* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on: 5th June, 2015*

\+ **Crl.M.A. Nos.4197/2011 & 17460/2014 in CRL.M.C. 1149/2011**

SHIVRAJ GUPTA ..... Petitioner
Through Mr.S.S. Gandhi, Sr. Adv. with Mr.Vikram Singh Panwar, Adv.

versus

HANSRAJ GUPTA & CO. P.LTD. ..... Respondent
Through Mr.Suhail Dutt, Sr. Adv. with Mr.Sujoy Kumar, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition under Section 482 Cr.P.C. seeking quashing of criminal complaint No. 25 of 2007 titled as "M/s. Hansraj Gupta & co. Pvt. Ltd. vs. Shri Shivraj Gupta" and the order of summoning dated 20th April, 2010, passed by the court of metropolitan magistrate, New Delhi whereby Metropolitan Magistrate took cognizance of the offence under Section 630 of the Companies Act 1956 and issued summons to the petitioner.

2. In the present petition, it is alleged that respondent/complainant Company has played fraud upon the trial court by suppressing material facts. The same are :

i) Alleged Board Resolution dated 14.02.2005 in support of the Complaint is in violation of order dated 14.01.2005 passed in CS (OS) No. 43/2005 pending before this Court.

ii) Contempt Application being IA No. 1218/2005 in CS (OS) No. 43/2005 pending against Mr. Rajendra Kumar Gupta and Mr. Ravi Raj Gupta for violation of order dated 14-01-2005 pending before this Court.

iii) Agreement to sell entered into between the Respondent Company and the Petitioner for sale of the farm house property in respect of which the Complaint is filed. The said Agreement is the subject matter of suit for specific performance on the basis of part payment of consideration receipt thereof was filed being CS (OS) No. 915 OF 2009 pending before this Court. Similarly the suit for possession filed by the Respondent/Complainant Company in respect of the farmhouse property against the Petitioner/Accused being CS (OS) No. 2626 OF 2008 pending before this Court. An Order of injunction dated 22.05.2009 passed by this Court directing the Respondent/Complainant Company to maintain status quo with respect to the title of the suit property i.e. the farm house property in the suit for specific performance filed by the Petitioner against the Respondent/Complainant Company being CS (OS) No.915/2009. In another suit, an order of injunction dated 17.12.2008 passed by this Court in a suit filed by the Complainant being CS (OS) No. 2626 of 2008 against the Petitioner directing the petitioner to maintain status quo with regard to the title and possession of the suit property being the farm house.

iv) Receipt of part payment towards sale consideration amounting to Rs. 20,00,000/- paid under cover of letter dated 29.12.2008.

3. It is stated that the orders of summoning were obtained by the Complainant Company by suppressing the aforementioned material facts. Had they been not suppressed, trial court unlikely to pass the summing order, even otherwise it is a family dispute of civil nature and one of the properties of the complainant company.

4. The complaint was filed by the respondent Company through its Directors, Mr. Rajendra Kumar Gupta and Mr. Raviraj Gupta; both allegedly jointly authorized by the respondent Company, by board resolution dated 14th February, 2005, the board resolutions dated 6th January, 2005 i.e. including 14th February, 2005, by Complainant Company are already under challenge before this court in a suit filed by the petitioner herein (i.e. CS (OS) No. 43/2005), who is claiming to be one of the Directors of the respondent company, the brother of the said Sh. Rajendra Kumar Gupta. Further, Mr. Ravi Raj Gupta is the son of Mr. Deshraj Gupta, brother of the Petitioner and the said Mr. Rajendra Gupta. This court in the said proceedings being CS (OS) No. 43/2005 had passed the order directing status quo vide order dated 14th January, 2005 while the impugned complaint was filed much later on 29th May, 2007, without disclosing the said order. In violation of the order passed by the Court, a resolution purporting to be of the Board of Directors of the said Company was passed, on the strength of which the subject Complaint has been filed. Contempt

proceedings have already been initiated by the petitioner which are pending. The respondent knowing all the circumstances by material facts, the complaint was filed and summoning order was obtained.

5. The order of summoning against the present petitioner who is 86 year old man suffering from many ailments. The respondent on the basis of twisted facts although many civil litigations on the same facts and grievance has field the complaint. Counsel has referred the facts relating to disputes and the details of litigations which are mentioned in para 10 of the petition, it is not necessary to refer long history of litigation pending between the parties as the same is not required in order to decide the issue in hand.

6. In nut-shell, it is stated that the criminal complaint has been filed with an ulterior motive, personal vengeance on the petitioner. Having failed to get vacated the status quo orders of the this Court, the complaint has been filed against the petitioner n order to harass him. It is alleged that the complaint has been filed pursuant to the Resolution dated 14th February, 2005 of the Board of Directors of the Respondent Company in which meeting Shri Rajendra Gupta participated, who had ceased to be a director of the respondent Company with effect from 31st December, 2004 and could not have participated in any meeting of the Board of Directors of the respondent/complainant Company subsequently and for which proceedings for contempt of court are pending. The same has been filed in contravention of the status quo order dated 14th January, 2005, 30th January, 2005 passed by this Court in CS (OS) 43/2005, which is operational till date. The Magistrate passed the summoning

order mechanically, without due application of mind. It is a family dispute in relation to the distribution of family properties no offence under Section 630 Companies Act could be made out. Most of the decisions referred by the respondent in respect of disputes pertaining to employer and employee. The respondent company did not disclose that it had already entered into an agreement to sell with the petitioner herein with respect to the said property and pursuant thereto also accepted and encashed the cheque for Rs.20,000,00/- (Rupees Twenty Lacs only). Even otherwise the petitioner being Director-In-charge of the respondent company and some time in September 2002 along with his wife were put in possession of the said property for residential purpose in accordance with his rights and entitlements.

7. The respondent company claims to be the owner of the subject property being the farmhouse bearing Khasra no. 53-20/2, 21/1, 54-16/1, 25/2, 68/27, 80-6, 7, 14, 15/1, 16/2, 17, 8/1, 13/2, 18/1, 27, 28 total of 16 KITA and having area of44 Bighas, 17 Biswas located at Village Bizwasan, Tehsil Vasant Vihar, Distt. South West Delhi, New Delhi (hereinafter referred to as the 'said property').

8. In the said complaint under Section 630 of the Companies Act, 1956 the respondent stated that it is the owner of the said property and that in the year 1990 the petitioner in the-present proceedings before this court had filed an application being CA No.403 of 1990 in CP 115 of 1986 indicated that the petitioner has no right or authority to occupy the said property. The same belongs to and is owned by the respondent company.

9. In the complaint it is also the case of the complainant, that is the respondent herein that the petitioner had been availing rupees 7000 per month as house, rent allowance from the respondent company. In the said criminal it is stated that one of the directors i.e. Uday Gupta of the respondent company is in occupation of the said property by the petitioner. The respondent company sent a notice dated 25th August, 2004 to the petitioner to convene a meeting of the board of directors regarding the illegal occupation of the said property.

10. It is mentioned in the said criminal complaint that a legal notice dated 1st December, 2005 was sent by the respondent to the petitioner calling upon Mm to vacate the said property owned by the respondent company but despite service of notice the petitioner/ accused refused to vacate the said property.

11. The respondent has in para 15 of the said criminal complaint has stated as under :

> ".....that the complainant at no point of time authorized him to use the said property as his residence, despite the fact further that the said occupation is illegal in view of the clear order passed by the Delhi High Court to that effect, the accused has starting quoting the said property as his residence in the official communication. The audacity of the accused could be very easily established from the fact that the accused even in the judicial proceedings filed before the same Hon'ble Delhi High Court which specifically restrained the accused from using the said property as his residence....".

12. In the summoning order dated 20th April, 2010 the Magistrate has referred to the sale deed in favor of the complainant/respondent

company as well as the order dated 1st November, 1990 passed by this Court in CA No. 403/90 in CP 115/86 and also taken into account that the petitioner/accused was entitled to receive Rs.7000 per month House rent allowance. The Magistrate has further recorder in the summoning order that the respondent company is the owner of the said property and that prima facie it does appear that the petitioner has wrongfully withheld the said property despite not being entitled to and the legal notice was served on the petitioner pointing out the said wrongful act and demanding the vacation of the property. The Magistrate on the basis of the averments in the complaint and the evidence placed on record found sufficient grounds to proceed and accordingly summoned the accused under Section 630 of the Companies Act, 1956. The said order is a legally correct order.

13. The respondent submits that the grounds raised by the petitioner in the present petition under Section 482 of the CrPC do not entitle the petitioner to seek an order for quashing of the summoning order and the criminal complaint filed under Section 630 of the Companies Act, 1956.

14. Mr. Suhail Dutt, learned Senior counsel appearing on behalf of respondent has made his submissions which are outlined as under :

a) That both civil and criminal remedies are available to the aggrieved party. The mere filing of civil proceedings would not be a sufficient ground to quash the summoning order. In the present matter the trial court has prima facie observed that there are prima facie sufficient grounds exist to proceed against the petitioner under Section 630 of the companies act, 1956 who has referred to the sale deed in favor of the respondent company as well as the order dated 1st November, 1990 passed by this court and other documents and on the basis thereof passed the summoning order. The impugned order does not suffer from any infirmity. From the facts of the present case, it is a clear case of Section 630 of the Companies Act, 1956 is therefore made out.

b) The petitioner is yet to prove his defence in the civil suits pending in this court and in the Criminal Complaint No.25 of 2007 pending before the trial court. The petitioner has ample opportunity and is entitled to lead evidence even in the proceedings under Section 630 of the Companies Act, 1956 pending before the trail court. On the basis of a purported or alleged defence. Two remedies are distinct and exclusive. Only because in both proceedings that is civil as well as criminal, the respondent/complainant is entitled to seek recovery of possession the same cannot be a ground for quashing the criminal complaint to an offence under Section 630 of the Companies Act, 1956.

c) Mr. Dutt, learned Senior counsel has referred few decisions in support of his submissions. The details of the some are given as under :

   (i) ***Gopika Chanrabhushan Saran and Anr. vs. XLO India Ltd. and Anr.***, (2009) 3 SCC 342

   It was held that pendency of a civil suit and the existence of an interim order directing maintenance of status quo does not bar criminal proceedings under section 630 of the companies act, 1956.

(ii) ***Maratt Rubber Ltd. vs J.K. Marattukalam***, 2001 SCC (Cri) 646

It was held that in a case instituted on complaint the High Court was possibly not entitled to look to the several documents purported to have been' filed by the accused in several civil proceedings, and rely on some orders/observations made there under. The defence of the accused cannot be looked into.

(iii) ***Ravindra Kumar Madhanlal Goenka and Anr. vs. Rugmini Ram Raghav Spinners Pvt. Ltd.***, (2009) 11 SCC 529

It was held that while entertaining a petition under section 482, materials furnished by defence cannot be looked into and can be entertained only at the time of trial.

(iv) ***J.P. Sharma vs. Vinod Kumar Jain and Ors.***, (1986) 3 SCC 67

It was held that if prima facie offences are made out on the basis of the allegations made in the complaint without going into truth or otherwise of the allegations, High Court cannot exercise its jurisdiction under Section 482.

d) Mr. Dutt argues that the petitioner has sufficient opportunity to explain his case by way of the statement of the accused under Section 313 of Cr.P.C. and thereafter he is also entitled to lead defence evidence. The respondent is entitled to seek recourse to the statutory remedy enshrined under Section 630 of the Companies Act, 1956. It is submitted by him that in case, the respondent is about to prove his case before the trial court then in the civil proceedings pending before the high court similar-relief cannot be granted as the civil court has no power or jurisdiction to award a sentence of punishment against the petitioner/accused as envisaged by Section 630 of companies act, 1956.

e) Lastly, he stated that the respondent is not insisting for personal appearance of the petitioner on every date being old person and his client has no objection if he be exempted from personal.

15. It is argued on behalf of respondent that at the stage of passing a summoning order the trial court is only required to consider the averments in the complaint and if the averments are taken as true and offence is made out then the summoning order cannot be quashed. In the present case the said property admittedly belongs to and is owned by the respondent company. It is stated in the complaint that no right title or interest has ever been created in favor of the petitioner to use the said property and documentary in support of the complaint has been placed on record.

16. The entire case of the petitioner is that the complaint has not been signed by a duly authorized person and that two suits are pending in this Court being CS(OS) No.2626/2008 filed by the respondent/complainant for recovery of possession of the said property and damages and CS(OS) No.915 of 2005 filed by the petitioner/accused for specific performance on the allegation that

there is allegedly an agreement to sell in favor of the petitioner and that he has allegedly paid part consideration of Rs. 20 lacs to the respondent.

17. The petitioner has also further sought to rely on two interim orders I passed by this court being order dated 17th December, 2008 passed in CS(OS) No.2626/2008 and order on 22nd May, 2009 in CS(OS) No.915/2009. The order dated 17th December, 2008 was passed in the suit filed by the respondent directing maintenance of status quo regarding title and possession in as much as the respondent is seeking recovery of possession of its property and heeded protection so that the petitioner did not alienate or create third party rights in the said property in furtherance of his illegal and mala-fide designs. The order date 22nd May, 2009 was passed in the suit for specific performance filed the petitioner directing the maintenance of status quo with respect to title of the said property.

18. Therefore the submission is made on behalf of petitioner that the complaint itself is bad as the same has been filed on the basis of a resolution which in itself could not have been passed in view of the status quo order of the court. The next ground taken by the petitioner is that the summoning order could not have been passed as the complainant were not examined before the court which is contrary to the mandatory provisions of Cr.P.C.

19. The said Section 630 of the Companies Act, 1956 for ready reference is reproduced hereunder.

> "Section 630: Penalty for wrongful withholding of property.
>
> (1) If any officer or employee of a company-

(a) wrongfully obtains possession of any property of a company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act; he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to one thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years."

20. After examining the averments made in the complaint and having gone through the decisions referred by Mr. Dutt, learned Senior counsel, I am of the view that in normal cases both remedies may be available. The complainant under Section 630 of the Companies Act, 1956 can be filed if the averment made in the complaint prima facie are correct or the complaint is validly filed by the competent person before the trial court. If the conditions are fulfilled and court is satisfied, the summoning order may not be interfered. The defence raised in the petition under Section 482 Cr.P.C. is to be postponed for the later stage.

21. However, in the present case the petitioner has challenged the validity of filing of complaint itself. It is the case of the petitioner that the board resolution dated 14th February, 2005. under the garb of which the instant complaint was filed, could not have been passed in view of the status quo order passed by this court vide order dated 14th January, 2005 in CS(OS) No.43/2005 and since the said

board resolution itself is illegal, hence, the complaint could not have been filed and the same is liable to be quashed.

It is submitted that the dispute is purely a civil dispute inter-se between the family members and therefore, the Corporate Veil ought to be lifted in the present case for the purpose of preventing the abuse of the process of law.

22. It is argued by Mr. S.S. Gandhi, learned Senior Counsel appearing on behalf of petitioners that status quo order was passed by this Court on 14th January, 2005 in CS(OS) No. 43 of 2005, though it was modified on 31st January, 2005 to the effect that AGM scheduled to be held on 5th February, 2005 may be held but the decisions in regard to Directorship of the company if any action taken in the AGM shall not be given effect. He submits that the very constitution of the board was under challenge in the said suit filed by the Petitioner alongwith his son. The proceedings of the Board Meeting dated 14th February, 2005 being in contempt of the civil proceedings being CS (OS) No. 43 of 2005. The status-quo order dated 14th January, 2005 was recorded and reflected in the minutes of the meeting dated 14th February, 2005 filed along with the Complaint. Relevant portion of the minutes of the meeting read as under:

> "........... the minutes were confirmed subject to the outcome of the High Court proceedings."

And also as :

> "...Letter of Shri Rajendra Gupta dated 11.02.2005 convening the Board Meeting and agenda contained

> therein is in contempt of order dt.14.1.2005 of Delhi High Court, as per which status Quo is to be maintained between the parties..."

The Petitioner had immediately initiated contempt proceedings before this Court being I. A. No. 1218/2005 in CS (OS) No. 43 I of 2005 for passing of the said board resolution in contempt of the status quo order.

23. Mr. Gandhi, learned Senior counsel submits that the said proceedings being CS (OS) No. 43/2005, the directorship of Mr. Rajendra Kumar Gupta of the Complainant Company has been challenged. It is stated by him that this court in the said proceedings being CS (OS) No. 43/2005 had been pleased to direct that status quo shall be maintained by the parties vide order dated 14th January, 2005 while the complaint was filed much later on 29th May, 2007, without mentioning about the said order. The respondent had so far acknowledged that there was an order of status quo and no action could have been taken, and hence no action was taken for the next 2 years despite the resolution.

24. It is not denied by Mr. Gandhi that the status quo order was modified by an order dated 31st January, 2015 to the limited extent of permitting the holding of the AGM of the Complainant Company on 5th February, 2005 and it was further observed that resolution, if any, passed affecting the directorship of the Plaintiffs therein (i.e. Mr. Shivraj Gupta, the accused herein and his son, Mr. Jayant Gupta) shall not be given effect to. Prior to the status quo order. Powers (Financial & Legal) of the Complainant Company were jointly

exercised by Mr. Shivraj Gupta (petitioner herein) and Mr. Ravi Raj Gupta. However, in a Board Meeting dated 14th February, 2005, Powers (Financial & Legal) exercised by Mr.Shivraj Gupta and Mr. Ravi Raj Gupta were changed to either of Mr.Shivraj Gupta and Mr, Rajendra Kumar Gupta together with Mr.Ravi Raj Gupta. Further, resolution was allegedly passed authorizing the filing of the present complaint. It is submitted that the petitioners Contempt application being I.A. No.1218/2005 against the alleged change of powers and holding of the Board meeting dated 14th February, 2005, is pending in the civil suit. The passing of the said resolution was never challenged at the same time.

25. By the judgment dated 28th May, 2010 (read with order dated 9th July, 2010 correcting the typographical error of order dated 28th May, 2010), the Division Bench of this High Court, while deciding the challenge to the permitting of amendment to the plaint of CS (OS) No. 2005 has inter-alia observed as under:

> "... We have considered the aforesaid submissions of the learned counsel for the parties. The first question which arises for consideration is as to whether suits filed by the plaintiffs have become infructuous. We think that it is not so. In this suit, business transacted in the meeting held on 06.01.2005 is challenged on the ground that defendant No.I could not have attended that meeting, as he ceased to be the Director on 31.04.2004. The Court had granted status quo order as prayer of the plaintiffs in the suit was to restrain the defendants from acting any furtherance of the resolution passed in the meeting held on 06.01.2005. What would be the effect if this suit is decreed ultimately? **Naturally, any action taken pursuant to the resolutions passed on 06.01.2005 shall be rendered illegal**. One of

the resolutions passed in that meeting was that AGM be held on 05.02.2005. Thus, if the suit is decreed, it would have direct bearing of the outcome of AGM which was held on 05.02.2005. In this view, we have to take note of the interim orders dated 14.01.2005 and 31.01.2005. **On 14.01.2005 status quo as on that date was directed to be maintained by the parties**. Moreover, it is also to be borne in mind that according to the plaintiffs, these meetings are held in violation of status quo order and therefore for this purpose, even contempt application is filed which is pending in the Court. **This order was modified only to the extent that AGM could be held on 05.02.2005, as scheduled**. However at the same time, it was also clarified that the decision in respect of the Directorship to the AGM, if any, shall not be given effect to, in the meantime. No doubt. Dr. Singhvi argued that the only embargo put by the Court were limited to the decision with regard to the directorship of the plaintiffs and no other business, which was to be transacted on 05.02.2005, we have to keep in mind that these are the interim orders. That would not mean that all other decisions taken on 05.02.2005 automatically become legal only because the Court had permitted the AGM to go ahead. It is stated at the cost of repetition that this AGM convened on 05.02.2005 is a sequel to the resolution passed on 06.01.2005, validity whereof is the subject matter of the suit. **Therefore, the outcome of the suit will have direct bearing on the AGM held on 05.02.2005. Subsequent meetings, viz.. EGM held on 04.06.2005 and board meetings held on 14.02.2005.21.06.2005** and 26.09.2005 are the off shoots of the said AGM. Thus, it is clear that the events which have taken place subsequent to the board meeting held of 06.01.2005 form one single chain. These are the incessant and continuous events arising out of the same transaction. Amendment based on such subsequent events is permissible and is to be allowed to do complete justice in the matter..." [**Emphasis supplied**]

26. It is argued by Mr. Gandhi, learned Senior counsel that Magistrate committed grave error of law in ignoring the mandate laid down in Section 200 of the Code of Criminal Procedure which casts a duty upon a magistrate to compulsorily examine the complainant before issuing process. In the present case the Magistrate has, instead of examining the complainants authorized by the company, allowed CW1 Uday Gupta to step into the shoes of the complainant without even asking for any authorization by the company to that effect.

27. Section 200 of the Cr.P.C. reads as under:

> A Magistrate taking cognizance of on offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
>
> **Provided that,** when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses
>
> (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complainant; or
>
> (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:
>
> **Provided further** that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, then the latter Magistrate need not re-examine them.

28. There is a force in the submission of Mr. Gandhi, learned Senior counsel as the word 'shall' used in the said provision signifies that the examination of the complainant is mandatory and only under three exceptions provided in the proviso can it be dispensed with. The said view was taken by the Supreme Court in ***Associated Cement Co. Ltd. vs Keshavanand*** [(1998) 1 SCC 687] wherein it was categorically held that:

> "Chapter XV of the new Code contains provisions for lodging complaints with magistrates. Section 200, as the starting provision of that chapter enjoins on the Magistrate, who takes cognizance of an offence on a complaint, to examine the complainant on oath. Such examination is mandatory as can be discerned from the words "shall examine on oath the complainant.." The Magistrate is further required to reduce the substance of such examination to writing and it "shall be signed by the complainant'. Under Section 203 the magistrate is to dismiss the complaint if he is of opinion that there is no sufficient ground for proceeding after considering the said statement on oath. Such examination of the complainant on oath can be dispensed with only under two situations, one if the complaint was filed by a public servant, acting or purporting to act in the discharge of his official duties and the other when a court has made the complaint. Except under the above understandable situations the complainant has to make his physical presence for being examined by the magistrate."

29. Even otherwise, in the present matter the board resolution dated 14th February, 2005 which authorized the institution of the complaint was not proved at all during the pre summoning evidence. <u>The board resolution specifically authorized Mr. Rajendra Gupta & Mr. Raviraj Gupta, to pursue legal action in the instant case. But,</u>

none of the two authorized persons appeared before the Trial Court at stage of the pre-summoning evidence to pursue the complaint may be some reason or otherwise in order to face the proceedings. The learned Trial Court did not verify the said aspect of the matter or it was not brought to the knowledge of the trial Court. But the fact of the matter is that the summons for appearance were issued without examining the complainant. When pre-summoning evidence was recorded, Uday Gupta was one of the director of the company but at the same time, he was not authorized by the board resolution dated 14th February, 2005.

30. I do not agree with the submissions of the respondent that the said plea can be taken in defence. In normal case, the answer is 'yes' but in the facts of the present case where the board resolution itself is under challenge before this Court within the knowledge of the complaint.

31. It is also a matter of fact that the petitioner was put in possession of the farmhouse in September, 2002. The alleged resolution was passed in February, 2005 whereas the complaint was filed sometime in 2007. In November 2008, the respondent has filed the civil suit for eviction with respect to the same property. In 2009 the petitioner filed a suit for specific performance of the agreement to sell for the same property against the respondent. The interim orders are already been passed in both the matters. The dispute with respect to board resolution is also raised. Issues are already framed. One of the issue is about the said alleged illegal occupation of the farm house i.e. suit property. Onus of the said issue is upon the

respondent. The evidence in both these suits is being led together & has already started and being led by the respondent company presently.

32. Had it been a normal matter, this Court ought not have interfered with the summoning order as it is settled law that the complaint under Section 630 of the Company Law may be maintainable despite of pendency of the civil litigation, but the facts in the present case are distinct as it is doubtful whether the complaint in the existing circumstances when the board resolution itself is under dispute is maintainable whether the proceedings can continue, therefore, instead of dismissal of complaint, I am of the view that the summoning order are liable to be quashed. The trial Court is directed not to further proceed with the complaint, the same is sine die adjourned till final conclusion is arrived out between the parties about the validity of board resolution. The respondent is granted liberty to revive the complaint if such situation would arise i.e. after deciding the issue of validity of board resolution by the Civil Court.

33. Without expressing any opinion with regard to the complaint on merit, the present petition is disposed off for the reasons stated above along with all pending applications.

34. No cost.

(MANMOHAN SINGH)
JUDGE

JUNE 05, 2015