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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS (L) NO.809 OF 2017
IN
SUIT NO.192 OF 2017

Tata Sons Limited & Others ...Applicants

In the matter between

Pramod Premchand Shah & Ors. ...Plaintiffs

vs.

Ratan N. Tata & Ors. ... Defendants

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Mr. P. Chidambaram, Senior Advocate, a/w. Mr. Ravi Kadam, Senior Advocate, Mr. Prateek Seksaria, Mr. Nitesh Jain, Ms. Ruby Singh Ahuja, Mr. Arjun Sharma, Ms. Juhi Mathur, Mr. Jeet Karia and Ms. Eesha Mohapatra, i/b. Shardul Amarchand Mangaldas & Co., for the Applicants in CHSL/809/2017/Defendant Nos. 1 to 4, 6, 7, 9, 28 to 30.

Mr. Dinyar Madon, Senior Advocate, a/w. Mr. Navroze Seervai, Senior Advocate, Mr. Kunal Dwarkadas, Mr. Jehaan Mehta, Mr. Satyen Vora and Mr. Sanmish Gala, i/b. Markand Gandhi & Co., for the Plaintiffs.

Mr. Shiraz Rustomjee, Senior Advocate, a/w. Mr. Shailesh Poria, i/b. Economic Laws Practice for Defendant Nos. 5, 21 and 25.

Mr. Janak Dwarkadas, Senior Advocate, a/w. Mr. Jehaan Mehta, Ms. Shireen Pochkhanawalla, Mr. Nirav Barot and Mr. Kaiwan Kalyaniwalla, i/b. Maneksha & Sethna, for Defendant No.11.

Mr. Zal Andhyarujina, a/w. Mr. Jehangir Mistry, Ms. Shruti Sardesai and Ms. Namrata Parekh, i/b. Mulla and Mulla & Craigie Blunt and Caroe, for Defendant Nos. 12, 14 to 20.

Mr. Jay Sanklecha, a/w. Mr. Aditya Sikka, i/b. Cyril Amarchand Mangaldas, for Defendant No.22.

Mr. Mutahhar Khan, a/w. Mr. Rajesh Satpalkar, i/b. Mulla and Mulla & Craigie Blunt and Caroe, for Defendant No.23.

Dr. Birendra Saraf, a/w. Mr. Mutahhar Khan and Mr. Rajesh Satpalkar, i/b. Mulla and Mulla & Craigie Blunt and Caroe for Defendant No.24.

Mr. Ankoosh Mehta, Mr. Aviral Sahai and Ms. Dhvani Shah, i/b. Cyril Amarchand Mangaldas, for Defendant No.26.

Mr. Bhalchandra Palav, a/w. Mr. Aditya Sikka, i/b. Cyril Amarchand Mangaldas, for Defendant No.27.

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CORAM : S.C. GUPTE, J.

DATED : 10 JULY, 2017

JUDGMENT :

. This Chamber Summons is taken out by the Applicants (original Defendant Nos. 1 to 3 and 6 to 9) for revocation of the leave granted to the Plaintiffs under Order 1 Rule 8 of the Code of Civil Procedure, 1908 (“Code”) in the suit.

2. The short facts of the case, which led the Applicants to take out the Chamber Summons, may be stated as follows :

2.1 The Plaintiffs claim to be shareholders of one or more of various NSE and BSE listed companies belonging to Tata Group of Companies, which are arraigned as Defendant Nos. 21 to 27 to the suit. The present suit is filed purportedly as a representative suit under Order 1 Rule 8 of the Code on behalf of “all the non-promoter shareholders” of Defendant Nos. 21 to 27, “who have all been similarly affected by reason of the illegal actions that have been taken at the behest of Defendant No.1 by Defendant Nos. 2, 3, 5 to 9 and 12 to 20”. Defendant No.1 is the Director and interim Chairman of Defendant No.2, Tata Sons Ltd., which is said to be a “core investment company” that holds shares in companies of the Tata Group and oversees

their governance, whilst Defendant Nos. 12 to 20 are, respectively, Tata Sons Ltd. and its Directors, and Trustees of Sir Ratan Tata Trust and/or Sir Dorabje Tata Trust, which trusts together hold about 66 percent of the paid-up capital of Tata Sons Ltd.

2.2 The grievance of the Plaintiffs is about the purported illegal ouster of one Cyrus Mistry from his position as the Executive Chairman of Tata Sons Ltd. and appointment of Ratan Tata (Defendant No.1) in his place as the interim Chairman, both of which actions are said to be contrary to the Articles of Association of Tata Sons Ltd. and in total disregard of corporate governance and disclosure norms and against the best interest of public shareholders such as the Plaintiffs. The Plaintiffs submit that after the ouster of Mistry and appointment of Tata in his place, Tata Sons Ltd. abused its position as a dominant shareholder and holding company in the Tata group to cause the listed companies, namely, Defendant Nos. 21 to 27, to toe its line in removing or ousting Mistry as their Chairman and taking steps for his removal from their respective Boards. It is the case of the Plaintiffs that all these actions led to a crash in the share prices of various Tata Companies including Defendant Nos.21 to 27. The Plaintiffs set out by way of illustration the closing prices on the stock exchanges of shares of Defendant Nos. 21 to 27 as of 24 October, 2016 (the date of ouster of Mistry from Tata Sons) and as of 6 December 2016 (in the aftermath of his ouster and steps taken by the group companies for his removal/ouster as chairman/director). It is submitted that there is a collective loss or erosion in value of shares of over Rs.41,000 crores in Defendant Nos. 21 to 27 companies. The Plaintiffs, accordingly, pray for a declaration that the removal of Mistry as the Executive Chairman of Tata Sons was illegal and contrary to the interest of shareholders of the Tata Group of companies.

The Plaintiffs also pray for nullification of various resolutions/meetings concerning the ouster of Mistry either as chairman or director of Defendant Nos. 21 to 27. The Plaintiffs also claim damages in the sum of about Rs.41,832 crores for the Plaintiffs and other non-promoter members of various Tata Group of companies “including the non-promoter shareholders of Defendant Nos. 21 to 27”.

2.3 By an ex-parte order dated 9 December 2016 passed in Judges Order No.215 of 2016, a learned Single Judge of this Court granted leave under Order 1 Rule 8 of the Code enabling the Plaintiffs to sue the Defendants on behalf, or for the benefit, of numerous persons having the same interest in the suit.

2.4 This leave is sought to be revoked by the Defendants named above on various grounds including lack of commonality of interest among the Plaintiffs and other 'non-promoter shareholders' of Defendant companies, who, it is submitted, do not in fact form a class so as to enable the Plaintiffs to sue on their behalf or for their benefit.

3. Mr. Chidambaram, learned Senior Counsel appearing for the Applicants/Defendants, submits as follows:

(a) Firstly, it is submitted that none of the Plaintiffs is a shareholder of Tata Sons Ltd. or could be said, as such, to be aggrieved by what was done by the Board of Tata Sons Ltd. Assuming, however, that the Plaintiffs could be said to be aggrieved by the impact of the acts or machinations of Tata Sons Ltd. in respect of the companies in which the Plaintiffs hold shares, learned Counsel submits that the grievance of each individual

Plaintiff in this behalf is distinct and separate from the grievance/s of others. The Plaintiffs are not shareholders of each of the seven companies arraigned as party defendants (i.e. Defendant Nos. 21 to 27); they are shareholders of one or more of these companies, each of whom has distinct Articles of Association, and a separate and independent board of directors. It is submitted that the grievance in respect of ouster of Mistry as chairman or director in each of these companies and the resultant alleged fall in share value of each company is a distinct individual cause of action; there is no commonality of cause of action as far these individual causes are concerned. It is submitted that there are no common questions of fact or law arising in respect of these grievances.

(b) Secondly, it is submitted that the present Plaintiffs not only do not have a common interest in the suit between them, but do not have such interest in common with other individual non-promoter shareholders of these seven companies. Learned Counsel submits that the non-promoter shareholders collectively of these seven companies, or even separately in case of each company, do not form a distinct class for the purposes of a representative suit such as the present. It is submitted that for forming such a class there must be a common interest and grievance in the suit, and a common benefit sought in the suit for the Plaintiffs and other persons who together with them form such class, and those ingredients are not satisfied in the present case.

4. Mr. Madon, learned Senior Counsel appearing for the Plaintiffs, submits that the grievance in the present suit is not about legality or otherwise of individual ousters of Mistry from the chairmanship/boards of the seven individual companies from the standpoint of their Articles, but the

singular act of ouster of Mistry from executive chairmanship of Tata Sons Ltd., which triggered both the ousters of Mistry from the chairmanship/boards of the seven companies and the fall in share value of the companies. In that sense, it is submitted, the right to relief to each of the Plaintiffs arises out of the same act or transaction and this right is shared by them in common with other non-promoter shareholders of the seven companies. Learned Counsel submits that there is no need to show, as it is made clear by the Explanation to Order 1 Rule 8, that all persons, i.e. each of the Plaintiffs and other non-promoter shareholders on whose behalf or for whose benefit the suit is filed, have the same cause of action; it is enough to show that there is sufficient community of interest among them, and that in a broad sense, so as to justify adoption of the special procedure prescribed in Order 1 Rule 8. Learned Counsel relies on the Supreme Court decision in the case of **Chairman, Tamil Nadu Housing Board, Madras vs. T.N. Ganapathy**¹ and the decisions of Madras and our High Court, respectively, in **Kodia Goundar vs. Velandi Goundar**² and **Kaira District Co.Op. Milk Producers Union Ltd. vs. Kishore Shantilal Shah**³, in support of his contentions.

5. Mr. Dwarkadas, learned Senior Counsel for Defendant No.11 (Cyrus Mistry), also makes submissions on law, making it clear at the outset that his client does not wish to take sides in this representative suit and has nothing to say on the merits of the controversy. Learned Counsel submits that it is not necessary to consider whether or not all persons joining the suit have a cause of action in respect of each of the reliefs claimed in the suit (for that has something to do with the permissibility of joinder of causes of

1 (1990) 1 SCC 608 : AIR 1990 SC 642

2 AIR 1955 Madras 281

3 1982 SCC OnLine Bom32

action), but whether each individual Plaintiff, being a non-promoter shareholder of one particular company out of seven Tata companies arraigned as Defendants, has community of interest with other non-promoter shareholders of that particular company to claim relief in respect of fall in share prices of that company as a result of ouster of Mistry from Tata Sons Ltd. Learned Counsel argues that Order 1 Rule 8 formulates a methodology to avoid similar suits on the same cause of action, both from the standpoint of the actual/prospective plaintiffs, and the defendants. Sub-Rule (1) of Rule 8 enables one or more persons to sue, with the leave of the court, on behalf of others, whilst Sub-Rule (6) protects the defendant/s from similar suits by others by making a decree passed in such suit binding on those others.

6. I find no difficulty in accepting Mr. Dwarkadas's submission on the test to be applied in the present case. Each of the Plaintiffs may be aggrieved as a shareholder of the particular Tata company, whose shares he holds, by the fall in share prices of the particular company as a result of the acts complained of in the suit. Whether he can join others, who may have a similar grievance in respect of other Tata companies, of which such others are shareholders, for the respective falls in the share prices of those companies, is an altogether different matter. It is rather an issue of joinder of causes of action and plaintiffs, respectively governed by Order 2 Rules 3, 4 and 5, and Order 1 Rule 1. What we have to consider here is, whether, assuming that there were seven different suits in respect of seven individual companies, shareholders of each company could be said to have community of interest for claiming relief in respect of fall in share prices of that particular company with the individual plaintiff complaining of such fall as such shareholder. Mr. Chidambaram's submission as to individual Plaintiffs

having distinct and separate causes of action in respect of individual companies need not be ruled on for the purposes of the present Chamber Summons, though learned Counsel is right to the extent that joinder of plaintiffs having distinct causes of action would compound the matter of permissibility or admissibility of grant of leave under Order 1 Rule 8 further, even if the test suggested by Mr. Dwarkadas is right.

7. With this preface, we may now turn to the issue of leave under Order 1 Rule 8 in the present case. Sub-Rule (1) of Rule 8 permits one or more persons to sue (or defend) with leave of the court on behalf of, or for the benefit of, numerous others provided that such others have “*the same interest in one suit.*” Sub-Rule (2) provides for a notice of institution of such suit where this leave is granted to all persons so interested. Any such person/s may apply for impleadment to such suit under Sub-Rule (3). Sub-Rule (4) forbids any compromise or satisfaction of such suit except with notice to all persons interested. It is permissible to the Court, under Sub-Rule (5), to substitute the person suing (or defending) with any other person having the same interest. Sub-Rule (6) makes a decree passed in such suit binding on all persons on whose behalf, or for whose benefit, the suit is instituted (or defended). The Explanation appended to the Rule makes it clear that for claiming “*the same interest in one suit*”, it is not necessary to have the same cause of action as the persons on whose behalf, or for whose benefit, the suit is filed (or defended). That is the scheme of Order 1 Rule 8. This scheme is an exception to the general rule that all persons interested in the suit must be made parties to it. The object of this exception is clearly to facilitate the redressal of grievances in which a large body of persons are interested, but where several practical difficulties would arise if every individual so interested were to either join in one suit or file a

separate suit under the general rule. The special rule facilitates prosecution of a cause in which numerous persons are interested, whilst, at the same time, protects the opponent from having to face a multitude of causes. If that is so, the essential condition for application of this special rule, by its very nature, must be that the interest of persons interested must be really represented by those that file or defend the suit. For if that interest be clashing or different from the persons suing or defending on their behalf, or for their benefit, various anomalies would ensue if these latter were permitted to sue or defend on the former's behalf or for their benefit, and any decree in the suit were to bind the former.

8. That seems to be pretty clear as a matter of principle, but what is precisely meant by the expression - "same interest in one suit"? Going by the Explanation, at least one thing is clear and that is that "same interest" does not imply "same cause of action". Then, what does the expression signify? For that purpose, one needs to examine the phrase in its essentials and in the context of its purpose. It is important to remember that this "same interest" must be "in one suit". Every suit has three components - the first is the right or liability, breach or accrual of which is complained of in the suit; the second is the injury or grievance resulting from any actual breach or accrual on the part of the opponent; and the third is the relief that is claimed in the suit. Each person having the "same interest in the suit" must have commonality with the plaintiff, or the defendant, as the case may be, in respect of each of these three components. If the suit is filed or defended for others, such others must, therefore, form a class having a common interest in (i) the right or the liability alleged in the suit, (ii) the grievance or injury complained of and (iii) in the relief sought. As for the last component, in the case of a plaintiff proposing to represent the others,

the relief sought must in its nature be beneficial to such others.

9. These requirements were, for the first time, formulated succinctly by Lord Macanaghten in the case of **The Duke of Bedford vs. Ellis**⁴. That was a case, where the respondents, who were growers of fruit, flowers, vegetables, roots or herbs within the meaning of the Covent Garden Market Act, 1828, brought an action against the appellant, the Duke of Bedford. The action was brought on behalf of themselves and all growers of fruit, flowers, vegetables, roots or herbs. The grievance of the respondents in the suit was that the Covent Garden Market Act gave various preferential rights in respect of the use of the market to the class of growers represented by them; that the Duke, in his management of the market as the owner, did not comply with the provisions of the Act in certain particulars and *inter alia* exacted excessive tolls from the growers. The respondents, accordingly, claimed declarations in the suit that they were entitled to the alleged preferential rights, an injunction to restrain the Duke from doing any acts contrary to the declarations claimed and an account of the sums charged in excess during the six years preceding the issue of the writ. Romer J, who heard the summons taken out by the Duke to set aside the writ and all other proceedings, was of the view that the plaintiffs were not entitled to sue on behalf of themselves and all other growers of fruit, etc. within the meaning of the Act and stayed the action in respect of all matters and causes alleged in a representative capacity. The learned Judge ordered dismissal of the action unless the plaintiffs elected to proceed in respect of their individual and personal causes of action. The Court of Appeal discharged the order of Romer J. The Duke came in appeal before the House of Lords. Lord Macnaghten, in his celebrated judgment, considered the principal ground of challenge, namely, that the plaintiffs were not entitled to sue in

⁴ H.L.(E) 1900 A.C.

representative character in defence of their alleged statutory rights. The learned Law Lord held that in considering whether the representative action was maintainable, one had to consider what is common to the class, not what differentiates the cases of individual members of that class. The learned Judge also held that Order 16 of Rule 9 (which is in *pari materia* with our Order 1 Rule 8), which provided for persons suing or being sued as representing a class, was not restricted to apply only in a case where such persons have or claim some beneficial proprietary right, which they assert or defend. The learned Judge considered the old rule in the Court of Chancery, simple and perfectly well understood, that “the Court required the presence of all parties interested in the matter in suit, in order that a final end might be made of the controversy”. But when, noted the learned Judge, the parties were so numerous that you never could “come at justice”, if everybody interested was made a party, the rule was not allowed to stand in the way. It was originally a rule of convenience; and for the sake of convenience it was relaxed. The learned Judge then noted the following rule of law, which since has come to be accepted as the proper basis on which a representative action is countenanced. The rule was stated thus: “Given a common interest and a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent.” The learned Judge noted that all growers in that case had the same rights; they relied on one and the same Act of Parliament as their common charter; they were aggrieved by the same acts of the Duke in denying those rights; and the relief sought was beneficial to all growers belonging to the class the plaintiffs proposed to represent.

10. These dicta of Lord Macnaghten were followed in another leading English case on the point, namely, **Smith vs. Cardiff Corporation**⁵.

5 Decision of Queen's Bench Division

That was a case, where four plaintiffs, who were all tenants of dwelling-houses provided by the defendants, the Corporation of Cardiff, under the Housing Act, 1936, challenged a resolution passed by the defendants to increase the rent of their tenants in order to balance their housing account in accordance with the obligations imposed on them by the Act. They served on the tenants the documents giving notice of their scheme to increase rent. The proposal was not to increase rents uniformly but having regard to the individual financial circumstances of the tenants. The scheme was not liked by the tenants and a tenants' protection association was formed. The four plaintiffs, with the support of some 9,000 other tenants, began the action for a declaration that the proposed scheme of rent increase was *ultra vires* the defendants and for an injunction to restrain the defendants from putting the scheme into operation. The plaintiffs claimed to be "suing on behalf of themselves and all other tenants of houses provided by the defendants under Part V of the Housing Act, 1936". The defendants applied to have the writ struck out and the proceedings stayed on the ground that the plaintiffs, in the circumstances of the case, were not entitled to bring a representative action. The trial court struck out the writ and stayed all further proceedings. In the plaintiffs' appeal, Evershed M.R., who wrote the leading judgment of the Appeal Court, was of the view that at first blush, one might be disposed to say that if there are 13,000 tenants with tenancies in identical form, then the case is one which the rule (Rule 9 of Order 16) would be designed to meet, on the grounds at least of convenience. The learned Judge, however, was of the considered view that these 13,000 individual tenants could not be said to have "the same interest in one cause or matter". The case of **Duke of Bedford** (supra) was cited before the Court. Evershed M.R. noted that there was a distinction between that case and the case before the Appeal Court. In **Duke of Bedford** there

was a class of persons, who had by statute a certain preferential right, namely, a right to be offered stands in the market in priority over non-growers and other persons. Even if it were to be assumed that all these 13,000 persons had this common right in the sense of a common interest, the grievance and the beneficial nature of the relief sought was not a matter in common between the tenants. The differentiation proposed in the scheme operated so that the more affluent of the tenants would end up subsidizing the less affluent. In fact, as was pointed out in that case, about 5,000 of the 13,000 tenants, who were of less affluent circumstances, suffered no increase of rent at all. This fact made it at once apparent that there were two classes, whose interests were not identical, but were in conflict, namely, the subsidizers and subsidized. The latter would benefit by having no increase, or at least no present increase, whilst the former might have inflated increase. These two classes could not be said to have the same interest in the relief claimed in the suit. The relief, which would favourably impact the 'subsidizing' group could not be said to be beneficial to the subsidized group. (The Corporation certainly had the right to increase the rent to meet its budget. An alternative scheme of increase in rent, say, uniform increase, would in fact be less beneficial to the subsidized.) Jenkins L.J, who agreed with Evershed M.R., noted that in order to determine whether the action was properly constituted as a representative action, it was necessary to look into the nature of the dispute far enough to be able to see what the true character of the alleged grievance was. The learned Judge noted that though the grievance, for the purpose of justifying the form of pleadings, is put as a threatened increase, actual or potential, in the amounts of all the rents, the true grievance was not that. The true grievance, the learned Judge noted, was that instead of charging a uniform increase in rent "by reference to the estimated letting value of the

house, and the necessity of charging an economic rent and of providing for increased outgoings, or other objective considerations of that nature”, the scheme charged rent by reference to the purse, and as such it was said to be *ultra vires*. What was argued was that *“it was beyond the powers of the defendants to charge differential rents according to the means and circumstances of the tenants, because the result of that would be that some tenants, those in more affluent circumstances, would, in effect, be subsidizing by the increases in rent imposed in their cases the tenants in less affluent circumstances in whose cases no increase was to be made at all.”* The learned Judge held that that being the true nature of the grievance, it was *“impossible to maintain that in this particular dispute these 13,000 tenants constitute a class having a common interest in any relevant sense : it seems to me impossible to maintain that they have in this dispute a common grievance or that the relief sought is beneficial to all.”*

11. The expression “same interest in one suit” being thus de-codified, let us consider if the facts of our case make out such interest and justify the leave granted under Order1 Rule 8. The present suit is filed on behalf of non-promoter members of Defendant Nos. 21 to 27. These members, in the first place, do not form a class for the purpose of the “interest in the suit”. No doubt each of these non-promoter members has the same right, breach of which is complained of in the suit, namely, the proprietary interest in his or her share in the particular Tata company and the corresponding right to have its value protected by the directors of the company in their fiduciary capacity vis-à-vis him or her. (I am not inclined to accept the suggestion of Mr. Chidambaram that even this right the non-promoter shareholders have in common with the others, namely, promoter shareholders, and therefore, they do not form a district class. Class, here, is

in the sense of a combination of numerous persons. That there may even be others over and above the group of persons represented in the suit, who may share the interest with the group, is neither here nor there, since that does not make the group sought to be represented any the less a combination of numerous persons within the meaning of the rule.) But the commonality within the group of numerous persons, in the present case, ends there. They cannot be said to share the same grievance. The grievance, here, is the ouster of Mistry as the Chairman of Tata Sons at the meeting of its Board of Directors, the other Tata companies toeing the line of Tata Sons, and the fall in value of individual shares of Tata companies triggered by these events. These are clearly matters of perception. The Plaintiffs may perceive the alleged dip in the share prices as having occurred as a result of the so-called machinations of the directors of Tata Sons. It is possible that there are others who may share this perception with the Plaintiffs. But then it is equally possible that there may not be such others; the Plaintiffs may, for that matter, be the only ones, amongst non-promoter shareholders of these companies, who have such perception. A drop in the share price, which may be seen as a temporary phenomenon brought about by immediate circumstances, in the first place, affects different shareholders differently. It is, for example, a well known fact that shareholders holding shares on a long term basis prefer to buy shares when the prices dip due to current market forces with a view to improve their average buying price. These shareholders may welcome a temporary dip and, in fact, proceed to buy shares happily. Secondly, the other non-promoter shareholders may not be of the view that the fall in share prices is brought about for the reasons suggested in the Plaint. In fact, they may hold an exactly contrary view. They may perceive the resistance offered by Mistry and his promoter group as the root cause of all problems. After all, in a corporate democracy, more often than not, there

is a sharp division amongst shareholders as to the outcome of a board meeting or a board resolution. Some may support a board decision, whilst the others may not. In short, each of the non-promoter shareholders in the present case may have the same type of proprietary right in the share and thereby, the same interest in protecting its value, but so far as the complaint of prejudice to that interest is concerned, other non-promoter shareholders may not have a common cause with the Plaintiffs. It is this prejudice or accrual of liability arising therefrom, which forms the subject matter of 'interest in the suit' and not the proprietary right per se or the interest in protecting its value. The grievance that the particular alleged acts of the Board of Directors of Tata Sons have led to the prejudice suffered or accrual of liability on the part of the Board as a result, is also not common amongst the alleged class of non-promoter shareholders. The grievance of the Plaintiffs is that ouster of Mistry and the acts of other directors of Tata Sons that followed such ouster caused a financial loss. As for the other non-promoter shareholders, the shoe may be on the other foot. Their perception may well be that it is Mistry and his promoter group who were conducting themselves against the interests of Tata Group of Companies, which prompted the Tata Sons Board, in the first place, to act the way they did and it is the resistance offered by Mistry and others to this action and the resultant corporate battle, which has caused the temporary fall in share prices of Tata companies.

12. When we come to the relief sought in the suit, even greater difficulties would follow insofar as commonality of interest amongst shareholders is concerned. The relief sought is two fold. Firstly, it is prayed that the decision of Tata Sons and other Tata companies be reversed and Mistry be reinstated in chairmanship or directorship, as the case may be, of

each of these companies. Secondly, the Plaintiffs claim monetary compensation. As for the reversal of the board decisions and reinstatement of Mistry, an overwhelming majority, or, for that matter, every other non-promoter shareholder, may well choose to back the board and may not want the return of Mistry. There is no way, at any rate, that the relief can be considered to be beneficial to such others. Mr. Madon tried to distinguish between the expressions “on behalf of” and “for the benefit of” in clause (a) of sub-rule 1 of Rule 8. Learned Counsel submitted that the suit may be filed (or defended) ‘on behalf of’ or ‘for the benefit of’, all persons interested, the two expressions conveying different ideas and used as disjunctives; either may be satisfied, and not both. There is no merit in this contention. No one can sue (or defend) on behalf of another, but not for the benefit of that person. Sueing (or defending) a suit on behalf of someone to his detriment or against his benefit, conveys scarce sense. The word ‘or’ must, if at all, be read as ‘and’ here. In any event, the two expressions cannot be read as mutually exclusive. You may sue on behalf of another, though not necessarily for his benefit, for he may concur in your benefit. But you can never sue on behalf of another, when such suit is to his detriment or against his interest. In the present case, the Plaintiffs cannot sue on behalf of others who resist Mistry’s reinstatement. The relief claimed would, in that case, be in fact to the detriment of such others. As far as monetary losses are concerned, each individual shareholder clearly has a separate cause of action; the individual circumstances and loss or gain, as the case may be, may be quite different. Each individual case may entail a separate inquiry into quantum of damages. No one can, in a case like this, purport to claim damages on behalf of others.

13. Mr. Madon tried to counter this by suggesting, firstly, that there

are in fact others who concur with, and share, the Plaintiffs' cause, and, secondly, if some individuals, who are claimed to be represented here, have a different perception and do not agree with the Plaintiffs, they may well choose to join the suit as defendants and oppose the suit. There is no merit in either of these suggestions. The fact that there are actually some others who support the Plaintiffs is not determinative of the issue. That is a mere coincidence. The question is whether there is a class of persons having the same interest in the suit and that question has to be decided at the date when leave under Order 1 Rule 8 is sought, when it is only the plaintiff who is before the court. The answer must, in turn, depend on the very position of the others who are claimed to be represented insofar as their interest in the suit is concerned. If by its very nature, their interest in the suit is not the same as the plaintiff, the application for leave must fail. If it is the same, the application must succeed. As we have noted above, by its very nature the interest in this suit of others of the alleged class is not the same as the Plaintiffs. If that is so, it does not matter that some others of that class have actually come forward in support of the Plaintiffs. That only means that there are, as it turns out, some others who claim the same right to relief in respect of, or arising out of, the same act or transaction, or series of acts or transactions. If that is so and if common questions of law or fact would arise if separate suits were to be brought by them, there is a case for joinder of those others under Order 1 Rule 1. If not originally joined, they may seek joinder under Order 1 Rule 10. But it is still not a case for leave under Order 1 Rule 8. Apart from impleadment of parties under Order 1 Rule 10, the law also envisages several other ways of dealing with such situations. There could be clubbing of several suits for trial (if several individual suits are filed) or there could even be a test case (if other suits could later follow).

14. The second contention of Mr. Madon is also a non-starter. The same argument was advanced in the case of **Cardiff Corporation** (Supra). The Plaintiffs' contention there was: The person who says: "I do not want to be represented by you" can ask to be joined as a defendant. The Court of Appeal rejected the contention, holding that "*such a result involves a serious inroad upon the ordinary individual's liberty to make his own terms with some other party with whom he is under no obligation to make any contract at all, if he does not want to*". The rationale behind this statement of law is not far to seek. If the suit is truly a representative suit, any decree passed therein would bind every other person who is represented in the suit. A number of such other persons whom the Plaintiffs claim to represent, but who actually oppose the suit, will be forced to join the suit with a view to contest it, for if they do not, the decree, which they perceive to be to their detriment, will bind them. That would be clearly unjust, if, in the first place, there was no warrant in allowing the Plaintiff to represent them. In the present case, the non-promoter shareholders, who do not want reinstatement of Mistry, would be bound to accept his reinstatement if the Plaintiffs were to succeed and on top of it, suffer such reinstatement as something which was prayed for on their behalf or for their benefit. To avoid such predicament, they would be forced to join the suit and defend it, when they really had no intention or obligation to do so. Nothing could be more unjust.

15. The judgments of Supreme Court in the case of **Chairman, Tamil Nadu Housing Board, Madras Vs. T. N. Ganapathy** and of Madras and our High Court, respectively, in **Kodia Gounder Vs. Velabdi Gounder** and **Karia District Co-operative Milk Producers Union Ltd.** are clearly distinguishable on facts. In **T. N. Ganapathy's** case, there were numerous allotments under the same housing scheme and all relevant facts were

common; the housing board had made a demand on all, after purportedly making a final determination of price, the basis of which demand was equally applicable to all the allottees and the plea of the plaintiff against such demand was available to all of them. The Supreme Court, in the premises, upheld the leave granted by the trial Court under Order 1 Rule 8. The argument before the Court was that each of these allottees was interested individually in fighting out the demand separately made on him, and thus, separate causes of action arose in the case. The Supreme Court negated the argument, relying on the Explanation to Order 1 Rule 8. The Court held that the principal requirement to bring a suit within the rule was 'sameness of interest of the numerous persons on whose behalf or for whose benefit the suit is instituted', and not the sameness of cause of action. There must be, as the Court held, a common interest or a common grievance which they seek to redress. As I have held above, that is not the case here. In **Kodia Gounder**, the subject matter of the suit was the interference by the defendants, representatives of the ryots of Kadirnarasingapuram hamlet of Kothapati, with the rights to irrigation through a particular sluice enjoyed by the plaintiff, who was one among many nanja ayacutdars and ryots of Kothapati Village. The court held Rule 8 of Order 1 to be applicable, on the ground that there was sufficient community of interest amongst the entire body of nanja ayacutdars whom the plaintiff claimed to represent. These facts are clearly distinguishable. In **Karia District Union's** case, a grievance was made on behalf of the entire Jain community that the particular advertisement which said that 'Amul' cheese was purely vegetarian was misleading for the whole of Jain community of which the plaintiff was a member. The plaintiff having in substance indicated how the advertisement affected not just him but the entire Jain community, the leave was said to be properly granted. The entire community was interested in not being misled

by the advertisement and in that sense, interested in the suit. These facts, again, bear no comparison with the facts of our case.

16. Accordingly, the present suit does not satisfy the requirements of Order 1 Rule 8. The Chamber Summons is, in the premises, allowed by revoking the leave granted on 9 December 2016 in Judges Order No. 215 of 2016. No Order as to costs.

(S.C. GUPTE, J.)