17) This report came before the court, and it was considered along with the applications which were then pending. By his order dated 12th December 1985, Ranganathan, J., who was now the company judge, disposed of the applications, and, also, dealt with the report sent by Justice Deshpande. In his said order, Ranganathan, J., came to the conclusion that on a true construction of the order dated 22nd May, 1985 passed by D.R. Khanna, J., the then company judge. Justice Deshpande had been appointed an arbitrator. He also granted leave to the respondents to amend their reply .to the petition as prayed in C.A. 746 of 1985.

(18) Against this composite order there were two appeals. One is the present appeal which is directed against the order granting the respondents leave to amend their reply to the petition. The other was Company Appeal No. 2 of 1986. That appeal was filed by Adarsh Kaur and others against that part of the order made by Ranganathan. J, which held that Justice Deshpande had been appointed an arbitrator. That appeal came on for preliminary hearing before a Bench comprising J.D.Jain, J., and myself on 14th March, 1986. In the course of the hearing, counsel agreed that the appeal may be allowed, and that the order under appeal may beset aside to this extent that the case would now be tried by the company judge and not by Justice Deshpande. Accordingly, the case has thenceforth proceeded in the court. This order was made without prejudice to the rights of the appellants in Company Appeal No. 6 of 1986, that is to say, the appeal now before us.

(19) I come, then, to the merits of the present appeal.

(20) In paragraph 7 of the petition, G.S. Gill and Surjit Kaur had said that they fulfilled the requirements of Section 399(l)(a) of the Companies Act since ''between them (they) have 3,921 Equity Shares of Rs. 100.00 each, which is more than the stipulated I/10th of the total shares''. In paragraph 9, it is said, that on 2nd February, 1985 G.S. Gill came to know from the copy of the letter addressed to the Reserve Bank of India about the alleged meeting of the Board of Directors on 28th December 1984, at which there had been a purported re-allotment of shares ''as under''. The very first item which followed showed that 2498 shares had been allotted to G.S. Gill.

(21) The reply to paragraph 7 of the petition was in a number of sub-paragraphs, but in the very first sentence it was admitted that 2498 shares had been allotted to G.S.

Gill. This sentence reads as follows :

"THE contents of paragraph 7 (repeated) of the Petition are wrong and denied subject to the clarification that prior to December 28, 1984 the Company had allotted only 2500 shares, of which 2498 partly paid equity shares had been allotted to the Petitioner No. 1, one fully paid equity share had been allotted to the Respondent No. 3, and one fully paid equity share to Shri Kamal K. Bindal, nephew of the Petitioner No. 2 and Respondent No. 2."

Likewise, sub-paragraph (b) admitted that 2498 shares had been allotted to G.S. Gill. It said :

"BY virtue of the said allotment of 1423 equity shares to the Petitioner No. 2 on December 28, 1984, the Petitioners Nos. 1 and 2 together held 3921 fully paid equity shares of Rs 100.00 each ill the Respondent Company (ie. 2498 + 1423), of which the 2498 shares held by the Petitioner No. I were only partly paid." Sub-paragraph) (c) set out the final position regarding the shares of the company, and clearly stated that G.S.Gill held 2498 shares. Paragraph 9 of the reply expressly admitted that the shareholding of the members of the company ''has been correctly reflected'' in paragraph 9 of the petition. Thus it is apparent that there were clear and unambiguous admissions by the respondents that G.S, Gill held 2498 shares of the company.

(22) By the application for leave to amend their reply, the respondents sought to withdraw these admissions. They wished to substitute new paragraphs 7 and 9 in their reply so as to contend that there had not been ''any valid allotment of 2498 shares or of any other shares'' in the company to G.S. Gill The proposed paragraph 7(e) sets out the full range of their contention. It reads as follows Petitioner No. 1 bad purported to allot himself 2498 equity shares in the Company with 30% amount paid thereon, and to have made a 15% call on the said shares, and at a meeting of the Board of Directors of the Company purported to have been made on April 27, 1979, the Petitioner No. 1 has purported to have made another 15% call on the said shares. The Respondents state that no notices were even sent for any meeting of the Board of Directors of the Respondent No. 1-Company to be held on 15-9-1978, 22-9-78, and 27-4-79 as required u/s 286 of the Companies Act, 1956 or otherwise that no such meetings were in fact held, that no allotment of shares in favor of the Petitioner No. 1 was in fact made as purported or otherwise and no calls in respect of such allotments were in fact made as purported or otherwise, and that the purported allotments and calls were in fact non-existant, void, invalid and without legal force or effect and that the alleged minutes were in fact forged and fabricated." In the proposed paragraph 9(a) of the reply, it is said : ''.....The Petitioner No. 1 is not a shareholder of the Company and the Petitioner No. 2 has denied and disclaimed her shareholding in the Company.'' The disclaimer was attributed to Surjit Kaur because she denied that any meeting of the Board of Directors was held on 28th December, 1984, which was the meeting at

which she was allotted the shares.

(23) The Explanation given in the application for leave to amend as to why these picas had not been taken in the very first instance, is not at all convincing. When Justice Deshpande directed the parties to file affidavits, Mr. G.C.Mittal filed an affidavit dated 4th July, 1985 in which paragraph 25(A) was as follows : ''25-A. I say that all meetings of the Board of Directors were held as and when required irrespective of the absence of some of the Directors from India inasmuch as, when Mrs. A.K. Gill was in India, Mrs. S.K. Gill or Mr. G.S. Gill were almost invariably deputising in America. There is only one Board meeting dated 19-3-1981 where all the Directors were present.'' The Explanation put forth is that when Adarsh Kaur and Mrs. Vanlaer read this paragraph, they asked Mr. Mittal whether notices calling meetings of the Board of Directors used to be sent as required by Section 286 of the Companies Act. Mr. Mittal then ''clarified and disclosed that no notice was issued for the said meetings, that no such meetings were in fact held, that no resolutions were passed on one of the said days, that no allotment of shares to Mr. G.S. Gill or call thereon was made on 15-9-78 or 27-4-79, and that the attendance in the minutes book was merely got signed from him by Mr. G.S. Gill''. It was as a result of these ''revelations'' that Adarsh Kaur and Mrs. Vanlaer came to know :- ''about the mistake of fact and law under which they have hitherto acted and proceeded and that there was no notice issued to any of the Directors of the Company for any meetings of the Board of Directors of the Company alleged to have been held on 15^9-1978, 22-9-78 and 27-4-79 that no meetings of the Board of Directors of the Company were in fact held on such dates, that no. share allotments of 2498 partly paid shares of Rs. 100.00 each in the Respondent Company were made in front (sic; should be "favor") of the Petitioner No. 1 as reflected in the Minutes Book of the Board of Directors of the Company nor were any calls in respect thereof in fact made by the Company on said dates and that the purported allotment and calls were in fact non-existant, void, invalid and without legal force or effect.'' Ranganathan, J., as I have said, granted leave to amend the reply. Counsel for the appellants has contended that the application was utterly mala fide and ought to have been refused.

(24) It is now too well settled that leave to amend pleadings should be liberally granted. In general, a plea should not be stifled without a hearing. The approach adopted by Bramwell L.J., in Tildesley v. Harper (1879) 10 Ch. D. 393, has been repeatedly quoted with approval. He said : ''My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise.'' Equally well-known and authoritative is the judgment of Brett, M.R. in Clarapede v. Commercial Union Association (1883) 32W.R. 262, where he said: ''However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs.'' These passages

have survived scrutiny for over a 100 years. They almost shift the onus on the party opposing the amendment to show that the amendment should not be allowed.

(25) The main argument of counsel for the appellants was that the respondents were "acting mala fide" in seeking leave to amend the reply in the manner proposed. He sought to support this submission on a number of counts. I will consider each in turn.

(26) The real purpose of the proposed amendments, he contended, was to withdraw the admissions made in the reply that G.S. Gill held 2498 shares in the company. This itself, he said, was sufficient ground to disallow the application. In my opinion, this argument is not acceptable. It is always open to a party to correct or explain an admission, unless it operates as an estoppel : see Section 31 of the Indian Evidence Act, 1872. Whatever conflict there may once have been regarding the application of this proposition to the amendment of pleadings, it has now been set at rest. In Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, , the Supreme Court has held that : An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn." If the respondents are doing what they are entitled to do, it cannot be inferred that they are acting mala fide.

(27) Counsel for the appellants tried to demonstrate that the plea now sought to be taken by the respondents in their reply, to the effect that G.S. Gill was not the owner of 2498 shares, was false. We heard him at some considerable length on this submission, and even adopted the unusual course of recording the statement of Mr. G.C.Mittal by securing his attendance in court. But, the authorities seem to be uniform in holding that, in considering whether leave to amend a pleading should be granted or not, the court should not inquire into the truth or falsity of the plea sought to be taken. Thus, for example, in M.K. Krishna Rao v. Sri Gangadeswarar Temple and other connected temples by trustees, Air (36) 1949 Madras 433, it was held, in the words of the headnote, that the court "ought not to give its finding on the allegations in the intended amendment without first allowing the amendment, framing an issue thereon and allowing both parties to adduce the relevant oral-and documentary evidence". The reasoning is that if the plea sought to be taken is false, it will fail on the merits at the trial : see Dharmatinga Chetti v. Krishnaswami Chetty Air (36) 1949 Mad 467. It behoves us, Therefore, to refrain from expressing any opinion on the merits of the plea sought to be taken. Since it is not permissible to form any opinion on the merits of the proposed plea, at this stage, necessarily no conclusion can be drawn.

(28) It was also suggested that mala fides ought to be inferred from the delay in moving for leave to amend the reply. Actually, there was not much delay in moving the application. The petition was filed on 14th February 1985. The application for leave to amend (C.A. No. 746 of 1985) was filed on 9th August, 1985. The case was still at a preliminary stage where it was yet to be decided whether Justice

Deshpande was to function as a commissioner or an arbitrator. It was nowhere near the end. Amendments of pleadings are allowed to be made even in first and second appeals depending, of course, on the facts. It would certainly not be justifiable to refuse leave to amend on the ground of delay when even the trial has not begun : see Dharmalinga Chetti v. Krishnaswami Chetly, Air (36) 1949 Madras 467: I do not think the delay in this case raises any suspicion of mala fides.

(29) No doubt, the plea now sought to be taken by the respondents by the proposed amendments, is new and inconsistent with the previous admissions by them that G.S. Gill did own 2498 shares in the company. That, surely, is bound to happen whenever an admission is sought to be withdrawn. In any case it is well accepted that an amendment can be allowed even to introduce ^''new ground of claim or allegation of fact inconsistent with the original pleas, if the court thinks it just and necessary : see Maruti and others v. Ranganath Air 1955 Hyd 1 (FB). Again, no sinister inference emerges.

(30) However, I think, it must be conceded that the story propounded by the respondents about having got to know the true facts only after reading the affidavit sworn by Mr. G.C. Mittal raises some doubts. As counsel for the appellants rightly said, even supposing the story to be true, it does not furnish any reason why Mr. G.C. Mittal, who also joined in filing the reply, did not attack the resolutions of the Board of Directors dated 15th September 1978, 22nd September 1978 and 27th April, 1979 for he knew all the tacts. And, as an advocate he must have understood their importance. No satisfactory answer was given by the respondents to this contention. Nevertheless, counsel for the respondents contended, that the position of the respondents could not be rendered worse by giving an Explanation which did not carry conviction than it would have been if no Explanation had been attempted at all, and they had simply pleaded their own, or their counsel''s, negligence oi carelessness. The point seems well taken. We have not made an inquiry into the truth of the Explanation given in the application for leave to amend, and, I think, we are not in a position to say finally that what is stated therein is false, howsoever incredible it may seem. There are observations in Harendra Math De v. Monmotha Nath De and others (1966-67) 71 C.W.N. 749, which seem to suggest that such a point should not be decided without full evidence. Having regard to all the circumstances, I would ignore the Explanation ,and treat the case as one of negligence or carelessness. The authorities to which I have earlier referred show that leave to amend should not be refused on such grounds.

(31) The point which counsel for the appellants stressed most of all was that if the amendments were allowed to be made, they would raise new issues requiring a great deal of evidence, and that would enable the respondents to delay the proceedings and a decision in the case. This, he said, was the real object which the respondents wished to achieve by amending their reply; and-not that they hoped to succeed on the merits of the pleas now sought to be taken. In order to show that it

was not the intention of the respondents to delay proceedings, Mr. Kaura offered an undertaking that the respondents would examine no other witness apart from Mr. G.C. Mittal in support of the pleas sought to be raised by the amendments. We have accepted that undertaking, and hereby record the same. This sufficiently ensures that the respondents cannot use the proposed amendments for delaying the proceedings.

(32) Lastly, counsel for the appellant argued that the amendments should not be allowed because a suit for declaring as null and void the resolutions dated 15th September 1978, 22nd September, 1978 and 27th April, 1979 of the Board of Directors would have been barred by time when the application for leave to amend the reply was moved by the respondents. No period of limitation is applicable to the raising of a defense. That is the short answer to the submission.

(33) The overriding consideration which causes me to lean in favor of allowing the amendments is that the question whether G.S. Gill owned 2498 shares is of critical importance. If he did not, then the petition is not maintainable because the requirement of Section 399 of the Companies Act that the petitioners must hold one-tenth of the issued share capital of the company will not be fulfilled .I do not think, it would be right to stop a question to such significance from being tried. If, as counsel for the appellants says, his clients have a foolproof case on this point, they have no cause for worry. Their anxiety that the amendments may be used by the respondents for dilatory tactics ought to be removed by the undertaking given by Mr. Kaura and recorded above. So, there is no prejudice caused to the appellants by allowing the amendments which cannot be compensated in costs. A sum of Rs. 500.00 has been awarded as costs in the order under appeal.

(34) It was for similar reasons that Ranganathan, J., allowed the application and gave leave to the respondents to amend their reply. It is true that he did, also, say that since the petitioners had been allowed to amend their petition ''it will be inequitable to deny a similar concession to the respondents''. Mo doubt, this does give the impression that he allowed the respondents to amend their reply because the petitioners bad been allowed to amend their petition. I agree with counsel for the appellants that this was no reason for granting leave to amend to the respondents, because each application has to be decided on its own merits. But, even if one disregards this reason stated by Ranganathan, J., the other reasons given by him are more than adequate to support his judgment.

(35) Consequently, I would dismiss this appeal, but having regard to all the circumstances I would make no order as to costs. The respondents will, however, be bound by the undertaking given on their behalf by Mr. Kaura, and accepted by the court, that, apart from Mr. G.C. Mittal, no other witness will be called to prove the pleas taken by amendments in their reply.