pdp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL APPELLATE DIVISION

APPEAL FROM ORDER NO. 231 OF 2017

1. H. Fillunger & Company Pvt. Ltd.
A company registered under the provisions of the Indian Companies Act, 1956, having its registered office at Mumbai-Pune-Road, Opposite Empire Estate, Near Premier Ltd. Pimpri, Pune 41 018

2. Achyut Dattatraya Marathe
Adult, Occ: Business
Currently residing at First Floor, Saidham, Lane No. 5, Prabhat Road, Pune 411 004.

3. Shobhana Achyut Marathe
Adult, Occ: Business
Currently residing at First Floor, Saidham, Lane No. 5, Prabhat Road, Pune 411 004

.. Appellants
(Org. Defts. No.1 to 3)

Versus

1. Ajit Arvind Marathe
Adult Occ: Business
Currently residing at 1/3A/A2, New Ajanta Avenue, Kothrud, Pune 411 038.

..Respondent No.1
(Org. Plaintiff)

2. Mr. Mandar Achyut Marathe
Member and Director of Defendant No.1 above,

Age 38 yrs. Occ: Business,
Residing at Saidham, 1st Floor, Prabhat Road,
Lane No. 5, Pune – 411 004.

3. Mr. Anant Shankar Pandit
Member and Director of Defendant No.1 above
Age – Adult, Occ: Business,
Residing at A/302,
Shri Anant Apartments, 3rd Floor, Near
Lakad Pul, Dandia Bazar,
Vadodara 390 001.

4. Mr. Vilas Ashok Marathe
Member of the Defendant No.1 above,
Age – Adult, Occ. Business
Residing at Flat No. 6, 1st Floor, Ganesh
Mahal, Plot No. 8, R.B. Mehta Road,
Ghatkopar (East), Mumbai 400 077 ..Respondent Nos. 2 to 4
(Org. Defendant Nos.4 to 6)

Mr. A. V. Anturkar, Sr. Advocate a/w Mr. R. C. Barge i/by Mr. Abhay Anturkar for appellants.

Mr. S. S. Patwardhan a/w Mr. Bhooshan R. Mandlik for respondent no.1.

Mr. Sarthak Diwan for respondent nos.2 to 4.

CORAM: NARESH H. PATIL &
SMT. BHARATI H. DANGRE JJ.

RESERVED ON : 19th July, 2017

PRONOUNCED ON : 1st August, 2017

JUDGMENT [Per Naresh H. Patil, J.] :

1. Admit. Heard finally by consent of the parties.

2. Respondent No. 1 herein – Shri Ajit Arvind Marathe is the original plaintiff and the appellants herein are the original defendant nos. 1 to 3 and respondent nos. 2 to 4 herein are original defendant nos.4 to 6 in Special Civil Suit No. 1210 of 2015 (New Special Civil Suit No. 177 of 2016) filed in the court of Civil Judge, Senior Division, Pune.

3. The plaintiff is one of the directors of the appellant no.1 – H. Fillunger & Company Pvt. Ltd. (for short the Company). Suit was filed for declaration, cancellation, injunction and other reliefs against the Company and its directors. The directors are from the same family. Prayer clause (a) of the Suit reads as under :-

> (a) It may kindly be declared that the alteration made in the share capital clause No. V and increase made in the authorized share capital from Rs.5,00,000/- to Rs.1,00,00,000/- in the Memorandum of Association of

the defendant no.1 Company in its extra ordinary general meeting dated 27/01/2015 by the defendants are illegal, null and void and the same may kindly be cancelled and/or set aside."

4. The plaintiff sought other declarations by way of various prayer clauses as described in the plaint. Pending the hearing, the plaintiff sought temporary injunction for giving effect to the Resolution passed in the EOGM dated 27/01/2015 and from passing proposed special resolution No.1, causing alteration in the Articles of Association of the defendant no.1. Plaintiff seeks restraining order against the defendants from claiming any rights on the basis of allotment of shares (rights issue) on 27/4/2015.

5. By an order dated 23/9/2015, learned 8th Joint Civil Judge, S.D., Pune passed an interim order restraining the defendants from holding EOGM on 25/9/2015. Plaintiff had filed an application Exh. 40 seeking temporary injunction against the defendants. An application Exh. 54, praying for restraining and passing a resolution, causing alteration in the Articles of Association of the defendant No.1 Company was also filed. Applications Exhs.5, 40 and 54 were commonly decided by the learned trial Judge on 3/4/2017.

6. According to the plaintiff, defendant no.1 – Company was incorporated under the provisions of the Companies Act, 1956 (Old Act) with an authorized share capital of Rs.2,00,000/-. The Company initially was incorporated by family members and one of the uncles of the plaintiff. The authorized capital of the Company was increased from Rs.2,00,000/- to Rs.5,00,000/- divided into 5000 equity shares of Rs.100/- each on 17/12/1969. The original defendant nos.2 to 5 are the directors of the Company. The defendant no.4 is a Managing Director and the defendant nos.2 to 4 are controlling the affairs of the company.

7. According to the plaintiff, the defendant nos. 2 to 5 being directors of the defendant no.1 – Company called an Extra Ordinary General Meeting (EOGM) on 27/01/2015 with an agenda to bring change in the Memorandum of Association of the defendant no.1 – Company to increase authorized capital of the Company from Rs.5,00,000/- to Rs. 1,00,00,000/- and to alter the Articles of Association of the Company under the provisions of the Companies Act, 2013. It is submitted that despite strong objection raised by the plaintiff, the proposed resolution No.1 for altering the clause No.V of the Memorandum of Association for increasing

authorized capital of the Company from Rs.5,00,000/- to Rs.1,00,00,000/- was passed by an ordinary resolution. Due to resistance made by the plaintiff and other directors of the company, the proposed resolution No.2 in respect of altering Articles of Association, including its capital clause of the Company could not be passed by securing 3/4th votes of the directors of the defendant – Company.

8. The plaintiff submits that defendant nos.2 to 5, as board of directors, approved the alleged rights issue of Rs.2,00,00,000/- in their meeting held on 9/3/2015 without altering the share capital clause in the Articles of Association of the Company, which action, according to the plaintiff, was illegal, null and void. In para 18 of the plaint, it is contended by the plaintiff as under :-

> "18. It is further to the shock and surprise of the plaintiff that the defendant No. 2 to 5 as board of directors approved the alleged rights issue of Rs.2,00,00,000/- (Two Crore Only) in their meeting held on 9/3/2015 without altering the share capital clause in the Articles of Association of the defendant No.1 Company, which action is grossly illegal, null and void on the part of the defendant No.2 to 5 being directors of the defendant No.1 Company and is liable to be set aside the

same. The action of approving right issue by the defendant No.2 to 5 without altering the Articles of Association of the defendant No.1 Company cannot sustain under the provisions of law. Consequently, the defendant No.1 Company by its letter of offer dated 9/3/2015 allegedly offered alleged 10000 equity shares of Rs.100/- each at a premium of Rs.1900/- per equity share aggregating Rs.2 Crore as rights issue to its members, which is in gross violation of the provisions of the Companies Act, 2013 and the same is liable to be set aside. It is submitted that the alleged letters of offer dated 9/3/2015 are issued to the plaintiff allegedly offering totally 3724 shares, which are illegal and bad in law and also the same are liable to be set aside. The said letter of offer dated 9/3/2015 is illegal and bad in law and is liable to be set aside."

9. The plaintiff addressed a complaint dated 10/4/2015 to the Registrar of Companies, Pune. The plaintiff made certain correspondence with the Company in respect of subject issue. The Company informed the plaintiff by letter dated 9/5/2015 that the Registrar of Companies had allegedly approved the increase in authorized capital of the defendant – Company. The plaintiff thereafter addressed a letter on 17/6/2015 to the Registrar of Companies requesting to direct the Company not to make any allotment of shares in contravention of the Articles of Association of the

Company. By communication dated 27/8/2015, the Registrar of Companies informed that according to the resolution passed, the Company allotted new shares to the defendant nos.2 to 4 and 6 in their meeting dated 27/4/2015 without altering the share capital clause in the Articles of Association of the Company. The plaint prescribed the said details of allotment of new shares under Rights issue.

10. Learned Senior Counsel Shri. Anturkar appearing for the appellants submits that in view of the provisions of Sections 13(1) and 61 of the Companies Act, 2013, the Company was entitled to carry out amendment in the Memorandum of Association by a simple majority. According to the learned counsel the provisions of Section 13(1) are exception to the general rule. It is submitted that the exception contemplated by Section 13(1) will operate not only in respect of Section 13(1) but also in cases of Section 13(6) as well as Section 13(9) of the Companies Act. Section 61 provides for procedure and not for power to carry out necessary amendment to the Memorandum. Learned counsel submitted that the provisions of Civil Procedure Code and principles of Order 39 Rule 1 of CPC do not attract in the facts of the present case. The case has to be considered in the light of the object behind passing of the

Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

11. Learned counsel Mr. Anturkar submitted that the Memorandum of Association was altered in accordance with the provisions of the Act of 2013. The Articles of Association were also amended, firstly, by passing resolution by simple majority and thereafter called EOGM of the company on 23/3/2017 and passed special resolution, amending the Articles of Association. The counsel, therefore, submitted that either way the Articles of Association were amended and there shall not be any impediment for the company to proceed further and take necessary steps.

12. Learned counsel submitted that impugned order suffers from non application of mind. The learned trial Judge failed to provide necessary reasoning in support of the order and the interpretation in respect of the provisions of Sections 13(1) and 61 of the Companies Act. Learned counsel places reliance on the judgment of Division Bench of this court in the case of **Miheer Hemant Mafatlal vs. Mafatlal Industries Ltd. [1987 (89) Bom. L.R. 86]**, which is applicable to the principles of law enunciated by the appellants in this case in support of their arguments.

13. Learned counsel appearing for the respondent no.1 supported the order passed by the trial court. In the view of the learned counsel, Section 13(1) specifically refers to passing of special resolution for altering provisions of Memorandum of Association. In past, Memorandum of Association was amended by passing a special resolution by the company and, therefore, no exception can be made now by exempting the Company for passing the resolution by a 3/4th majority with a specious plea of provision of Section 13(1) and Section 61 the Companies Act. Learned counsel submitted that Section 61 of the Companies Act refers to Power of limited company to alter its share capital, whereas Section 13 prescribes mode and the procedure to alter share capital of the Company. The provisions of Section 64 relates to notice to be given to Registrar for alteration of share capital of the Company. The counsel submits that with definite purpose, the board passed resolution inspite of the protest of the plaintiff. The Board failed to amend the Articles of Association as they could not gather 3/4th majority to adopt a special resolution. The Counsel made reference to Section 14 of the Companies Act, which refers to alteration of articles. It was submitted that unless Memorandum of Association and Articles of Association are amended strictly in accordance

with law, the resolution passed by the board cannot be implemented. The balance of convenience is in favour of the plaintiff. The trial court has considered these aspects of the matter while passing interim order which is in force since last near about two years. The Counsel places reliance on the judgment of the Supreme Court in the case of **Wander Ltd. and anr. vs. Antox India P. Ltd. [1990 (Supp) SCC 727]**.

14. We have perused the record, the impugned orders and the judgments cited. Provisions of Sections 13(1), 13(6), 14(1), 61(1) and 64(1) of the Companies Act, 2013 read as under :-

> "**13. Alteration of memorandum**. - (1) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.
>
> (2) …..
>
> (3) …..
>
> (4) ….
>
> (5) ….
>
> (6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar -

(a) the special resolution passed by the company under sub-section (1);

(b) the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

14. Alteration of articles. - (1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of -

(a) a private company into a public company; or

(b) a public company into a private company:

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company.

Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

61. Power of limited company to alter its share capital.-

(1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to -

(a) increase its authorised share capital by such amount as it thinks expedient;

(b) consolidate and divide all or any of its share captial into shares of a larger amount than its existing shares:

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

(c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

64. Notice to be given to Registrar for alteration of share capital. -(1) Where -

(a) a company alters its share capital in any manner specified in sub-section (1) of section 61;

(b) an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital or a company; or

(c) a company redeems any redeemable preferece shares,

the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

15. Section 13 (1) of the Act of 2013 starts with the words “Save as provided in section 61”. This signifies the exclusory nature of the provisions of Section 13 (1) by carving out an exception to the rest of the provisions of Section 13. The provisions of Section 61 refer to power of limited company to alter its share capital. The exception carved out under Section 13 will have to be appreciated in view of the purpose for which Memorandum of Association is to be altered. The provisions of Section 61 are clear. It indicates that a limited company having share capital may, if

so authorized by its articles, alter its memorandum in its general meeting. Reference to Section 64 shows that a notice could be given to Registrar for alteration of share capital. One of the method prescribed for alteration of share capital is in the manner specified in sub-section (1) of Section 61. A company is entitled to alteration of its memorandum in the prescribed manner as provided by the said provision. In the facts of the case, provisions of Sections 13 and 61 will be material having bearing in appreciating the facts of the case.

16. The respondent no.1 – plaintiff filed the Suit on 15/3/2016. On 23/9/2015, an interim order was passed by the trial court, the operative portion of which reads as under :-

> "1. The defendants are hereby restrained from holding EOGM on dated 25/09/2015 as scheduled in notice dated 20/08/2015 at Pune.
>
> 2. The plaintiff is directed to comply as per Order 39 Rule 3 of Code of Civil Procedure.
>
> 3. Issue notice to defendants as to why this order should not be confirmed till disposal of the application below Exh.5.

The Trial Court passed interim order dated 29/9/2016, the operative

portion of which reads as under :-

> "(1) The defendant No.2 to 6 are hereby temporarily restrained from making changes in Articles of Association in respect of share capital of the company on the basis of new shareholding pattern, in the Annual General Meeting of company scheduled on 30/09/2016 only.
>
> (2) Matter be sent to the Hon'ble Commercial Court in view of Circular Tech/B-16(ii)/65/Civ./2016 dated 02/08/2016.

17. It was come on record that an Extra Ordinary General Meeting of the Company was held on 27/1/2015 to increase authorized share capital of the company from Rs.5,00,000/- to Rs.1,00,00,000/- and to alter the Articles of Association of the company under the provisions of the Companies Act, 2013. The plaintiff contended that the notice dated 24/12/2014 of the company proposed Extra Ordinary General Meeting. The plaintiff attended and took objection in the Extra Ordinary General Meeting held on 27/1/2015 for passing both the proposed resolutions i.e. Resolution Nos. 1 and 2. The resolution for amending Memorandum of Association was passed by an ordinary resolution, but resolution amending Articles of Association, including its share capital clause of the company, could not secure 3/4th votes of the directors of the company. The company by its letter dated 9/3/2015 offered 10000 equity

shares of Rs.100/- each at a premium of Rs.1900/- per equity share as rights issue to its members.

18. The plaintiff further contended that he filed a complaint on 10/4/2015 to the Registrar of Companies, Pune. The defendants called an Extra Ordinary General Meeting of the company on 25/9/2015 to alter the Articles of Association of the company, which according to the plaintiff was illegal. After taking search at the office of the Registrar of the Companies, it revealed that the company and defendant nos.2 to 5 as directors of the company allotted new shares (rights issue) to the defendant nos.2 to 4 and 6 in their meeting dated 27/4/2015 without altering share capital clause in the Articles of Association.

19. The record reflects that the amendment brought to the provisions of Memorandum of Association was taken note of by the Registrar of Companies by registering the same. According to the amendment brought to the Memorandum of Association, the shares were offered to the directors of the company. The Registrar of Companies had approved the alteration and certified it under Section 13(9) of the Act of 2013. The record reflects that Extra Ordinary General Meeting was held on 27/1/2015 for amendment of Clause V of Memorandum of Association so as to increase share capital from

Rs.5,00,000/- to Rs.1,00,00,000/-. On that day, first resolution was passed, and the second resolution could secure simple majority. Therefore, the counsel appearing for the respondent no.1-plaintiff submitted that the amendment of Articles of Association was not at all passed in a special resolution by 3/4th majority.

20. It is clear from the record that the plaintiff did not file any suit soon after the amendment of the Memorandum of Association of the company. The suit was filed at a belated stage when the substantive steps were taken by the Board of Directors by passing resolution and taking steps to get it registered with the Registrar of Companies. It is necessary, at this stage, to refer to Clause 7 of the Articles of Association, which reads as under :-

> "7. Subject to the provisions of the said Act, the Company shall be entitled, to exercise the powers to alter the conditions of its Memorandum so as to increase, consolidate and divide its share capital, convert shares into stock, subdivide or cancel shares as provided in section 94 of the said Act, to reduce its share capital as provided in section 100 of the said Act, and to alter the rights of the shareholders and for that purpose to exercise the powers contained in sections 106 and 391 of the said Act.

> The Directors shall have powers to increase the share capital of the Company by the issue of new shares and to dispose of such new shares in any manner provided in Article 6 hereof without bring under any obligation to offer such new shares to the holders of the equity shares in the capital of the Company."

The said Clause provided that subject to provisions of the Act i.e. the Companies Act, the company shall be entitled to exercise powers to alter its memorandum to increase its share capital in accordance with the provisions of Section 94 of the Companies Act, 1956, which corresponds to the provisions of Section 61 of the Act of 2013.

21. We find substance in the submissions of the learned counsel appearing for the appellants that articles are internal regulations of a Company. It is a subordinate document to the Memorandum of Association. If companies were unable to alter their memorandum or Articles of Association to give effect to their desire changes, the corporate enterprise is likely to get frustrated and the purpose and object for which the company was formed would get defeated.

22. During the course of hearing, it was submitted that the company business had come to a standstill, because of which the company could not grow

by expanding its business. The purpose of the new Companies Act, 2013 in regulating the affairs of the company will have to be considered in the light of the facts of the case and the interest of trade and commerce, as canvassed by the learned senior counsel appearing for the appellants. The company had issued additional shares on 9/3/2015 and the Registrar of Companies had already registered the amendment to the Memorandum of Association. This fact cannot be overlooked. The ad-interim relief was granted by the trial court on 21/9/2015 directing not to conduct the meeting when in the month of January 2015 itself the meeting of the Board of Directors was conducted. In fact, by retrospective effect the ad-interim injunction was interpreted to have been operated against the resolution passed in the meeting of the Board of Directors held in the month of January 2015. The second meeting was held on 30/9/2015 and accordingly the resolution was passed amending he Articles of Association by simple majority. The company consists of six directors who are family members inter se. The trial court while passing order below Exhs. 5, 40 and 54 prescribed the reasoning, which appears to be in para 27 of the order. It is the finding of the trial court that if the defendants want to make any alteration in the Articles of Association, it should be in consonance with the provisions of the new Act.

23. On behalf of the appellants reliance was placed on the Judgment of

this court in the case of Miheer Hemant Mafatlal vs. Mafatlal Industries Ltd. (Supra) and on behalf of the respondent no.1, reliance was placed on the judgment of the Supreme Court in the case of M.S. Madhusoodhanan and anr. Vs. Kerala Kaumudi (P) Ltd. and ors. (Supra) before us. Both these cases were cited before the trial court. The trial court referred to these cases. We have also perused the judgments cited before us (Supra). Prima facie, we find that the plaintiff approached the trial court at a belated stage. By that time, the resolution for amending Memorandum of Association was passed in the meeting held on 27/1/2015 by simple majority. Additional shares were issued on 9/3/2015. The Registrar of Companies had registered the amended Memorandum of Association. Objection raised by the plaintiff before the Registrar was overruled and thereafter the trial court passed an ad-interim order not to hold a meeting called on 25/9/2015. By a further order, the defendants were temporarily restrained from making changes in the Articles of Association in the meeting scheduled on 30/09/2016 only.

24. Learned counsel appearing for the respondent referred to the provisions of Section 6 of the Act of 2013, which read as under :-

> "**6. Act to override memorandum, articles etc.** - Save as otherwise expressly provided in this Act -

> (a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
>
> (b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

The provision states that save as otherwise expressly provided in this Act, the provisions of this Act, notwithstanding anything to the contrary contained in the memorandum or articles of a company shall have an overriding effect. Considering the facts of the case and provisions of Section 13(1) and Section 61 of the Act of 2013, amending Memorandum of Association by the company would not be contrary to the provisions of Section 6 of the Act. Clause 7 of the Articles of Association would not go contrary to the provisions of Section 6 of the Act as it states that the memorandum could be altered subject to the provisions of the Act and Section 94 of the Act of 1956, which corresponds to the provisions of Section 61 of the Act of 2013.

25. Section 16 of the Act of 1956 refers to alteration of memorandum, which reads as under :

> "16. Alteration of memorandum. - (1) A company shall not alter the conditions contained in its memorandum except in the cases, in the mode, and to the extent for which express provision is made in this Act.
>
> (2) Only those provisions which are required by section 13 or by any other specific provision contained in this Act to be stated in the memorandum of the company concerned shall be deemed to be conditions contained in the memorandum.
>
> (3) Other provisions contained in the memorandum including those relating to the appointment of a managing director or manager, may be altered in the same manner as the articles of the company, but if there is any express provision in this Act permitting of the alteration of such provisions in any other manner, they may also be altered in such other manner.
>
> (4) All references to the articles of a company in this Act shall be construed as including references to the other provisions aforesaid contained in its memorandum.

Section 31 of the Act of 1956 refers to alteration of articles by special resolution, which reads as under :-

> "**31. Alteration of articles by special resolution**.- (1) Subject to

the provisions of this Act and to the conditions contained in its memorandum a company may, by special resolution, alter its articles:

Provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government.

(2) Any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution.

(2A) Where any alteration such as is referred to in the proviso to sub-section (1) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval.

(3) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them, extend to altering any provisions in Table B annexed to Act 19 of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum."

26. If we consider the provisions of Sections 16, 31 and 94 of the Act of 1956, we could notice a conscious and intentional change in the legislative approach while framing Section 13 of the Act of 2013. We cannot ignore the specific provisions of Section 13(1) so lightly. In the present case Clause V of the Memorandum of Association reads as under :-

> "V. The share capital of the company shall consist of Rupees five lacs (Rs.5,00,000) divided into five thousand (5000/-) equity shares of Rupees one hundred (Rs.100/-) capable of being increased in accordance with the Company's regulations, and the legislative provisions for the time being in force in that behalf. The authorised capital of the company increased from Rs.2 lacs to 5 lacs by way of special resolution passed in the extra ordinary General Meeting held on Wednesday 17 th Dec. 1969.

The said clause further supports the view that the share capital can be increased in accordance with the Company's regulations and the legislative provisions of the Act of 2013, viz. Sections 13(1), 61 and 64.

27. In the present facts of the case, the Board of Directors had amended the Memorandum of Association and Articles of Association by simple majority but in an EOGM of the company called on 23/3/2017 passed a special resolution for amending the Articles of Association. In accordance with the provisions of Section 13(6) of the Act of 2013, after amendment of Memorandum of Association, the company had filed an application with the Registrar of Companies for recording alterations of its memorandum. Accordingly, the Registrar of Companies had registered the same. In accordance with the increased share capital, new shares were distributed. It was argued that shares were even offered to the plaintiff but he declined to accept the same. The Articles of Association were amended in accordance with the provisions of Section 14 of the Act of 2013. We, therefore, find that there was reasonable and statutory compliance of the provisions of law.

28. In the light of the discussion made above, we find that the interpretation placed by the trial court on the provisions of the law and the approach adopted in the facts of the case required to be interfered with. We do not find that the view of the trial court is reasonable one. We are, therefore, required to interfere in the order passed by the trial court.

29. The appeal is allowed. The impugned order dated 3/4/2017 passed by the Court of 8th Joint Civil Judge, Senior Division, Pune below Exhibits 5, 40 and 54 in Special Civil Suit No. 1210 of 2015 (New Special Civil Suit No. 177 of 2016) is quashed and set aside. No order as to costs.

(SMT. BHARATI H. DANGRE,J.) **(NARESH H. PATIL,J.)**

30. After pronouncement of Judgment, learned counsel appearing for respondent no.1 prays for continuation of interim order passed by the trial court on 3/4/2017 for four weeks. Said request is opposed by the learned counsel appearing for the appellants.

31. In the facts, we are not inclined to continue the interim order passed by the trial court. Request stands rejected.

(SMT. BHARATI H. DANGRE,J.) **(NARESH H. PATIL,J.)**