

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

% **Date of decision: 4th February, 2020**

+ **CS(OS) 46/2020**

SANJEEV MAHAJAN **Plaintiff**

Through: Mr. Rajiv Nayyar, Sr. Adv.
with Mr. Aakash Bhardwaj, Mr.
Saurab Seth & Ms. Misha
Rohatgi Mohta, Advs.

Versus

ARIES TRAVELS PVT. LTD. & ORS. **Defendants**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.1583/2020 & 1584/2020 (both for exemptions)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CS(OS) 46/2020, IA No.1581/2020 (under Order XXXIX Rules 1 and 2 CPC) and IA No.1582/2020 (under Order II Rule 2 CPC)

3. The plaintiff has instituted this suit, against (a) Aries Travels Pvt. Ltd. (ATPL); (b) Sandeep Singh Khinda (Sandeep); (c) Jain Floriculture Ltd. (JFL); and, (d) Habitat Royale Land Investments Pvt. Ltd. (HRLIPL), pleading:

(i) that Farm No.3, Avenue Ashok, Westend Greens, Rajokri, New Delhi-110038 (subject farmhouse) is owned by ATPL;

(ii) the shareholding of ATPL is held equally by Nimitaya Property Ltd. (NPL – not a party to the suit) and JFL;

- (iii) the plaintiff and his family hold the entire shareholding of NPL;
- (iv) Sandeep and his associates hold the entire shareholding of JFL;
- (v) JFL had subscribed to the shareholding of ATPL at the behest of the plaintiff, so as to discharge the payment obligations of its erstwhile shareholder Samta Khinda to the plaintiff;
- (vi) that JFL acquired its shareholding in ATPL from the funds of the plaintiff and the plaintiff is the real beneficiary of the shareholding of JFL in ATPL;
- (vii) thus the plaintiff is the real owner of the entire subject farmhouse and which position has been undisputed for the last six years;
- (viii) the plaintiff was 50% shareholder of HRLIPL and the remaining 50% shares of HRLIPL were held by one Jaswant Singh Chawla and the plaintiff and said Jaswant Singh Chawla were the only Directors of HRLIPL;
- (ix) the plaintiff had a close relationship with Sandeep and his wife Samta Khinda and Sandeep was also inducted as a Director on the Board of HRLIPL;
- (x) JFL, in the year 2005, owned land at Sohna Road;
- (xi) the plaintiff, to acquire the said land of JFL, made HRLIPL acquire 96.82% shareholding of JFL; the plaintiff and his family members acquired 1.94% shares of JFL and Jaswant

Singh Chawla aforesaid and his family acquired the remaining 1.24% shares of JFL; the plaintiff, the said Jaswant Singh Chawla and Brij Mohan Mahajan, father of the plaintiff were in May, 2005 inducted on the Board of Directors of JFL;

(xii) in September, 2011, due to efforts of plaintiff, a buyer for the land of JFL at Sohna Road was identified;

(xiii) on 28th September, 2011, the plaintiff transferred the 50% shares held by him in HRLIPL in favour of Samta Khinda, wife of Sandeep;

(xiv) though the said shares at that time were valued at Rs.25,17,30,000/- on the basis of valuation of land at Sohna Road of JFL, but the plaintiff received only Rs.1,25,000/- from Samta Khinda, with the understanding that the balance amount of Rs.25,16,05,000/- towards transfer of shares shall be paid by her once the land held by JFL would be sold;

(xv) a Share Transfer Agreement dated 28th September, 2011 was executed between the plaintiff, HRLIPL and Samta Khinda in this respect; in Clause 2 of the said Agreement, it was provided that the shares of HRLIPL transferred by the plaintiff to Samta Khinda, would be held by Samta Khinda on behalf of the plaintiff and the beneficial interest in the shares would continue to vest in the plaintiff and that in case the balance sale consideration towards transfer of shares was not received by the plaintiff upon sale of land of JFL, then JFL shall invest the said amount in an asset identified by the plaintiff at a subsequent stage;

(xvi) the plaintiff thus continued to be the beneficiary of the shares held by Samta Khinda in HRLIPL, being 50% of the shareholding of HRLIPL;

(xvii) at that time Section 187C of the Companies Act, 1956 (the 1956 Act) permitted such beneficial shareholding by one party on behalf of the other and the plaintiff made declaration with respect to beneficial interest held in the shares of HRLIPL in compliance of the provisions of Section 187C(3) and also requested HRLIPL to file the return with the Registrar of Companies (ROC) pursuant to Section 187C (4) of the 1956 Act;

(xviii) simultaneously with the transfer of shares in HRLIPL in favour of Samta Khinda, the plaintiff, on 28th September, 2011 also resigned from the Directorship of HRLIPL and subsequently, on 6th February, 2012 Samta Khinda was appointed as Director of HRLIPL;

(xix) sale consideration of the land of JFL at Sohna Road was received by JFL in the first half of the year 2012; however no amount was distributed amongst any of the shareholders of JFL;

(xx) on 17th December, 2012, the plaintiff and his family members sold their 1.93% shareholding in JFL to Sandeep;

(xxi) though after December, 2012, the plaintiff had exited from shareholding as well as Directorship of HRLIPL as well as JFL but retained vital commercial interests in both, as HRLIPL/Samta Khinda owed Rs.25,16,05,000/- to the plaintiff towards balance sale consideration of shares of HRLIPL

transferred by plaintiff to Samta Khinda and owing whereto the plaintiff continued to hold beneficial interest in the shares of HRLIPL held by Samta Khinda;

(xxii) the amount of Rs.25,16,05,000/- so owed to the plaintiff was required to be paid by the wholly owned subsidiary of HRLIPL, namely JFL, inasmuch as the basis of valuation of the shares of HRLIPL was the value of the land held by JFL;

(xxiii) sometime around 2013, the plaintiff identified the subject farmhouse owned by ATPL and requested Samta Khinda to make payment of Rs.25,16,05,000/- owed by her to the plaintiff for purposes of acquiring the subject farmhouse;

(xxiv) Samta Khinda informed the plaintiff that she would be discharging her obligations by making payment of the said amount by utilizing her share of the sale proceeds received from the sale of the land at Sohna Road of JFL in the capacity of a shareholder of HRLIPL, being the holding company of JFL;

(xxv) on 7th August, 2013, a Settlement Agreement was executed between the plaintiff, Samta Khinda and JFL, towards discharge of obligation of the parties arising under the earlier Share Transfer Agreement dated 28th September, 2011;

(xxvi) the Settlement Agreement dated 7th August, 2013 provided that Samta Khinda would call upon JFL to subscribe to 50% shareholding of ATPL and though the said shares of ATPL would be held in the name of JFL but JFL would hold the same

in trust for the plaintiff who shall be beneficial owner of the said shares;

(xxvii) the Settlement Agreement dated 7th August, 2013 also provided that the plaintiff shall remain in exclusive possession of the subject farmhouse of ATPL and would be considered as the absolute owner of the same, to the exclusion of JFL, Samta Khinda and Sandeep;

(xxviii) pursuant to the Settlement Agreement dated 28th September, 2011, the plaintiff ceased to hold the beneficial interests in the shareholding of HRLIPL held by Samta Khinda and the shares became freely transferrable by Samta Khinda;

(xxix) the plaintiff acquired the remaining 50% shareholding of ATPL in the name of NPL;

(xxx) the plaintiff made his declaration with respect to beneficial interest held in the shares of ATPL in compliance of Section 89 of the Companies Act, 2013 (the 2013 Act) and also requested JFL to submit its declaration with respect to the same so as to enable ATPL to do the necessary filing with the ROC, however the same was not forthcoming; the plaintiff was however not worried because of the relationship with Samta Khinda;

(xxxi) the plaintiff thus became the owner in possession of the subject farmhouse; ATPL, vide resolution dated 10th April, 2014 of its Board of Directors, resolved that the possession of the subject farmhouse shall vest exclusively with the plaintiff;

(xxxii) since 2014, there has been no dispute over the title and possession of the plaintiff of the subject farmhouse and the plaintiff has been meeting all outgoings towards electricity, water maintenance, property tax etc. thereof;

(xxxiii) Sandeep, by his conduct has conceded to the sole and exclusive possession of the plaintiff of the subject farmhouse;

(xxxiv) the plaintiff started residing in the subject farmhouse from September, 2017 and Sandeep was aware of the same;

(xxxv) Sandeep, in or around January, 2018, acquired complete control of the assets of his wife Samta Khinda including ownership and control of JFL and HRLIPL where Samta Khinda held 1.24% and 9.09% shares respectively and Samta Khanna also ceased to be Director of JFL and HRLIPL;

(xxxvi) disputes arose between Sandeep and Samta Khinda but were settled vide Settlement Agreement dated 23rd August, 2018 whereunder Samta Khinda give up her entire shareholding and Directorship, in both JFL and HRLIPL in favour of Sandeep;

(xxxvii) Sandeep has filed various frivolous and vexatious complaints against the plaintiff including an application under Sections 241 and 242 of the 2013 Act before the National Company Law Tribunal (NCLT) and a complaint under Section 452 of the 2013 Act before the Special Judge, South West, Dwarka Courts;

(xxxviii) by way of the complaint under Section 452 of the 2013 Act, Sandeep has for the first time since 2014 sought to challenge the possession of the plaintiff of the subject farmhouse; and,

(xxxix) from the complaint filed by Sandeep against the plaintiff under Section 241 and 242 of the 2013 Act, the plaintiff realized that Sandeep was claiming to be a majority shareholder to the extent of 90% in HRLIPL; and,

(xl) the cause of action paragraph 54 of the plaint is as under:-

“54. That the cause of action arose on 06.05.2019, when the Defendant No.2 filed various frivolous and vexatious complaints against the Plaintiff. The Cause of action again arose on 05.08.2019 when a copy of the petition under Section 452 of the Companies Act, 2013 filed before the Special Judge South West, Dwarka Courts, was served upon the Plaintiff and Plaintiff became aware that the Defendant No.2 had illegally and for the first time challenged the possession of the Plaintiff in the suit property. The cause of action still continuing on a day to day basis.”

4. On the pleadings aforesaid, the following reliefs have been claimed in the plaint:-

“i. Pass a decree of declaration declaring that the Plaintiff has beneficial interest in the shares held by JFL/Defendant No.3 in Defendant No.1;

ii. Pass a decree of declaration that the shares subscribed by Defendant No.3 in Defendant No.1 was in discharge of the obligations arising under agreement dated 28.9.2011;

iii. Pass a decree of Permanent Injunction restraining Defendant No.2 either himself or through Defendant No.3

from in any manner interfering with the peaceful possession of the Plaintiff in the property bearing no. Farm No.3 Avenue Ashok, Westend Greens, Rajokri, New Delhi-110038.

iv. Pass a decree of Mandatory Injunction directing Defendant No.3 to submit its declaration under Section 89 of the Companies Act 2013 to Defendant No.1

v. Pass such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

5. The declaration sought in prayer paragraphs (i) and (ii) above are valued for the purposes of jurisdiction and court fees at Rs.1 crores each and total valuation of the suit is pleaded to be Rs.2,00,10,000/- on which court fees of Rs.2,10,000/- has been affixed.

6. The suit is listed today for consideration/admission, subject to office objections as to valuation and court fees.

7. I have at the outset enquired from the senior counsel for the plaintiff, how initiation of a complaint under Section 452 of the 2013 Act can furnish a cause of action for another legal proceeding i.e. this suit, as is pleaded in paragraph 54 of the plaint reproduced above. As far as the averments therein of the plaintiff, from the legal proceedings initiated by Sandeep having become aware that Sandeep was challenging the possession of the plaintiff of the subject farmhouse, are concerned, even if the legal proceedings initiated by Sandeep challenge the possession of the plaintiff of the subject farmhouse, the remedy of the plaintiff is to contest the said legal proceedings initiated by Sandeep and not by way of commencing another legal proceeding, as has been done by instituting this suit. From the averments in

paragraph 54 reproduced above, it is clear that the present suit has been instituted to scuttle the proceedings in the complaint initiated against the plaintiff under Section 452 of the 2013 Act i.e. of wrongful withholding of the property of a company i.e. ATPL and which is *pari materia* to Section 630 of the 1956 Act.

8. The senior counsel for the plaintiff has contended that paragraph 54 supra is a case of bad drafting and be ignored and the suit be treated as one for the relief of declaration sought and the need for which declaration has occurred on possession of the plaintiff of the subject farmhouse being challenged by institution of the complaint aforesaid under Section 452 of the 2013 Act. It is contended that the Court of the Additional Sessions Judge where the said complaint is pending, does not have the jurisdiction to determine the questions as raised in this suit and which are purely of civil nature. Attention is invited to ***Jagdish Chandra Nijhawan Vs. S.K. Saraf*** (1999) 1 SCC 119 where, finding it to be a term of the agreement entered into between the company and the occupant against whom proceedings under Section 630 of the 1956 Act were instituted that the occupant, even after termination of his engagement was entitled to continue in the premises and further finding that the civil suit filed by the company for recovery of possession from the occupant was pending, it was held that the dispute being of a civil nature, it could not be said that the occupant had wrongfully withheld the property of the company and the parties relegated to the civil court. Reliance is also placed on ***Damodar Das Jain Vs. Krishna Charan Chakraborti*** (1989) 4 SCC 531 where, on the plea of the occupant that the

company was neither a tenant nor a licensee in the premises in his occupation and the term of the licence had expired, the complaint under Section 630 of the 1956 Act was held to be not maintainable, reasoning that the question was required to be determined by the civil court and could not be determined by a Magistrate Court in a proceeding under Section 630 of the 1956 Act.

9. From the aforesaid contentions of the senior counsel for the plaintiff, it is quite evident that the suit has been filed to ward off the complaint under Section 452 of the 2013 Act (equivalent to Section 630 of the 1956 Act), filed by the ATPL against the plaintiff.

10. I now proceed to consider whether the plaintiff, on the averments in the plaint, has made out any case required to be determined by this Court, as the Court of original civil jurisdiction.

11. The claim of the plaintiff, shorn of all verbosity and complexity, in a nutshell is, that (i) though the plaintiff as far back as on 28th September, 2011 transferred his 50% shareholding in HRLIPL to Samta Khinda, wife of Sandeep but was not paid the entire consideration thereof by Samta Khinda and in lieu of the balance sale consideration, remained the beneficial owner of the shares in HRLIPL transferred by him to Samta Khinda; (ii) the balance sale consideration of Rs.25,16,05,000/- was agreed to be paid by the wholly owned subsidiary of HRLIPL, namely JFL, inasmuch the basis of valuation of the shares held by the shareholders of HRLIPL was the land at Sohna Road held by JFL; thus, the plaintiff retained an interest in JFL as well; (iii) Samta Khinda, in whose 50% shareholding in HRLIPL

the plaintiff had beneficial interest, in discharge of the balance sale consideration payable to the plaintiff, called upon JFL to subscribe to 50% of the shareholding of ATPL; (iv) JFL agreed that the 50% shares held by it in ATPL would be held by it in trust for the plaintiff who shall be the beneficial holder thereof; and, (v) thus plaintiff is the beneficial owner of the 50% shares held by JFL in ATPL.

12. The senior counsel for the plaintiff has drawn attention to page 27 of Part-III(A) file, being a photocopy of a document titled Settlement Agreement dated 7th August, 2013 between plaintiff, Samta Khinda and JFL, recording that JFL shall subscribe to 50% shareholding of ATPL in discharge of the obligation of Samta Khinda under the Share Transfer Agreement dated 28th September, 2011 between plaintiff, HRLIPL and Samta Khinda and the shares held by JFL in ATPL shall be perpetually held in trust for the plaintiff.

13. The aforesaid document, as per the copy filed, comprises of four sheets and of which the first three sheets are not signed by any of the parties thereto and only the last sheet, which does not have any clause of the document and is typed in a different font than the first three sheets, purporting to bear the signatures of the plaintiff and Samta Khinda for herself and on behalf of JFL.

14. The senior counsel for the plaintiff has also drawn attention to page 22 of Part-III(A) file, being the photocopy of a document titled Share Transfer Agreement dated 28th September, 2011 between the plaintiff, HRLIPL and Samta Khinda providing that Samta Khinda, against the valuation of the shares of HRLIPL transferred by plaintiff

to Samta Khinda of Rs.25,17,30,000/-, had paid Rs.1,25,000/- only and the balance Rs.25,16,05,000/- was to be paid by Samta Khinda to the plaintiff as and when JFL sold the land at Sohna Road, Gurgaon and distributed sale proceeds to HRLIPL as shareholder of JFL and if the sale proceeds were not so distributed to HRLIPL, HRLIPL, either itself or through JFL, shall invest the said amount of Rs.25,16,05,000/- in an asset identified by the plaintiff. The senior counsel for the plaintiff has argued that the subject farmhouse is the asset identified by the plaintiff, which was owned by ATPL and JFL, in pursuance to the aforesaid, acquired 50% shares of ATPL.

15. The aforesaid document also, as per the photocopy filed, again comprises of four sheets and again the first three sheets do not bear the signatures of any of the executants thereof and only the fourth sheet, in a different font, purports to bear the signature of the plaintiff, Samta Khinda and Sandeep, for himself and as Director of both HRLIPL and JFL.

16. The senior counsel for the plaintiff has next drawn attention to Section 187C of the 1956 Act. It is deemed expedient to set out hereinbelow Section 187C in entirety:

“187C. Declaration by persons not holding beneficial interest in any share. – (1) Notwithstanding anything contained in section 150, section 153B or section 187B, a person, whose name is entered, at the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), or at any time thereafter, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed, make a declaration to the

company specifying the name and other particulars of the person who holds the beneficial interest in such share.

(2) Notwithstanding anything contained elsewhere in this Act, a person who holds a beneficial interest in a share or a class of shares of a company shall, within thirty days from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974) or within thirty days after his becoming such beneficial owner, whichever is later, make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Whenever there is a change in the beneficial interest in such shares the beneficial owner shall, within thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) Notwithstanding anything contained in section 153 where any declaration referred to in sub-section (1), sub-section (2) or sub-section (3) is made to a company, the company shall make a note of such declaration, in its register of members and shall file, within thirty days from the date of receipt of the declaration by it, a return in the prescribed form with the Registrar with regard to such declaration.

(5)(a) If any person, being required by the provisions of sub-section (1), sub-section (2) or sub-section (3), to make a declaration, fails, without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues.

(b) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

(6) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in respect

of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him.

(7) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend in accordance with the provisions of section 206, and the obligation shall, on such payment, stand discharged.

(8) The provisions of this section shall not apply to the trustee referred to in section 187B on and after the commencement of Companies (Amendment) Act, 2000.”

17. The senior counsel for the plaintiff has also contended that the equivalent to Section 187C of the 1956 Act, is Section 89 of the 2013 Act, and which Section 89 came into force with effect from 13th June, 2018. (However I find the same to have come into effect on 1st April, 2014.)

18. It is deemed expedient to reproduce hereinbelow Section 89 of the Companies Act, 2013 in entirety. The same is as under:

“89. Declaration in respect of beneficial interest in any share.—(1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

(2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the

beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.

(5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first luring which the failure continues.

(6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed.

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

(9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.

(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly,

through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to –

- (i) exercise or cause to be exercised any or all of the rights attached to such share; or*
- (ii) receive or participate in any dividend or other distribution in respect of such share.”*

19. The senior counsel for the plaintiff has contended that the plaintiff made the requisite declaration under Section 187C(2) of the 1956 Act to HRLIPL and the declaration under Section 89(2) of the 2013 Act with respect to his beneficial interest in shares held by JFL in ATPL.

20. I have enquired from the senior counsel for the plaintiff, what is the proof with the plaintiff of having made such a declaration.

21. The senior counsel for the plaintiff states that though the plaintiff has no proof but the plaintiff, in paragraph 20 of the plaint has pleaded having made declaration with respect to the beneficial interest held in the shares of HRLIPL and in paragraph 33 of the plaint has pleaded having made declaration under Section 89 of the 2013 Act with respect to the beneficial interest held in the shares of ATPL.

22. I have next enquired from the senior counsel for the plaintiff, whether HRLIPL, in accordance with Section 187C(4) filed the return in the prescribed form with the ROC with regard to the declaration claimed to have been made by the plaintiff.

23. The senior counsel for the plaintiff states that the plaintiff has also pleaded having called upon HRLIPL to file the said return with the ROC but does not know whether it was filed or not.

24. I may record, that no attempt to obtain proof of filing of such return if any with the ROC has been made.

25. I have next drawn attention of the senior counsel for the plaintiff to Section 187C(6) supra which was in force on 28th September, 2011 when beneficial interest in the shares of HRLIPL is claimed to be created in favor of the plaintiff and enquired, how without the said return having been filed, the plaintiff can lay a claim on the basis of beneficial interest in the shares of HRLIPL.

26. The senior counsel for the plaintiff contends that Section 187C(6) refers to the ostensible owner of any share and which would mean Samta Khinda and not the plaintiff.

27. I am unable to agree. Section 187C(6) bars enforcement by the beneficial owner or any person claiming through him, of any charge, required to be declared in accordance with Section 187C, if not so declared. Section 187C(2) requires the holder of beneficial interest in shares to make a declaration to the company and Section 187C(4) requires the company to make a note of such declaration and to file the same in the form of a return with the ROC. Thereafter Section 187C(6) provides consequences of not making of such declaration by beneficial owner. The plaintiff pleads having made the requisite declaration under Section 187C(2) to HRLIPL and having called upon HRLIPL to comply with Section 187C(4). However there is nothing

to show that HRLIPL complied with Section 187(4). The plaintiff pleads having made declaration of beneficial interest in shares held by Samta Khinda in HRLIPL, in or about September-October, 2011. HRLIPL, in accordance with Section 187C(4), was required to file return with ROC, latest by November, 2011. More than eight years have since elapsed. There is nothing to show that any such return was filed. Section 187C(6) provides the consequences of, declaration required to be made “under the foregoing provisions”. In my opinion use of the expression “foregoing provisions” as distinct from only Section 187C(1) and Section 187C(2) is indicative of the consequence under Section 187C(6) flowing, even when though there is compliance of Section 187C(1) and (2) by the ostensible owner and beneficial owner respectively, but there is no compliance of Section 187C(4) by the company.

28. Section 187C was incorporated in the 1956 Act vide Amendment Act, 1974, with effect from 1st February, 1975, with a view to expose benami transactions. However thereafter, the Parliament in the year 1988 promulgated the Benami Transactions (Prohibition) Act, 1988 renamed as the Prohibition of Benami Property Transactions Act, 1988 (Benami Act). The Benami Act as promulgated in 1988, prohibited any person from entering into any benami transaction and made entering into a benami transaction punishable with imprisonment. The Benami Act also barred a suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property was held, by a person claiming to be the real owner of such property. It also barred

any defence based on any right in respect of any property held benami against the person in whose name the property was held. Though the Benami Act did not make any exception with respect to benami holding of shares but notwithstanding the promulgation of the Benami Act in the year 1988, Section 187C, providing a procedure for declaration of shares in a company held benami, continued on the statute book. Not only did it so continue in the 1956 Act even after 1988 but a reincarnation thereof in the 2013 Act also finds mention in the form of Section 89.

29. I have in *Ashwani Sharma Vs. Kanta Sharma* 2017 SCC OnLine Del 6623 held that till the coming into force of the Benami Act in 1988, benami transactions were recognized and permitted in India. It was for the first time in 1988, on coming into force of the Benami Act, that the same were prohibited and entering into benami transactions made an offence. The claim of the plaintiff of, in September, 2011 becoming the beneficial owner of the shares of HRLIPL held in the name of Samta Khinda in the records of HRLIPL is nothing but a claim of benami and being against the spirit of the legislative bar against benami transactions, though permitted vide Section 187C of the 1956 Act in respect of shares, has to be strictly in accordance with the statutory provisions permitting the same and any non-compliance of such provisions would kick in the bar of the Benami Act and the plaintiff would be barred from enforcing any right in respect of any property i.e. the shares of HRLIPL, on the ground of being the benami owner thereof. The scheme of Section 187C allows

enforcement of rights by the beneficial owner in shares only if declared in accordance therewith and the plaintiff on his own averments has not been able to make out a case of complete compliance of Section 187C of the 1956 Act. This Court cannot thus lend its process to the plaintiff. In the absence of full compliance of the provisions of Section 187C, Samta Khinda remained the owner of the 50% shares of HRLIPL, admittedly transferred to her by the plaintiff, and the plaintiff has no right with respect thereto.

30. Section 89 of the 2013 Act, which was not in force on 7th August, 2013 when beneficial interest in favour of plaintiff is claimed to be created in the shares of ATPL held by JFL, is *pari materia* to Section 187C of the 1956 Act save for a change of language in Section 89(8) from the wording of Section 187C(6). While Section 187C(6) provided consequences of non declaration “under the forgoing provisions” and which I have hereinabove interpreted as including declaration by the company under Section 187C(4), Section 89(8) provides consequences of non-declaration by the beneficial owner only. I have considered, whether on default by company, in this case ATPL, to file return under Section 89(6) and on the plea of the plaintiff of having made a declaration, the plaintiff is entitled to maintain the suit, but am unable to hold so. As on 7th August, 2013, Section 187C was still in force. As aforesaid, the provision permitting benami transaction in relation to shares, has to be strictly construed and is a complete code. Unless the beneficial owner ensures public declaration of his beneficial ownership in shares, by filing of return

with the ROC, no such beneficial ownership can be enforced in Court. The benami transaction in shares is permitted by providing for public declaration thereof in ROC and if kept hidden, cannot be enforced. The plaintiff has not pleaded having exercised any right or got any benefit or having been treated as beneficial owner of shares in HRLIPL, since 28th September, 2011 or as beneficial owner of shares in ATPL since 7th August, 2013. The records required to be maintained by a company qua beneficial interest in shares, are public records, open to inspection by all and the conduct of the plaintiff, of inspite of such declaration being not made, keeping quite till now, speaks volumes of natural course of human conduct. The plaintiff had option under Section 59 of the 2013 Act to apply for rectification of register of members, but failed to exercise the said option. The claim of beneficial ownership of shares of ATPL, even otherwise stands on the edifice of beneficial ownership of HRLIPL and which is unsustainable under Section 187C(6) supra.

31. The claim of the plaintiff even otherwise is not plausible and the plaintiff has spun a web, only to have this suit entertained and to use the same to defeat his prosecution under Section 452 of the 2013 Act. The claim of the plaintiff is that the entire sale transaction due to him from Samta Khinda for transfer by him of 50% shareholding in HRLIPL to Samta Khinda was not paid and to secure the same, beneficial interest in favour of the plaintiff of the transferred 50% shareholding of HRLIPL was created. As per the said claim of the plaintiff, it was Samta Khinda and not HRLIPL which was liable to the plaintiff. The plea of the plaintiff, of HRLIPL as the holder of

majority shares of JFL, agreeing to, on non payment of such balance sale consideration by Samta Khinda, make JFL invest the amount due to the plaintiff in an asset identified by the plaintiff, is an agreement / promise by HRLIPL, without any consideration and unenforceable. The plaintiff has mixed up the corporate identity with the identity of the shareholders and Directors of such corporation and the plaint has been drafted treating the corporate entity to be the same as the shareholders and Directors and which is contrary to the basic covenants of corporate law. A corporation / company is a distinct juristic entity, distinct from its shareholders and Directors and has its own persona, independent from its shareholders and Directors. A corporation / company is not liable for the dues of its shareholders and Directors. Moreover, the shareholders / Directors of a corporation / company in their such capacity also are entitled to exercise only such rights with respect to affairs of a corporation / company, as are within the domain of the Articles of Association of the Corporation / company. The plaintiff has made the averments of HRLIPL, as the majority shareholder of JFL, having agreed to make JFL invest the amount due to the plaintiff from Samta Khinda in an asset identified by the plaintiff, not only without disclosing the consideration therefor but also without referring to the Articles of Association of HRLIPL and JFL and without pleading that HRLIPL and / or JFL were entitled under their Articles of Association to do so. A company otherwise is not concerned with relationship *inter se* its shareholders. There is also no explanation why the plaintiff, inspite of being not paid the substantial sale consideration due for transfer of shares of HRLIPL to

Samta Khinda, on 17th December, 2012 also transferred his and his family's shareholding in JFL to Sandeep, being the husband of Samta Khinda.

32. Interestingly, Samta Khinda has not even been impleaded as a party to the suit though on the same being put, the senior counsel for the plaintiff states that she can always be added. However the question is not of who can be added and who cannot be added but of the frame of the suit by the plaintiff. According to the averments in the plaint, it is Samta Khinda who owed monies to the plaintiff and it is at the insistence of Samta Khinda that HRLIPL, as shareholder of JFL, made JFL acquire 50% shares of ATPL to be held by JFL with plaintiff having beneficial interest therein. Samta Khinda was thus the most important link whom the plaintiff has not even deemed necessary to implead.

33. The right of the plaintiff even if any, as beneficial owner of shares in the name of Samta Khinda in HRLIPL or shares in the name of JFL in ATPL could be only to exercise rights as a shareholder and not otherwise. It is not the plea of the plaintiff that the plaintiff as shareholder exercised any such rights or even made any attempt to exercise such rights. On the contrary this suit is only to retain possession of immovable property of ATPL. The plaintiff, even as beneficial owner of shares of ATPL in name of JFL, is not entitled to hold possession of immovable property of ATPL, unless permitted by resolution of Board of Director of ATPL. Though the plaintiff pleads such resolution but has not filed the same. In any case, this suit is not

for declaration of existence of any such resolution of the Board of Directors of ATPL.

34. I have already hereinabove while describing the documents dated 28th September, 2011 and 7th August, 2013, expressed doubts as to the authenticity thereof. The non-compliance of the statutory provisions which bar the plaintiff from claiming any rights as claimed in the present suit, only confirm the said doubts.

35. I am therefore unable to find the plaintiff, on the pleaded case, to have a cause of action for the reliefs claimed and rather find the suit as aforesaid to be barred by law.

36. Resultantly, the suit is dismissed.

37. The draftsman of the plaint however deserves to be complemented for his legal ingenuity.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

FEBRUARY 04, 2020

‘ak’/gsr

(corrected & released on 18th February, 2020)