

BINA DEEPAK PANCHAMIA & ORS.	...	PETITIONERS/ PLAINTIFFS
VERSUS		
THE BOMBAY DYEING AND MANUFACTURING COMPANY LTD & ORS.	...	RESPONDENTS/ DEFENDANTS

Mr.D.G.Khambata, Sr. Adv. A/w. Mr. J.P.Sen, Sr. Adv. I/b. Negandhi Shah and Himayatullah for Respondent / Defendant No. 1.

DATED: 21ST AUGUST, 2018

P. C. :

- Broadly stated, it is the Plaintiffs' case in the Plaint:

- a) That the Declaration dated 28th September, 2011 filed by Defendant No.1 submitting the Building “Springs” to the provisions of the Maharashtra Apartment Ownership Act, 1971 (“**MAO Act**”) is illegal and invalid and liable to be cancelled;
 - b) That Defendant No.1 is liable to convey in favor of such organization of flat purchasers as may be formed or permitted to be formed by the competent authorities a conveyance in respect of the property as described in Exhibit-C to the Plaint, and
 - c) That Defendant No.1 has acted in breach of various obligations under the agreements entered into in favor of the Plaintiffs as well as the provisions of the Maharashtra Ownership of Flats Act, 1963 and is on this account liable to compensate the flat purchasers to the tune of Rs.100 crores as set out in the Particulars of Claim annexed as Exhibit-JJ to the Plaint.
3. It is the Plaintiffs’ case in the present Petition that the flat purchasers whose names are mentioned in Exhibit A to the Petition have a common interest with the Plaintiffs, being similarly affected by the acts of Defendant No. 1, and that the Plaintiffs have filed the Suit to enforce not only their own rights, but of the other flat purchasers who they claim are similarly situated. On this basis, the Plaintiffs seek the leave of this Court to prosecute the Suit on behalf of the persons mentioned in Exhibit A.
 4. Defendant No. 1, on the other hand, contends that the case set up in the Plaint and the reliefs sought in the suit are not of a nature as would entitle the Plaintiffs to leave under Order 1, Rule 8 to prosecute the Suit in a representative capacity. It does so on the following grounds:

- a) While the principal challenge in the Suit is to the validity of the Condominium set up by Defendant No.1 to manage the affairs of the Building “Springs” pursuant to a Declaration dated 28th September 2011 filed by Defendant No. 1 submitting the Building to the provisions of the MAO Act, it is not even the Plaintiffs’ case that all the flat purchasers are aligned with the Plaintiffs or desire that the declaration be cancelled or that the condominium be disbanded.
- b) There is nothing to indicate that all or indeed any of the persons named in Exhibit A to the Petition save and except the Plaintiffs share their views as to the validity of the Declaration impugned in the Suit or that any of them wish to withdraw from the Condominium presently in management of the Building. In fact, the Petition does not even contain an assertion to that effect.
- c) In any event, the principal relief sought in the Plaint is not even in favour of the body of flat purchasers. The Plaintiffs, on cancellation of the Declaration and the Condominium, seek an execution in favor of such body as may be formed of the flat purchasers a conveyance of the property described in Exhibit-C. In other words, this relief would enure to the benefit not of the flat purchasers themselves, but of such body as may be formed of or by them.
- d) A claim for compensation as is made in the Suit can never be representative. The Plaintiffs claim a sum of Rs.100 crores as damages, the particulars of which are furnished in Exhibit-JJ to the Plaint which reads as follows: -

“Being the compensation payable by Defendant No.1 to the purchasers of flats in the Buildings including the Plaintiffs or Defendant No.2 or to the organization formed by them for the defects and defective

construction, costs incurred by purchasers of flats in the Buildings, for forming and registering the organisation of their choice and the loss, mental agony, harassment and stress caused to them on account of the delay in handing over possession of their respective flats by Defendant No.1 and the various steps taken by Defendant No.1 to interfere with the registration of the organisation of their choice by the Plaintiffs and purchasers of flats and refund of Car Parking consideration received by Defendant No.1 from such Flat Purchasers.”

e) These claims, it is contended, are personal to each flat purchaser and is required to be separately pleaded and proved and cannot as a matter of law be the subject matter of a single rolled up plea. In any event, a claim for damages is personal to the person who has suffered a loss and cannot be canvassed on his or her behalf by someone else.

5. In support of its submission that the Petition is liable to be rejected, Defendant No. 1 also relied on the Judgment of this Court in *Pramod Premchand Shah & Ors. v. Ratan N. Tata & Ors.*, reported in (2018) 1 BCR 89. That judgment was rendered in a suit filed by certain shareholders of some of the listed companies of the Tata Group who complained of the removal of Mr. Cyrus Mistry as Chairman of Tata Sons and the consequent diminution in the value of the shares of the other companies in the group. These Plaintiffs sought leave under Order I, Rule 8 of the CPC to prosecute the suit as a representative action on behalf of all shareholders of the Tata Companies. While rejecting this Application, this Court observed:

“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.*

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, 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 mattering 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 twofold. 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. Suing (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."

6. In the present case, I am called upon to consider the very same issues that arose for consideration by this Court in *Pramod Premchand Shah*, viz., whether the Plaintiffs and the persons on whose behalf they seek to prosecute the suit form a class having a common interest in (i) the right or liability alleged in the suit; (ii) the grievance or injury complained of; and (iii) in the reliefs sought. I do not believe that they do.
7. It is quite clear that the flat purchasers in the building are not of one mind regarding the validity of the declaration made by Defendant No. 1 under the MAO Act or as to the legality of the condominium formed pursuant to that declaration. Exhibit **A** to the Petition is a list containing the names of 90 flat purchasers. This list includes the names of the Plaintiffs. While the petition does assert that the persons named in Schedule A are similarly situated to the Plaintiffs and share a common interest, it is unclear on what basis the Plaintiffs so assert. There is nothing in the Petition to indicate that the persons named in the list (other than the Plaintiffs themselves) concur with the Plaintiffs as to the legality or otherwise of the declaration and condominium or that they desire the formation of any other body of flat purchasers or the execution of a conveyance in favour of such body. In any event, on the Plaintiffs own case, all the flat purchasers (each of whose interest is alleged to be identical) are not in agreement with the course adopted by the Plaintiffs. While a Plaintiff is not required to procure the consent of each individual of the class that he claims to represent, it must at least be clear that the interest of all members in the class coincide. It is manifest in this case that they do not or in any event that the Plaintiffs have not demonstrated that they do.
8. The Petition suffers from other difficulties as well. One of the reliefs sought in the Plaint is for damages in a sum of Rs.100 Crores. It is clear from the Particulars of Claim at exhibit JJ to the Plaint that this claim is on account of losses stated to have been suffered by all the flat purchasers including those not

a party to the Suit. It is settled law that a Plaintiff cannot purport to claim damages on behalf of others. Each claim in damages constitutes a separate cause of action, with the individual circumstances giving rise to it and the loss flowing from it requiring distinct proof. I accordingly reject the Petition filed by the Plaintiffs seeking leave to prosecute the suit as a representative one under Order I, Rule 8 of the CPC with no order as to costs.

(S.J. KATHAWALLA, J.)