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Reserved on	21.06.2024
Pronounced on	03.07.2024

**O.A.Nos. 360 & 361 of 2024
And
A.Nos. 2602 & 2623 to 2625 of 2024
IN
C.S.No. 111 of 2024**

C.V.KARTHIKEYAN, J.

O.A.Nos. 360 and 361 of 2024 have been filed by the plaintiff in the suit seeking an order of interim injunction against the first to fourth respondents not to act on the basis of the Board Resolution dated 30.04.2024 during the pendency of the suit and for an interim injunction against the second to fourth respondents, not to interfere with the day to day affairs, banking operations of the first respondent and also the administration and management of the first respondent during the pendency of the suit.

2. The plaintiff also filed A.No. 2602 of 2024 seeking a direction against the first to fourth respondents to maintain status quo ante during the pendency of the present suit, as it had existed before 30.04.2024.



3. These applications came up for consideration before a learned Single Judge of this Court, who by an order dated 16.05.2024 had granted an order of interim injunction as prayed for in O.A.No. 361 of 2024 against the second to fourth respondents restraining them from interfering with the day to day affairs, banking operations, administration and management of the first respondent pending disposal of the suit.

4. The second respondent, who was the second defendant in the suit, filed A.No. 2623 of 2024 seeking to vacate the said order of interim injunction. The third respondent/third defendant in the suit filed A.No. 2624 of 2024 again seeking to vacate the said order of interim injunction. The fourth respondent/fourth defendant in the suit filed A.No. 2625 of 2024 also seeking to vacate the order of interim injunction granted in O.A.No. 361 of 2024.

5. Even before proceeding further, it would be only convenient that the parties are referred as per their nomenclature in the plaint which would indicate that the plaintiff had filed O.A.Nos. 360 and 361 of 2024 and A.No. 2602 of 2024 and the second defendant had filed A.No. 2623 of 2024, the third defendant had filed A.No. 2624 of 2024 and the fourth defendant had



6. It would also be appropriate that the relationship among the parties are explained before exploring the facts of the case. The plaintiff Rajiv Bakshi and the seventh defendant Mrs.Jamuna Sounderam are both independent directors of the first defendant M/s. Binny Ltd., a public limited company represented by its Executive Chairman, M.Nandagopal. The second defendant is M.Nandagopal. The third defendant Mrs. Sumathi Ramesh Babu is his daughter. The fourth defendant Nate Nandha and the fifth defendant Arvind Nandagopal are his sons. The sixth defendant T.Krishnamurthy is Director (Finance) in M/s. Binny Limited. It must also be mentioned that the fifth defendant Arvind Nandagopal is the Managing Director of M/s. Binny Ltd.

7. The issues which necessitated institution of the suit had arisen owing to a Board meeting of the second defendant held on 30.04.2024 by which a resolution had been passed inducting the third defendant Mrs. Sumathi Ramesh Babu and the fourth defendant Nate Nandha as Directors. The plaintiff has serious objections and grievances against their induction and the



procedure adopted while passing the said resolution in the Board meeting held on 30.04.2024.

8. The suit in C.S.No. 111 of 2024 had been filed seeking a Judgment and Decree to declare the Board Resolution dated 30.04.2024 as null and void and passed without quorum and to declare that the induction of the third and fourth defendants as Directors of the first defendant as null and void and to further declare the Board Resolution dated 30.04.2024 authorising the second, third and fourth defendants to operate the bank accounts of the first defendant as null and void and to declare any undisclosed resolution or decision made consequent to the Board Resolution dated 30.04.2024 by the second to fourth defendants as null and void and also for permanent injunction against the third and fourth defendants from in any manner interfering with the banking operations, administration and day to day affairs of the first defendant.

9. The last relief sought, to reiterate, was a permanent injunction against



the third and fourth defendants alone from interfering with the operations and administration and banking operations of the first defendant.

10. However, in O.A.No. 361 of 2024 in which interim injunction on the same line was sought, the plaintiff had sought interim injunction against not just the third and fourth defendants but had also included the second defendant and had sought an injunction against the second defendant also from interfering with the day to day affairs and banking operations and administration of the first defendant. It is trite in law to point out that the relief in the interim injunction cannot go beyond the relief sought in the suit.

11. The learned Single Judge by order dated 16.05.2024 had granted an interim injunction as prayed for in O.A.No. 361 of 2024 which effectively meant that the hands and legs of the second defendant, the Executive Chairman of the first defendant were tied and though he continues to function as Executive Chairman, he has been restrained from performing the day to day activities or the banking operations of the first defendant. As Executive Chairman, he has every right to participate in the day to day operations and such participation can never be termed as interference. That word



'interference' could be applied only the third and fourth defendants, who were inducted afresh by the resolution in the Board meeting dated 30.04.2024.

12. In the plaint, the plaintiff, Rajiv Bakshi, who is a stranger to the family of the second defendant, but who claims interest as an independent Director of the first defendant, stated that he and the seventh defendant Mrs. Jamuna Sounderam are additional and independent Directors of the first defendant. He disclosed that the second defendant was holding 44.86% of equity in the first defendant. The fifth defendant held 3.58% equity. The first and fifth defendants however, indirectly through the group companies M/s. Mohan Breweries and Distilleries Ltd., (MBDL) and M/s. Arthos Breweries Ltd., held an additional 26.24% of equity in the first defendant. The second to fifth defendants, therefore, directly and indirectly held 74.69% of equity in the first defendant company. The balance equity was held by the general public. It had been further stated that in the year 2015, the first defendant had included 'real estate' as part of their objectives. By 2021, they had also added 'operation in spirits and ethyl alcohol' also as part of their operations.

13. The plaintiff and the seventh defendant were inducted as independent Directors by Board Meeting dated 05.02.2024. Their appointment was also



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intimated to the Bombay Stock Exchange by communication dated 05.02.2024. The plaintiff was also made the Chairperson of the Audit Committee and Nomination and Remuneration Committee (NRC) of the first defendant. The said appointments were also intimated to the Bombay Stock Exchange and this was also reflected in the website of the said exchange.

14. The plaintiff further stated that he came to understand that the statutory auditors M/s. Sagar and Associates had resigned from the first defendant since they had noted that cash of Rs.2,90,73,000/- was not available even though the cash balance reflected a sum of Rs.2,90,77,000/-. The independent auditor had given a report on 29.11.2023 complaining about financial irregularities in the first defendant. It is contended by the plaintiff that he had taken efforts to improve the Corporate Governance. The plaintiff had sent a whatsapp message to the third defendant on 20.02.2024 that he would ensure that no funds are taken away from the company. He contended that immediately after that message, the third defendant and her husband and also the fourth defendant had sent out a life threat to him.

15. The plaintiff further stated that one of the shareholders, M/s. Tiger Farms and Enterprises Ltd., had addressed a letter dated 05.03.2024 and had



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requested the plaintiff to take necessary steps to recover an amount of Rs.900/- crores allegedly taken away by the second defendant and a sum of Rs.120/- crores which was given in cash to the second defendant. They also requested the plaintiff to examine the forensic audit conducted by SEBI.

16. The plaintiff further stated that in the Board Meeting held on 06.04.2024, the second defendant resigned from the post of Managing Director and the fifth defendant was appointed to that post. It was contended that this was subject to the approval of the shareholders. An agreement with respect to such appointment was also entered into between the second to fifth defendants and counter signed by all the other Directors of the first defendant. This appointment was also intimated to the Bombay Stock Exchange.

17. The approval of the shareholders was sought for the appointment of the plaintiff as additional and independent Director of the first defendant and he obtained 96.47% of votes approving his appointment. With respect to the seventh defendant, the percentage of votes was 99.82%. It was also stated that in accordance with the Companies (Appointment and Qualifications of



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Directors) Rules, 2014, Form DIR 12 was filed but only with respect to the seventh defendant and not for the plaintiff.

18. The plaintiff further contended that the third and fourth defendants were continuously interfering with the internal decision taking process of the issues in the first defendant. The plaintiff further stated that in the Board meeting held on 30.04.2024, the following members were present:-

(1) the second defendant; (2) the fifth defendant; (3) the plaintiff; (4) the sixth defendant, Director (Finance) and (5) the seventh defendant, Independent Director.

19. An agenda was introduced at the time of the meeting without prior notice. The agenda was for appointment of the third and fourth defendants as Directors and also of Mrs. Madheneswari Nandagopal, wife of the second defendant as Director. The plaintiff contended that the Nomination and Remuneration Committee alone was responsible to identify persons with requisite qualifications to be appointed as Director. It was also stated that the plaintiff alone can chair the NRC meeting. The second defendant being the



chairperson of the first defendant would also be a member of NRC but cannot preside over the same. It is thus contended that the plaintiff, the second and seventh defendants constituted the NRC committee.

20. The plaintiff presided over the NRC meeting and refused to recommend the third and fourth defendants for being appointed as Directors of the first defendant. The plaintiff gave reasons for his refusal. They were the previous involvement of the third and fourth defendants in the affairs of the first defendant and the complaint by the fifth defendant and minority shareholders regarding siphoning of funds. Further, the fifth, sixth and seventh defendants also objected to the recommendation of the third and fourth defendants as Directors. It was contended that the NRC meeting concluded at that point of time. It was thus stated that no decision had been taken with respect to the induction of the third and fourth defendants as Directors of the first defendant. It was stated that the plaintiff and the seventh defendant, both independent Directors left the Boardroom and no conclusion was arrived at the meeting on 30.04.2024.

21. The plaintiff stated that he was shocked to see the resolution of the Board meeting published in the Bombay Stock Exchange website claiming



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that a Board meeting was held on 30.04.2024. It was contended that the seventh defendant only sought to defer the meeting for a day. The fifth and sixth defendants had replied to the Bombay Stock Exchange questioning the intimation dated 30.04.2024.

22. The plaintiff further contended that under the Articles of Association, the quorum for the Board was $1/3^{\text{rd}}$ of the strength of the Directors. In the instant case, there were five Directors in the first defendant. It was therefore contended that there must atleast be two Directors to maintain quorum. It is also contended that the second defendant was an interested Director with respect to the items listed as Agenda. It was stated that since the Directors had walked out of the meeting, the second defendant had alone passed the resolution. There were also resolutions about cancellation of the appointment of the second defendant as Managing Director.

23. It was contended that the hidden agenda of the third and fourth defendants was to take charge of the banking operations. It was also stated that the second, third and fourth defendants had prepared a fraudulent document as if there was a Board meeting and the same was also signed by



24. The plaintiff very specifically stated that as independent Director, he had apprehensions about the third and fourth defendants and stated that they had siphoned the funds of the first defendant.

25. The plaintiff denied that a Show Cause Notice was issued to him. It was also contended that the plaintiff was not directly associated with M/s. Geetanjali Enterprises Private Limited.

26. The plaintiff further stated that as independent Director, he cannot be removed from the Board.

27. The plaintiff had issued a reply on 30.04.2024. The second defendant issued a reply dated 11.05.2024. The plaintiff stated that the second defendant had fabricated the Board resolution of the first defendant. It was contended that all these acts of the second, third and fourth defendants clearly establish that they are acting to defeat the interest of the members of



the first defendant. It was also contended that the recommendation of the NRC Committee was mandatory and had to be complied with by the second, third and fourth defendants. The resolution passed was with intention to take control of the first defendant.

28. It was contended that as independent Director, the plaintiff was under duty and obligation to protect the interests of the first defendant and the members. It was specifically stated that the plaintiff does not have any stake in the first defendant. It was also contended that there was no remedy available to the plaintiff under the Companies Act 2013 to challenge the said Board resolution dated 30.04.2024. It was under those circumstances that the plaintiff had instituted the suit seeking the reliefs as stated above.

29. In the suit, the plaintiff had filed O.A.No. 360 of 2024 seeking an interim injunction against the first, second, third and fourth defendants from acting on the basis of the Board resolution dated 30.04.2024.

30. The averments in the affidavit were practically a repetition of the averments in the plaint which had been extracted above.



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31. The plaintiff also filed O.A.No. 361 of 2024 and sought an interim injunction against the second, third and fourth defendants from interfering with the day to day affairs or banking or administration of the first defendant. At the cost of repetition, it must be stated that the suit had been filed seeking permanent injunction against only the third and fourth defendants from interfering with the administration or banking operation of the first defendant. In O.A.No. 361 of 2024 the plaintiff had also included the second defendant.

32. A learned Single Judge of this Court while granting interim injunction on 16.05.2024 had granted the injunction as prayed for and thereby also enjoined the second defendant though no such relief was sought against the second defendant in the suit.

33. The plaintiff had also filed A.No. 2602 of 2024 seeking a direction against the first to fourth defendants to maintain status quo ante as it existed before 30.04.2024. This would mean that the plaintiff seeks that the resolutions passed in the earlier Board Meeting held on 06.04.2024 should be



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maintained and the resolutions passed on 30.04.2024 should not be put into effect.

34. In the affidavits filed in both the above applications also, the same averments as stated in the plaint had been stated.

35. The second defendant filed A.No. 2623 of 2024 to vacate the interim injunction granted in O.A.No. 361 of 2024. In the affidavit filed in support of the application, the second defendant, who incidentally is the father of the third, fourth and fifth defendants and the chairperson of the first defendant M/s. Binny Ltd., and a senior citizen of advanced age and also a cancer patient stated that he was the promoter, Director of the first defendant with an individual shareholding of 44.86%. He was also the Chairman and Managing Director. The first defendant was listed with the Bombay Stock Exchange.

36. He stated that in view of his advanced age, he wanted to settle his properties and had executed settlement deeds of his properties in favour of



third and fourth defendants. He had transferred his shareholdings in Mohan Breweries and Distilleries Ltd., (MBDL) to his younger son, the fifth defendant. The first defendant also entered into a joint development agreement with SPR Constructions Private Limited to develop the Perambur property which spread over an area of 63 acres with 60:40 revenue share. He further stated that like in most family companies, disputes arose among his children when it came to distribution of assets.

37. He stated that this suit was a shadow litigation by the plaintiff/independent Director on behalf of the fifth defendant. He claimed that he had transferred his shareholding in MBDL to the fifth defendant and wanted to settle his shareholding in the first defendant to the third and fourth defendants. This was however obstructed by the fifth defendant. It was further stated that disputes arose between SPR and the first defendant owing to revenue sharing in the development of the property. The fifth defendant had, with the support of the plaintiff and the sixth defendant, supported SPR. He further claimed that the fifth and sixth defendants were already in the radar of the Enforcement Directorate and investigations were ongoing for money laundering. He also stated that the first defendant had initiated action



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for misappropriation of a sum of Rs.2.90 Crores against the fifth and sixth defendants.

38. The second defendant further stated that the plaintiff was brought in as independent Director on 05.02.2024 without knowledge of the fact that he had pecuniary relationship with the first defendant for the last three years. The second defendant sought an explanation from the plaintiff regarding his eligibility to be an independent Director as he had done transactions with the first defendant to the tune of nearly Rs.3/- crores through his company, M/s. Geetanjali Enterprises Private Limited.

39. The second defendant further stated that he had taken a decision to revoke the decisions taken on 06.04.2024 including the decision to make the fifth defendant as Managing Director. The second defendant further stated that the first defendant is a listed company governed by SEBI and its regulations, and therefore, any grievance or procedural violation should be placed only before the SEBI and not before the Civil Court since there was a bar under Section 15Y of the SEBI Act 1992. He further stated that the plaintiff had no locus to institute the civil suit and should have approached



the competent authority as he was not personally aggrieved by any act of the Board or the Company.

40. The second defendant further stated that the Court had no jurisdiction to examine the issues raised, since under Section 15Y of SEBI Act 1992, a Civil Court does not have jurisdiction to entertain a suit in respect of any matter in which an adjudicating authority had been appointed.

41. With respect to the averment made by the plaintiff that the Board Meeting held on 30.04.2024 was held in violation of Section 178(2) of the Companies Act 2013 since it was not chaired by an independent Director, the second defendant stated that the plaintiff was the Chairperson of the Nomination and Remuneration Committee. It was also stated that there was no concept of a permanent Chairperson. Therefore, the seventh defendant was made the Chairperson for the meeting held on 30.04.2024. It was therefore contended that the procedure adopted was not in violation of Section 178 of the Companies Act 2013. It was also stated that the plaintiff was also the chairperson of the Audit Committee and therefore cannot function as chairperson of two separate committees.



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42. With respect to the allegations relating to the appointment of the third and fourth defendants as Directors and the cancellation of the fifth defendant as Managing Director, it was stated that the third and fourth defendants were properly proposed to be Directors and that the fifth defendant had earlier given a false statement about his educational qualification and therefore stood disqualified. It was also contended that the plaintiff had been issued with a show cause notice to explain his status as independent Director. The sixth defendant was also issued with a show cause notice since he was involved in a criminal case which was being enquired by the Enforcement Directorate. It had been also stated that the fact that the plaintiff had pecuniary transactions with the first defendant were not disclosed. It was finally contended that the Board resolution passed on 30.04.2024 were not in violation of Article 20 of the Articles of Associations since during the meeting, there was a quorum and the second defendant could not be held responsible if a few members walked out of the proceedings.

43. It was also pointed out that the the fifth defendant had not



independently questioned the cancellation of his nomination as Managing Director and it was therefore asserted that the plaintiff was indulging in a proxy litigation on behalf of the fifth defendant. It was also stated that an Arbitral Tribunal had directed the joint developer, S.P.R to deposit a sum of Rs.100/- Crores to the company and that the plaintiff and the fifth defendant had instituted the suit with the sole object to misappropriate that amount. For all these reasons, it was contended that the interim order granted should be vacated.

44. The third defendant had filed A.No. 2624 of 2024 and the fourth defendant had filed A.No. 2625 of 2024 both seeking to vacate the interim injunction granted. They both took the same stand. The third defendant was the daughter and the fourth defendant was the son of the second defendant. They both claimed that the second defendant had divested his shares in MBDL to the fifth defendant and to balance the family interest, had taken a decision to similarly settle his shares in the first defendant to the third and fourth defendants. They contended that consequent to such settlement of the shares, the second defendant had taken a decision to induct them as Directors in the second defendant. They also claimed that the fifth and sixth defendants



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had misappropriated amounts from the first defendant. They claimed that the plaintiff had no independent cause to institute the suit and had instituted the suit only to protect the fifth defendant. They both claimed that the injunction granted should be vacated.

45. All the parties to the suit filed additional counter affidavits bringing to the notice of the Court subsequent developments. One specific development which was brought to the notice surrounded the second defendant. It was informed that the second defendant had resigned from all posts of the first defendant. It was urged that since he had resigned, he cannot pursue the application filed by him. This was countered by a statement on behalf of the second defendant that he had never resigned and that the fifth defendant had obtained signatures in various papers at a time when he was under sedation and therefore, it was contended that he still continues to be the Chairman of the first defendant. Let me not delve into that particular aspect.

46. The seventh defendant also filed an affidavit contending that the meeting dated 30.04.2024 did not proceed in accordance with the established



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procedure. It was contended by the seventh defendant that she and the plaintiff had walked out from the meeting and that the second defendant alone was left and had passed the resolutions inducting the third and fourth defendants as Directors.

47. During the initial hearing, since it had been brought to the notice of this Court that immediate expenses will have to be met by the first defendant, this Court had permitted the fifth defendant to issue necessary cheques towards such expenses and to produce accounts for the same. Necessary affidavits in that regard and statements have also been filed.

48. The second defendant also filed O.A.No. 405 of 2024 seeking an order of injunction against the fifth defendant restraining him from calling for any meeting of the Board of Directors of shareholders including extraordinary general meeting. I am not dealing with the said application.

49. In the counter affidavits filed by the plaintiff to A.Nos. 2623, 2624 and 2625 of 2024, it had been again asserted that the meeting dated



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30.04.2024 was a sham meeting presided over by the second defendant with the sole object of inducting as Directors, the third and fourth defendants and to remove the fifth defendant. It was contended that the second defendant had personal interest in passing such resolution and had passed the resolution when there was no quorum, since the plaintiff and the seventh defendant had walked out protesting at such induction of the third and fourth defendants. It was also contended that since the second defendant had a direct interest in that arrangement, he was precluded from presiding over the said meeting. It had been contended that there are allegations of misappropriation against the third and fourth defendants and therefore, inducting them as Directors would cause damage and loss to the first defendant.

50. It was again reiterated that the plaintiff, being an independent Director, could not approach the National Company Law Tribunal as only a member could file any application before NCLT under Sections 241 or 242 of the Companies Act 2013. It was pointed out that a member had been defined as any person, who had shares in the company. It had been contended that the plaintiff was not a shareholder and therefore cannot be categorised as a member eligible to file a petition before the NCLT.



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51. All the averments already stated in the plaint were once again repeated.

It was asserted that if the plaintiff had not taken any action, then SEBI would have had imposed penalty not only on the plaintiff individually, but also on the first defendant. It was therefore stated that the plaintiff had no other efficacious remedy except to file the suit. It had been further asserted that the learned Single Judge of this Court while granting interim injunction had so granted it, only after considering all facts and circumstances and on perusing the documents produced. It had therefore been urged that the applications to vacate the injunction should be dismissed and the interim injunction granted should be made permanent till disposal of the suit.

52. The fifth defendant also filed counter affidavits contesting every stand taken by the second, third and fourth defendants. The fifth defendant contended that he was the Managing Director of the Company and removal from that post in a meeting which was not properly convened had caused much hardship to him. It was also contended that the agenda for the said meeting was never circulated and the details as to the additional Directors who were to be inducted were not disclosed prior to the meeting.



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53. It was again reiterated that in any listed company, it was only the Nomination and Remuneration Committee which could propose and recommend any person for the post of Director and it was specifically stated that in the instant case, the NRC, of which the plaintiff was the Chairman had never proposed the third and fourth defendants.

54. With respect to the maintainability of the suit, it was contended that under Schedule-IV of the Companies Act, 2013, the role of an independent Director had been elucidated and among other duties and responsibilities, he was also under obligation to safeguard the interest of all stakeholders. It was again reiterated that the suit is maintainable.

55. Heard arguments advanced by Mr.P.Wilson, learned Senior Counsel and Mr.S.Ravi, learned Senior Counsel on behalf of the plaintiff, Mr.R.Sankaranarayanan, learned Senior Counsel for the second defendant, Mr.R.Murari, learned Senior Counsel for the third defendant, Mr.T.K.Baskar, learned counsel for the fourth defendant, Mr.Vijay Narayan, learned Senior Counsel for the fifth defendant, Ms. Ramya Subramaniam, learned counsel



for the sixth defendant and V.Raghavachari, learned Senior Counsel for the seventh defendant.

56. Mr.P.Wilson, learned Senior Counsel took the Court through the pleadings. He pointed out that the plaintiff was appointed as an independent Director in the first defendant company. This was under Section 149(4) of the Companies Act 2013. The guidelines were provided Schedule -IV of the Act. He was also inducted in the Audit Committee and also in the Nomination and Remuneration Committee (NRC). He was also the chairman of the NRC.

57. The learned Senior Counsel pointed out that under Section 178(2) of the Companies Act 2013, an independent Director had certain responsibilities to discharge to balance the interest of all stakeholders. If he does not so discharge his duties, then, under Section 178(8) of the Act, penalty could be imposed not only on the independent Director but also on the company. The learned Senior Counsel also contended that a previous independent Director was imposed with penalty owing to non performance of such obligation.

58. The learned Senior Counsel then pointed out Section 184 of the Companies Act 2013 and pointed out Rule 15(2) of the Companies Rules



2013. According to the said Rule, a Director, who is interested in any agenda of a meeting should not be present and should stay away. The word '*interested*' would include interest in any contract or any arrangement. The learned Senior Counsel very specifically stated that the word '*arrangement*' could not be restricted to an arrangement which is commercial in nature but would also include an arrangement in inducting Directors, who were personally interested in the subject matter and in this case, the learned Senior Counsel pointed out that the second defendant, as father had a direct personal interest in ensuring that the third and fourth defendants were brought into the company. When that interest was prevalent, the learned Senior Counsel argued, the second defendant should not have participated in the meeting and should not have been a party to any resolution inducting the third and fourth defendants as Directors.

59. The learned Senior Counsel then pointed out the agenda for the meeting dated 30.04.2024 and stated that the agenda did not specify the names of the Additional Directors who were to be inducted. It was then pointed out that the plaintiff and the second, fifth, sixth and seventh defendants had gathered for the Board Meeting on 30.04.2024 and when it was announced that the



agenda was to induct the third and fourth defendants, the plaintiff and the seventh defendants and also the fifth and sixth defendants raised objections and walked out of the meeting.

60. The learned Senior Counsel stated that the NRC had the sole authority to recommend, who could be appointed as Directors. It was only the NRC which could suggest the names of the persons, who could be appointed as Directors. The NRC consisted of the plaintiff as Chairman, the second defendant and the seventh defendant, who was another independent Director. The learned Senior Counsel pointed out that the plaintiff and the seventh defendants walked out of the meeting. To substantiate this fact, the learned Senior Counsel pointed out the affidavit of the seventh defendant, who also stated that she and the plaintiff walked out of the meeting. This left only the second defendant. There was no quorum. It was less than the $2/3^{\text{rd}}$ members required to constitute a quorum when there are three members. There must be atleast two members, who are present and voting. In the instant case, two independent Directors had walked out, leaving only the second defendant who presided over the meeting and also passed the resolution which he wanted to pass. It was therefore asserted by the learned Senior Counsel that



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the entire proceedings in the Board meeting held on 30.04.2024 was sham, fraudulent and should be set aside by this Court.

61. The learned Senior Counsel argued that it was only on appreciation of all these facts, interim injunction had been granted by a learned Single Judge of this Court.

62. The learned Senior Counsel also pointed out that there were direct allegations of misappropriation against the third and fourth defendants and therefore, they were disqualified from being inducted as Directors of the first defendant.

63. The learned Senior Counsel then pointed out Section 9 of the Code of Civil Procedure and stated that the plaintiff had a cause to institute the suit. If he had not taken any steps, the SEBI and other authorities would have imposed penalty on the plaintiff and on the first defendant. He also contended that as an independent Director, the plaintiff had a right to call in question any illegality performed and stated that the entire meeting and the resolution passed on 30.04.2024 were *per se* illegal. The learned Senior Counsel



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therefore argued that the suit is not barred under Section 430 of the Companies Act 2013.

64. The learned Senior Counsel then pointed out the definition of a member under Section 2(55) of the Companies Act, 2013, by which, the word '*member*' had been defined as any person who primarily holds shares in the Company. He then pointed out Section 241 of the Act which provides that only a member can file an application before the NCLT. He pointed out that the plaintiff is not a shareholder and therefore would not come under the definition of a member and therefore had no locus to file any petition or raise any objection before NCLT. It was therefore contended that the only alternate which the plaintiff had to protect the interest of the first defendant was to institute this suit and it was therefore argued that the suit is maintainable.

65. The learned Senior Counsel assailed a Judgement of a learned Single Judge of this Court, who, in ***C.R.P.(PD).(MD).No. 870 of 2017, Chiranjeevi Rathnam and others Vs. Ramesh and another, by order dated 19.07.2017***



had read down the definition of a '*member*' and had stated that it cannot be restricted to a person who has shares and had expanded the scope of who could be classified as a member. The learned Senior Counsel stated that when the words in a Statute are not ambiguous, they must be read as they have been written down. There cannot be any interpretation given on the language used in a statute, particularly when the language is plain, simple and straight forward. Learned Senior Counsel again pointed out that Section 2(55) defines a '*member*' as a person who holds shares and argued that a '*member*' alone can file an application before NCLT. This would place a bar on every other person from filing an application before the NCLT. The plaintiff therefore could not have filed any application before the NCLT. The only avenue for the plaintiff was to file a suit and it was therefore emphasised that the suit is maintainable.

66. The learned Senior counsel further pointed out that the financial affairs of the first defendant were at a very critical stage. The first defendant was possessed of about 60 acres of land. An agreement had been entered into with a developer, SPR to develop and construct about 2500 flats. Owing to disputes between the developer and the first defendant, an Arbitral Tribunal



had directed the developer to deposit a sum of Rs.100/- crores to the first defendant. It was contended that this amount would be available and the second, third and fourth defendants were interested in siphoning away that particular amount. The learned Senior Counsel further pointed out that there was also a school which was run by a Trust with more than 1500 students and therefore, contended that public interest had to be protected and the independent Director had a duty to protect the interest of all stakeholders. He pointed out the word used in the Act is '*stakeholder*' which would include everybody who had a financial interest in the company and pointed out that it was under those circumstances that the plaintiff had instituted the suit.

67. The learned Senior counsel was insistent in his submission that the plaintiff had made out a prima facie case and that the balance of convenience was in favour of the plaintiff to maintain the order of injunction already granted. The learned Senior Counsel urged that the injunction already granted should be made absolute.

68. Mr.S.Ravi, learned Senior Counsel who also argued on behalf of the plaintiff pointed out paragraph Nos. 22 and 23 in the plaint which stated the cause of action and argued that the suit had been instituted since there was



violation of the provisions of Section 178 of the Companies Act 2013. It was pointed by the learned Senior Counsel that the Companies Act did not give exclusive jurisdiction to the NCLT and stated that a civil suit is maintainable. The learned Senior Counsel pointed out that there are various provisions in the Companies Act itself where a civil suit is maintainable like Section 130, Section 210(2) and Section 463. He also pointed out that under Section 2(29) a 'Court' is defined as the "*High Court*" and therefore stated that the suit is maintainable.

69. The learned Senior Counsel stated that under Section 210(2) of the Act, the Court can even direct investigation.

70. The learned Senior Counsel further pointed out Sections 161 and 169 of the Act and stated that those provisions related to appointment of Director and there was no provision in the Companies Act specifically relating to independent Directors. He pointed out schedule – IV and the various clauses therein which placed an obligation on an independent Director to take appropriate action if there was illegality in the functioning of the company. He charged that the signed minutes which had been produced by the second



defendant as a created document. The learned Senior Counsel also pointed out that no application under Order 7 Rule 11 CPC had been filed by any of the defendants seeking to reject the plaint. It was therefore contended that the plaint is maintainable. The learned Senior Counsel also asserted that the injunction granted should be made absolute.

71. Mr.R.Sankaranarayanan, learned Senior Counsel for the second defendant first pointed out the relief sought in the plaint which was for permanent injunction restraining the third and fourth defendants from interfering with the day to day affairs of the company and with the banking operations. He then pointed out the relief sought in O.A.No. 361 of 2024 wherein interim injunction was sought not only against the third and fourth defendants but also against the second defendant from interfering with the day to day affairs of the company and with the banking operations. The learned Senior Counsel stated that the right of the second defendant to operate the banking accounts had been granted by the shareholders in the Annual General Body Meeting and could not be usurped away. He pointed out that the relief in the Original Application exceeded the relief sought in the plaint.



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72. The learned Senior Counsel then pointed out that the second defendant as promoter/ Director of the Company wanted to settle the financial matters within the family. The second defendant was a Senior Citizen of advanced age and was suffering from cancer. He had settled all his shares in MBDL to the second defendant. To balance and to provide for the third and fourth defendants, he wanted to settle his shares in the first defendant company to them. The learned Senior Counsel pointed out that the fifth defendant cannot have any grievance over this arrangement. He pointed out that the fifth defendant had not approached the Court questioning the settlement of the shares by the second defendant to the third and fourth defendants. However, the plaintiff, who is an independent Director had instituted the suit taking cudgels on behalf of the fifth defendant.

73. It was pointed out that the plaintiff was not at all affected by any resolution passed either categorising the second defendant as Managing Director or bringing in the third and fourth defendants as director or cancelling the resolution passed nominating the fifth defendant as Managing Director. The duty of an independent Director was to maintain a balance in



the Board Meetings and he cannot take sides with anyone. The learned Senior Counsel therefore stated that the plaintiff has no locus to file the suit.

74. The learned Senior Counsel further stated that the plaintiff, who had been appointed as an independent Director was also under obligation to declare that he had no pecuniary interest in the first defendant and to file a declaration in this regard in the first Board meeting he participates. The plaintiff had not filed any such declaration. The reason was that the plaintiff had direct dealings, albeit, as Director, along with his wife in a company called M/s. Geetanjali Enterprises Private Limited. That company had entered into contracts with the plaintiff and it was alleged that the amounts involved was nearly about Rs.3/- crores. The learned Senior Counsel stated that if the second defendant had known this fact earlier, the plaintiff would never have been included as an independent Director.

75. The learned Senior Counsel was categorical in his assertion that the plaintiff was indulging in proxy litigation. He pointed out that Sections 241 and 242 of the Companies Act could be resorted to only in public interest. He



further pointed out Section 430 of the Companies Act 2013 which provides an express ouster of the jurisdiction of the Civil Court. He also pointed out Section 241(2) of the Companies Act, 2013 which provides that the Central Government can initiate action and stated that the plaintiff had that alternate, namely to address the Central Government and seek redressal of his grievances. He asserted that the suit was not maintainable.

76. The learned Senior Counsel further stated that the observations of a learned Single Judge in ***C.R.P.(PD).(MD).No. 870 of 2017, Chiranjeevi Rathnam and others Vs. Ramesh and another, by order dated 19.07.2017*** were affirmed by the Division Bench in ***(2019) SCC On Line Mad 10424 in Viji Joseph Vs. R.Chander and Others.***

77. The learned Senior Counsel pointed out Section 34 of the Specific Relief Act and stated that the plaintiff had no locus to institute the suit and seek any declaratory relief. A declaration can be granted on an issue which directly affects the legal character or right to property of the plaintiff.

78. In the instant case, by the resolution dated 30.04.2024, the plaintiff was not at all directly affected and it was therefore contended that the plaintiff had no locus to seek a declaration or to institute the suit. The learned



Senior Counsel therefore asserted that the suit had been filed only to protect the fifth defendant and that the plaintiff was a mere name lender. The learned Senior Counsel was emphatic that the applications to vacate the injunction should be allowed.

79. Mr. R. Murari, learned Senior Counsel for the 3rd defendant, in his arguments pointed out Section 213 (b) of the Companies Act, 2013, and asserted that “*any person*” can move the Tribunal and seek necessary relief. The learned Senior Counsel stated that though Section 213 came under the Chapter headed Inquiries and Investigations, the said provision was specific to Investigations in other cases and therefore would directly apply to the allegations raised by the plaintiff. Learned Senior Counsel therefore stated that the plaintiff should have taken recourse to that provision and should have approached the National Company Law Tribunal. It was therefore urged that this Court has no jurisdiction to examine the facts, in view of the specific bar under section 430 of the Companies Act, 2013.

80. Learned Senior Counsel then pointed out Section 184 (2) of the Companies Act and stated that appointment of a Director cannot be categorised as an ‘*arrangement*’ and therefore would not fall under sub



clauses (b) or (c) and therefore argued that the resolution inducting the 3rd and 4th defendants as Directors cannot be faulted. He then pointed out the documents relating to 'Tiger Farms' and stated that even the 5th defendant had been implicated in the complaint, but the plaintiff had conveniently omitted to mention this fact in the plaint. Learned Senior Counsel charged the plaintiff with being in collusion with the 5th defendant. He pointed out the signed copy of the minutes of the meeting and stated that the unsigned document produced by the plaintiff will have to be rejected by the Court. He further pointed out Schedule IV to the Companies Act and stated that an independent director was obligated not to abuse his position and refrain from any action prejudicial to the interest of the company.

81. Learned Senior Counsel then pointed out Section 41 (j) of the Specific Relief Act, 1963, which provides that injunction can be granted when personal injury caused. In the instant case, it was argued, that the plaintiff had not suffered any personal injury to claim grant of injunction. He also pointed out that the relief sought in O.A. No 361 of 2024 exceed the relief sought in the plaint as in the plaint such relief was not sought against



the 2nd defendant. Learned Senior Counsel was emphatic in his submission that the applications filed by the plaintiff should be dismissed and the injunction granted should be vacated.

82. Mr. T.K. Baskar, learned Counsel for the 4th defendant pointed out that an independent director in a listed company is a status. He argued that there is a cloud over the eligibility of the plaintiff to maintain the suit since he had been issued with a show cause notice charging that he had and has pecuniary interest with the 2nd defendant. Learned Counsel then pointed out the definition of independent director in section 2 (47) r/w Section 149 (6) in which it had been provided that an independent director should not have pecuniary interest in the company. Learned Counsel stated that a director has a fiduciary duty to the company and not to the shareholders. He then pointed out the documents relating to Geetanjali Enterprises, wherein the plaintiff was and is a director, and which documents clearly reflect the financial transactions with the 2nd defendant. Learned Counsel then pointed out the SEBI (LODR) Regulations which also places the same embargo on independent directors. He pointed out that the plaintiff



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had not filed his declaration that he had no pecuniary interest with the 2nd defendant.

83. Learned Counsel further stated that the plaintiff had not suffered any civil injury necessitating institution of the suit. The suit had been filed on the basis of an unsigned minutes, which is not valid and can never be acted upon. He further pointed out that Sec. 430 provides a bar to institute a civil suit and placed emphasis on the words ‘any matter’ in the said provision. He stated that there was a strong motive in instituting the suit since the 2nd defendant had settled his 46.94% interest by way of a settlement deed on the 3rd and 4th defendants and charged the plaintiff with filing the suit on behalf of the 5th defendant. Learned Counsel urged that the applications should be dismissed.

84. Mr. Vijay Narayan, learned Senior Counsel on behalf of the 5th defendant stated that two issues arise for consideration, namely, the validity of the resolution passed in the Board Meeting held on 30/4/2024 and the maintainability of the suit.

85. With respect to the first issue, learned Senior Counsel pointed out that the third and fourth defendants were not shareholders of the second



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defendant and were never involved in its administration. They were residing abroad. There was no necessity to induct them as directors. The agenda for the meeting scheduled on 30/4/2004 was not circulated in advance. There was only a bland statement about induction of additional directors without any further details. Learned Senior Counsel pointed out that in a listed company, the Nomination and Remuneration Committee should consider and make recommendation for anyone to be appointed as director. This has been provided in Regulation 19(2) of SEBI (LODR). The NRC consisted of the plaintiff as Chairman, the second defendant, who was the Executive Chairman of the first defendant and the seventh defendant another independent director. The other 2 directors were the fifth and sixth defendants. It was pointed out that except the second defendant, the other directors left the meeting. There was thus no quorum. He argued that the meeting should have been adjourned. The second defendant however claimed that the resolutions have been passed. Learned Senior Counsel assailed the resolution as being a nullity, passed by one director to favour the third and fourth defendants.

86. With respect to the second issue, Learned Senior Counsel



pointed out the duties of an independent director as provided in Schedule IV of the Companies Act, which included that he should safeguard the interest of all the stake holders. He stated that there was no ambiguity in the provisions or in the duties stated. Learned Senior Counsel therefore stated that the Mischief Rule can never come into play and it was the Golden Rule which would prevail.

87. Learned Senior Counsel stated that the injunction granted protected the interests of the first defendant from being usurped by the third and fourth defendants and was insistent that the same should be made absolute.

88. Ms. Ramya Subramaniam, learned Counsel for the sixth defendant also questioned the legality of the resolutions passed in the Board Meeting on 30/4/2024, which were passed by the second defendant sitting alone without quorum and in the absence of all the other members. Learned Counsel stated that a Show Cause Notice was also issued to the sixth defendant. Learned Counsel further pointed out that the third and fourth defendants were alleged to have siphoned off case of nearly Rs.2.90 crores in



cash from the first defendant and questioned their integrity and eligibility to be inducted as directors. Learned Counsel also stated that when clarity is called for regarding maintainability of a suit, the pendulum should swing in favour of maintainability and the plaintiff should not be non-suited on frivolous grounds. Learned Counsel also urged that the injunction granted should be made absolute.

89. Mr. V. Raghavachari, learned Senior Counsel for the seventh defendant pointed out Clause 20 of the Articles of Association of the first defendant, which stipulated that no serious business should be undertaken in the absence of the independent directors. He pointed out that the seventh defendant had been inducted as an independent director to maintain a balance in the Board Meetings. He emphasised that the seventh defendant had not affirmed the resolution and had not participated in the meeting and the resolution was passed in her absence. There was no quorum when the resolution was passed.

90. Mr. S. Ravi, learned Senior Counsel for the plaintiff, in his reply arguments pointed out the cause of action in the plaint and stated that



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the plaintiff had instituted the suit with genuine grievance about violation of statutory provisions of the Companies Act, particularly section 178. Learned Senior Counsel stated that the plaintiff need not approach the NCLT for redressal of his grievances and that the civil suit is maintainable. He also pointed out that a subsequent meeting had been called for on 14.05.2024 with agenda to remove the plaintiff, and therefore asserted that the plaintiff was an interested person with cause to institute the suit. Learned Senior Counsel assailed the procedure adopted during the meeting on 30.04.2024, when resolutions were passed without a quorum. He also pointed out the provision in the Companies Act where a Court has jurisdiction, particularly in Sections 130, 210(2) and 463. He also pointed out the duties of an independent director and stated that if the plaintiff had not filed the suit, he would have failed in his duty to the company and to all stakeholders. Learned Senior Counsel justified the injunction granted and asserted it must be made absolute.

91. Mr. P. Wilson, learned Senior Counsel for the plaintiff, in his reply arguments again reiterated that the plaintiff had come to Court for a just



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cause to prevent an illegal and unlawful resolution being put into effect. He pointed out that the defendants had not filed any application to reject the plaint on the issue of maintainability and therefore argued that it would not lie on them to question maintainability. The learned Senior Counsel argued that the plaint has to be read as a whole to determine whether there was a cause of action to seek relief and whether necessary averments had been pleaded to justify grant of relief. Learned Senior Counsel also relied on the Standards of Meeting under section 118 (10) of the Companies Act and stated that the meeting held on 30.04.2024 did not meet such standards. Learned Senior Counsel was emphatic that the injunction granted should be made absolute till the pendency of the suit.

92. I have carefully considered the arguments advanced and perused the materials available on records.

93. I am deeply conscious that I have not referred to any of the Judgments cited during the arguments. I must place on record my deep appreciation for the strenuous research made, but though there were arguments put forth regarding locus of the plaintiff, they were only in



passing. That aspect would have to be addressed first. It will have to be examined whether the plaintiff had come to Court with clean hands, since he who seeks equity must do equity.

94. The suit had been filed by Rajiv Bakshi, who had been inducted as an independent Director of the first defendant M/s. Binny Ltd., a public limited company, by a Board Resolution dated 05.02.2024. He had filed the suit seeking a declaration that a Board Resolution dated 30.04.2024 of the first defendant as null and void and passed without quorum and for a further declaration that the appointment of the third and fourth defendants Mrs. Sumathi Ramesh Babu and Nate Nandha as Directors of the first defendant as null and void and for a further declaration that the Board Resolution dated 30.04.2024 authorising the second, third and fourth defendants to operate the bank accounts of the first defendant as null and void and to declare any action or decision made based on the Board Resolution dated 30.04.2024 by the second, third and fourth defendants as null and void and to grant a decree of permanent injunction against the third and fourth defendants from interfering with the operations, administration and banking operations of the first defendant.



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95. The plaintiff also filed three Interlocutory Applications along with the
plaint.

96. The first was O.A.No. 360 of 2024 wherein he sought an order of
interim injunction against the first to fourth defendants not to act on the basis
of the Board resolution dated 30.04.2024 during the pendency of the suit.

97. The second was O.A.No. 361 of 2024 wherein he sought for an
interim injunction restraining the second, third and fourth defendants from
interfering with the day to day affairs and banking operations and
administration of the first defendant during the pendency of the suit.

98. The third application was A.No. 2602 of 2024 seeking a direction
against the first to fourth defendants to maintain status quo ante as it had
existed before 30.04.2024, even during the pendency of the suit.

99. A learned Single Judge of this Court by an order dated 16.05.2024 had
granted an order of interim injunction in O.A.No. 361 of 2024 thereby



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restraining the second to fourth defendants from interfering with the day to day affairs and banking operations and administration of the first defendant pending disposal of the suit.

100. Questioning grant of such injunction and seeking to vacate the order of interim injunction, the second defendant M.Nandagopal had filed A.No. 2623 of 2024 and the third defendant Mrs. Sumathi Ramesh Babu had filed A.No. 2624 of 2024 and the fourth defendant Nate Nandha had filed A.No. 2625 of 2024.

101. It must be straight away pointed out that in O.A.No. 361 of 2024, the plaintiff had, either knowingly or unknowingly, or deliberately and surreptitiously, included the second defendant, though in the plaint, he had not sought any injunction against the second defendant from interfering with the day to day affairs or banking operations or administration of the first defendant. It must also be pointed out that during the course of arguments, when this fact was brought to the notice of the Court, no reply or explanation had been advanced on behalf of the plaintiff, necessitating an inference that the inclusion of the second defendant in O.A.No. 361 of 2024 was a



deliberate act by the plaintiff with intention and knowledge that as against the second defendant such relief had not been sought in the plaint.

102. The plaintiff, Rajiv Bakshi had filed the suit exercising his status as an independent Director of the first defendant. It must be immediately pointed out that a Director, whether he or she is an independent Director or a Managing Director, has a fiduciary duty only to the company and not to the shareholders.

103. This position of law has been affirmed by the Hon'ble Supreme Court in ***(2005) 11 SCC 314 [Sangramsinh P. Gaekwad and Other Vs. Shantadevi P.Gaekwad (Dead) through LRS and Others]***, wherein after examining the precedents on that point, in paragraph No.55, the Hon'ble Supreme Court had categorically held as follows:-

“55. Fiduciary duty of the Directors to the Company should not be equated with the duty to the shareholders.”

104. An independent Director had been defined under Section 2(47) of the



Companies Act 2013. Section 2(47) of the Companies Act 2013 is as follows:-

“”independent director” means an independent director referred to in sub-section (5) of Section 149.”

105. Section 149 (5, 6, 7 & 8) of the Companies Act are as follows:-

“Company to have Board of Directors:-

(5)

(6) *An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—*

(a) *who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;*

(b)

(c) *who has or had no pecuniary*



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relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year; (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e)

(8) The company and independent directors shall abide by the provisions specified in Schedule IV. ”

106. Schedule – IV of the Companies Act 2013 gives the Code for independent Directors. It provides guidelines on professional conduct, role and functions and duties of an independent director.

107. Even before proceeding further, it would only be appropriate to



examine the averments in the plaint.

108. In the plaint, the plaintiff had stated that the first defendant has been listed in the Bombay Stock Exchange. He further stated that he and the seventh defendant Mrs. Jamuna Sounderam are independent Directors of the first defendant. The second defendant M. Nandagopal is the Executive Chairman and the third defendant Mrs. Sumathi Ramesh Babu is the daughter of the second defendant and the fourth and fifth defendants Nate Nandha and Arvind Nandagopal are the sons of the second defendant. It had been further stated that the fifth defendant is the Managing Director of the first defendant. The sixth defendant T. Krishnamurthy is the Director (Finance) of the first defendant.

109. The plaintiff further claimed that in the Board meeting held on 05.02.2024, the plaintiff and the seventh defendant were inducted as independent Directors. This was also intimated to the Bombay Stock Exchange. The plaintiff also claimed that he was made the Chairperson of both the Audit Committee and the Nomination and Remuneration Committee (NRC). These appointments were also intimated to the Bombay Stock



Exchange.

110. The plaintiff then listed out various statements whereby he claimed that there was serious misappropriation of the funds of the first defendant and stated that owing to this, the earlier statutory auditors M/s. Sagar and Associates had resigned from the first defendant. The auditors had alleged that though there was a cash balance of Rs.2,90,77,000/-, physically, cash of Rs.2,90,73,000/- was not available. The plaintiff claimed that he was thrust with the responsibility to revive the image of the first defendant. He further claimed that his intentions were bona fide. He also apprehended the involvement of the third and fourth defendants in such misappropriation of cash of the first defendant.

111. The plaintiff further stated that one of the shareholders M/s. Tiger Farms and Enterprises Ltd., by a letter dated 05.03.2024 had stated that the second defendant had misappropriated a sum of Rs.900/- crores of the first defendant and that there was a forensic audit conducted by SEBI and that a sum of Rs.120/- crores had been divested in cash to the second defendant which was evident from the confession of the Directors of M/s. Land Mark



Housing Projects Ltd. It had been further stated that in this connection, FIR in Crime No. 1 of 2024 dated 31.01.2024 had been registered by the Vigilance and Anti Corruption Department at Chennai.

112. The plaintiff further stated that in the Board Meeting held on 06.04.2024, the second defendant had resigned from the post of Managing Director and the fifth defendant had been appointed as Managing Director. An agreement for appointment of the fifth defendant as Managing Director was entered into between the second and fifth defendants on 15.04.2024 and counter signed by all the Directors. This appointment of the fifth defendant was also intimated to the Bombay Stock Exchange. It was also stated that the said appointment of the plaintiff and the seventh defendant as independent directors had also been approved by the shareholders in a postal ballot held between 05.04.2024 and 04.05.2024. The plaintiff further stated that the third and fourth defendants sought to unlawfully interfere with the day to day affairs of the first defendant and usurp the properties and assets of the first defendant.

113. The plaintiff further stated that a meeting of the Board was



proposed to be held on 30.04.2024. During the meeting, the plaintiff as chairperson and the second defendant as Executive Chairman, the fifth defendant as Managing Director, the sixth defendant as Director, Finance and the seventh defendant as independent Director were present. The agenda of the meeting had not been circulated in advance.

114. It had been stated in the plaint that it came to be known that the meeting was to induct the third and the fourth defendants and also the wife of the second defendant as Directors. The plaintiff claimed that the NRC alone had the right to identify and recommend persons to be appointed as Directors. It was also stated that the members of the NRC were the plaintiff as Chairperson, the second and seventh defendants. It was stated that during the meeting on 03.04.2024, the plaintiff refused to recommend the third and fourth defendants to be appointed as Directors. This refusal was primarily on the ground that there were complaints of misappropriation of funds against the third and fourth defendants. It was therefore stated that the NRC meeting concluded without any decision. The plaintiff and the seventh defendants had sought further time to deliberate and to resolve the issue. It was stated that thereafter, the plaintiff, and the seventh defendants left the



NRC meeting.

115. The plaintiff further stated that he was shocked to note in the website of the Bombay Stock Exchange that the minutes of the meeting dated 30.04.2024 had been hosted and it reflected that the third and fourth defendants had been appointed as Directors of the first defendant. The appointment of the fifth defendant as Managing Director had been cancelled and withdrawn. Further, the designation of the second defendant as whole time Director was cancelled and it was minuted that he was to continue as Managing Director of the first defendant.

116. The plaintiff was also served with a show cause notice to explain his status as independent Director.

117. The sixth defendants was also served with show cause notice and was asked to step down from the Board.

118. Claiming that the above decisions were taken unilaterally by the second defendant to further his personal interest, and further claiming that there was no quorum in the meeting when the said resolution was



passed, the plaintiff had filed the suit seeking the declarations and injunction as stated above.

119. A careful perusal of the plaint would reveal that except for the issuance of show cause notice against the plaintiff, the plaintiff has not suffered any direct injury owing to the Board resolution passed.

120. Before examining whether the interim injunction granted should be continued or should be vacated, the Court will necessarily have to examine the locus of the plaintiff in seeking the reliefs and in instituting the suit.

121. Section 34 of the Specific Relief Act, 1963, which is *para materia* with Section 42 of the earlier Specific Relief Act is as follows :

***34. Discretion of court as to
declaration of status or right.—***

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make



therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.

122. It is thus seen that a suit for declaration would lie when a legal character or a right to property had been denied. In the instant case, the plaintiff claims right to institute the suit in his capacity as an independent director. The status of an independent director is not a *legal character* as implied in the above provision. The plaintiff as independent director does not have any right to property of the 2nd defendant.

123. In this connection, reference may be had to a very instructive judgment of the Bombay High Court, reported in ***AIR 1959 Bom 201 (Major***



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General Shanta Shamsher Jung Bahadur vs Kamani Brothers Private

Limited-) In that case, the plaintiff, the Managing Director of the defendant had instituted a suit questioning a resolution removing him from the status of Managing Director.

124. The High court first examined whether the status of Managing Director could be categorized as *legal character* as provided in Section 42 of the old Specific Act, which is provision is *para materia* to Section 34 of the Specific Relief Act, 1963. It was held as follows :

“18. The first point for consideration is whether the plaintiff is entitled to a “legal character” within the meaning thereof in s. 42 of the Specific Relief Act. The said s. 42 provides that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right. This section, therefore, applies when a person is entitled to any legal character or to any right as to any property. The phrase “legal character” occurs in two statutes, viz.,



in s. 42 of the Specific Relief Act and in s. 41 of the Indian Evidence Act, but that phrase has not been defined in either of the said two Acts.....”

*“22. As regards the meaning of “legal character” Mr. Munshi relied upon **Ramakrishna v. Narayana**—(1914) I.L.R. 39 Mad. 80. which is a judgment of a division bench of the Madras High Court. One of the contentions in that suit was that the plaintiff's suit to declare that he had contractual rights as against defendant No. 1 did not fall under s. 42 of the Specific Relief Act because it was not a suit to declare a right to a legal character or a right to property. In respect of this contention, the following passage from the judgment appearing at p. 82 was relied upon by Mr. Munshi, viz.,*

“...We take it that a man's ‘legal character’ is the same thing as a man's status. ‘A man's status or ‘legal character’ is constituted by the attributes which the law attaches to him in his individual and personal capacity, the distinctive mark or dress, as it were, with which the law clothes him apart from the attributes which may be said to belong to normal humanity in general’. According to Holland, the chief varieties of status among natural persons may



be referred to the following causes:—(1) sex (2) minority, (3) 'patria potestas', and 'manus', (4) coverture, (5) celibacy, (6) mental defect, (7) bodily defect, (8) rank, caste and official position, (9) slavery, (10) profession (11) civil death, (12) illegitimacy, (13) heresy, (14) foreign nationality and (15) hostile nationality (See Banerjee's Lectures on Specific Relief). We think that a declaration that a valid personal contract still subsists between the plaintiff and the first defendant is not a right to declare a title to a legal character or a title to right to property”.

*23. The above passage contains a quotation from **S.C. Banerjee's Law of Specific Relief in British India (1909 edition), pages 617-618**. It will be noticed that “legal character” has been taken in this judgment to mean the same thing as a man's status.”*

125. After discussing the concept of *right* as defined by Salmond and Holland, in the judgment it was held as follows :

“54. As observed by me earlier “legal



*character” as used in s. 42 is equivalent to legal status, and legal status is a legal right when it involves a peculiarity of the personality arising from anything unconnected with the nature of the act itself which the person of inherence can enforce against the person of incidence. The plaintiff claims legal character or legal status by reason of his managing directorship. Under s. 2(26) of the Companies Act, 1956, a director is a managing director when he is entrusted, with powers of management either by virtue of an agreement with the company, or of a resolution passed by the company in general meeting, or by its board of directors, or by virtue of its memorandum or articles of association. On this definition of a managing director as given by the Companies Act, it is necessary to ascertain first who is the person of inherence, which is “the act” that is the right, and who is the person of incidence. It is the plaintiff who is the person of inherence. **It is the plaintiff who as managing director claims certain rights. “The act”, that is, the right or rights are the powers entrusted to the managing director as mentioned in the above definition. It is the company which is the***



*person of incidence, that is the person against whom the powers or rights as managing director would be available. It may be that not only the company, that is, defendant No. 1 company, but even the plaintiff's co-directors may perhaps fall within the category of persons of incidence. I do not think it necessary to analyse and ascertain whether the plaintiff's co-directors would or would not be persons of inherence. I will assume that they do fall within that category of persons of incidence. **But to my mind it is quite clear that whatever powers or rights the managing director is entitled to are by reason of the particular entrustment. It is the particular entrustment, that is, the particular agreement or resolution or memorandum or articles of association mentioned in the said s. 2(26), which fully determines the nature and extent of that power or right of the managing director. The personality of a managing director has no peculiarity, and certainly no peculiarity unconnected with or independent of his said right or power as a managing director, and therefore, there can possibly be no legal right which a managing director can have which would involve***



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*such peculiarity of personality which is independent of the right or power itself and which the managing director can enforce against his company and against his co-directors. The position of a managing director is totally unlike that of a minor or a wife. A minor by the only reason of his being a minor and the wife by the only reason of her being a wife has peculiarity of personality which is unconnected with any right which the minor or the wife may claim. A landlord would have certain rights against his tenants as such landlord, but if that landlord happens to be a minor, the peculiarity of the status of the minor, which is totally independent of the rights as a landlord, would affect and modify the Otherwise normal rights as a landlord. The personality of a minor as recognised by the law of persons is such that it modifies indefinitely the legal relations into which the minor as having been clothed with such personality may enter. Such is not the case of a managing director. **Independently of the powers entrusted to him, he has no peculiarity or legal status which affects or modifies his powers or rights. A managing director cannot, therefore, be***



said to have any legal status.....”

Emphasis Supplied

126. A careful analysis of the reasoning in the above judgment would imply that the plaintiff as an independent director has rights thrust on him by way of entrustment. His position cannot be categorized as a *legal character*. Thus on this ground also the relief of declaration will necessarily have to be rejected as there is no denial of the *legal character* of the plaintiff. The plaintiff certainly cannot claim to have right over property of the 2nd defendant. There is yet another aspect, and that is with respect to the relief of injunction.

127. Section 41 (j) of the Specific Relief Act, 1963 is as follows :

41. Injunction when refused.—An injunction cannot be granted—

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...



- (f) ...
(g) ...
(h) ...
(ha) ...
(i)

(j) when the plaintiff has no personal interest in the matter.

In the instant case, the plaintiff has not established any personal interest, except to espouse the personal interest of the 5th defendant. It has been held that the suit had been instituted suppressing material facts, is therefore fraudulent and moreover, there is active collusion between the plaintiff and the 5th defendant. The plaintiff cannot seek any relief when he has not come to court with clean hands. On this ground also, the relief of injunction will have to be denied to the plaintiff.

128. The documents filed by both the sides have been perused by the Court. They reveal extraordinary facts. The first defendant M/s. Binny Ltd., was originally incorporated as the Buckingham and Carnatic Company



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Ltd., in the 19th Century. It is one of the oldest companies surviving in this country. It had seen various amalgamations and demergers. Finally, the original business for which it was started, namely, manufacturing of cloth had practically stopped. A very important development was that in 1969, there was an amalgamation of the various companies and the first defendant was incorporated as a listed Public Limited Company. This was on 13.06.1969. The first defendant M/s. Binny Limited was listed with the Bombay Stock Exchange.

129. The second defendant, the partriach of the family, aged about 85 years and suffering from cancer held 44.86% of the shares. He was the majority shareholder. The fifth defendant, his son held 3.58% of shares. Quite independent of this, the second and fifth defendants jointly held through their other companies 26.24% of shares. Thus the second and fifth defendant either directly or indirectly held 74.69% of the shares. The remaining shares were subscribed by the public.

130. With respect to the major asset, the first defendant was possessed of land of over 63 acres. With intention to develop the same, they had entered into a Joint Venture Agreement with SPR Constructions Private



Ltd., to develop the land at Perambur. The revenue share was 60:40 between SPR and the first defendant. The joint development agreement was to put up nearly about 2500 apartments. It must also be pointed out that there was also a school being run by a Trust in that land with about 1500 students.

131. A perusal of the documents reveal that owing to disputes between SPR and the first defendant, arbitration proceedings had been initiated and the Arbitral Tribunal had also directed in their proceedings dated 30.04.2024 that SPR must deposit Rs.100/- crores with the first defendant within 10 weeks from 24.04.2024. It is thus evidently clear that the internicine quarrels and disputes among the second, third and fourth and fifth defendants were primarily with regard to sharing of the spoils.

132. Quite independent of the aforementioned facts, the documents reveal that the plaintiff, who claimed innocence and therefore sought indulgence of this Court, cannot be painted as being as innocent as he proclaims. Documents filed reveal further startling details. One of the primary pre-requisite for anybody to be appointed as an independent Director is that such person should be '*independent*' in tune with all facets of the said word.



He should be independent and maintain equidistance with the existing Directors of the company. He should be independent of any financial dealings with the company. Unfortunately, the documents filed reveal otherwise.

133. It is seen from the documents filed that the plaintiff and his wife were Directors in a company called M/s. Geetanjali Enterprises Private Limited. The plaintiff had been appointed as Director on 27.10.2010. His wife had been appointed on 11.05.2018 but had ceased to be the Director on 10.05.2023. Being a Director in another company would not be a disqualification for the plaintiff. But unfortunately, a further perusal of the documents reveal that M/s. Geetanjali Enterprises Private Limited had specific monetary and financial transactions directly with the first defendant. This commenced in April 2013 and continued till March 2023. Consultancy charges have been paid for a sum of Rs.21,06,000/- and such payments have been consistently made in that period. They may not be the same sum but still reflect financial dealings between M/s. Geetanjali Enterprises Private Limited and M/s. Binny Ltd., the first defendant. Quite apart from that, there had been transfers with Axis Bank Account No.8434.



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134. Being murked with these transactions, it would hardly be termed as a bona fide approach by the plaintiff to impute the defendants with misappropriation. This fact of having direct transactions with the second defendant had been only cursorily stated, but specific details have been suppressed in the plaint. That an independent Director should not have had any financial transaction with the company in which he is to be proposed to be inducted as independent Director had been stipulated by law. When a person come to Court seeking equity, he must also show equity in his conduct.

135. There is one further aspect which has to be pointed out. It was not the second defendant alone who had been pointed out by M/s. Tiger Farms and Enterprises Ltd., as having misappropriated amounts but also the fifth defendant.

136. The plaintiff in the plaint had conveniently screened away the fifth defendant from any imputation. Even during the hearing of the arguments, this Court had pointed out that fact and had stated in the order



dated 03.06.2024 that "*the plaintiff also appears to espouse the cause of the fifth defendant*".

137. In (2007) 6 SCC 120 *Arunima Baruah Vs. Union of India and others*, the Hon'ble Supreme Court, albeit while dealing with a Civil Appeal emanating from a writ petition had examined the role of denial of relief in cases of suppression of facts. It was held that the fact suppressed must be "*material*".

138. In that case, the appellant had filed a writ petition without disclosing that she had already filed a civil suit for the same relief. When the writ petition came up for hearing before the High Court, an application for withdrawal of the suit was pending, but the suit was withdrawn only after notice had been issued in the Writ Petition. The High Court had dismissed the writ petition on the ground of suppression of material facts. In such special circumstance, since both the Writ Petition had been dismissed and the suit had been withdrawn, the Supreme Court granted permission for filing a fresh writ petition disclosing all facts.



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139. But, in the course of discussion, the Supreme Court had examined in detail, the rule relating to denial of relief when there was suppression of material facts.

140. In the instant case, it will first have to be examined whether the plaintiff had suppressed facts which are *material*.

141. A reading of the plaint shows that the plaintiff is focused against the third and fourth defendants and also against the second defendant. He had very specifically raised an apprehension that, to his belief, it was the third and fourth defendants, who had misappropriated cash of Rs.2,90,73,000/-. He had further stated that a sum of Rs.120/- crores had been given to the second defendant and this statement was on the basis of a confession of the Directors of M/s. Land Mark Housing Projects Ltd. He had further stated that the second defendant had siphoned off a sum off Rs.900/- crores.

142. A perusal of the documents filed on behalf of the defendants



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show that M/s. Tiger Farms and Enterprises Ltd., had also pointed a finger at the fifth defendant also. This fact had been suppressed by the plaintiff. He had not disclosed that the fifth defendant was also, if not primarily, but equally responsible for the siphoning of funds. This very clearly show that there is not only suppression of a *material* fact but *collusion* with one of the defendants.

143. As a matter of fact, the documents further reveal that with respect to a transaction of the first defendant with M/s. Land Mark Housing Projects Ltd., FIR in Crime No.1 of 2024 had been registered by the Department of Vigilance and Anti Corruption, Head Quarters, Chennai, on 31.01.2024 under Sections 7, 12 r/w 7, 13(2), 13(1)(d) r/w 13(1)(d) of the P.C. Act, 1988 and r/w Section 109 IPC. The complainant was the Inspector of Police, Special Investigation Cell, Vigilance and Anti Corruption, Chennai. There were three named accused and other unknown officials of various departments.

144. It had been stated that consequent to directions of the Madras High Court in CrI.O.P.No. 27938 of 2018 dated 12.12.2018 directing the



investigating agency to conduct a preliminary enquiry within four months, the FIR had been registered relating to cash payment as bribe amount of Rs.50,00,86,125/- to various public servants including Members of Parliament, Members of Legislative Assembly, Officials of the Government Department and private individuals whose names had been given and the amounts received by them were also given in Annexure-A. No doubt, this is only an information of a cognizable offence and every allegation has to be proved in accordance with law, but at this stage, while examining the bona fide of the various individuals involved, it is also seen that among others, one Krishnamurthy is also alleged to have received commission of Rs.6/- crores.

145. The plaintiff, if he was interested in upholding the sanctity of his office and dignity of the first defendant should also have pointed out these facts in his plaint. He had conveniently suppressed the material facts relating to financial irregularities by all the defendants, namely, the second, third, fourth, fifth and sixth defendants and had cherry picked a few of them in the plaint. He cannot disclaim ignorance of the facts and if he claims ignorance he is not suitable to continue as an independent Director. Therefore, suppression of these facts have to be termed as *materials* facts.



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146. When there is suppression of material facts, the Hon'ble Supreme Court had held as follows in the Judgment referred supra, ***Arunima Baruah, (2007) 6 SCC 120:-***

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question. ”



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147. The Hon'ble Supreme Court had further in paragraph 14 extracted the relevant portion from Halsbury's Laws of England 4th Edition.

148. Paragraph 14 is as follows:-

“14. In Halsbury's Laws of England, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms:

“1303. He who seeks equity must do equity. —In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

1305. He who comes into equity must come with clean hands.—A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was



formerly expressed by the maxim 'he who has committed iniquity shall not have equity', and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

149. ***AIR 1994 SC 853, [S.P.Chengalvaraya Naidu Vs.***

Jagannath (dead) by LRS and others], the Hon'ble Supreme Court examined the issue of suppression and the issue of fraud. It had been held as



follows:-

““Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be



pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

6. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. ”



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150. A perusal of the above shows that the Hon'ble Supreme Court had used very strong language and had stated that when there is deliberate deception with design to secure something by taking unfair advantage of another, then it is a deception to gain by another's loss. It was characterised as cheating intended to get an advantage. It had been further held that a litigant who approaches the Court is bound to produce all documents which are relevant to the litigation.

151. In the instant case, the plaintiff had not only not disclosed material facts but is also guilty of suppression and also of collusion with the fifth defendant. He can never have the prefix *independent* to his name or post. Thus, the plaintiff's bona fide itself is questionable.

152. Even if it is to be remotely considered that the plaintiff would be justified in bringing to notice about a meeting which was not conducted in accordance with rules and without any quorum and to prevent the third and fourth defendants from being inducted as Directors by raising specific allegations against them that they had misappropriated cash of Rs.2,90,73,000/-, I hold that the plaintiff will still have to take recourse only



to Section 213 of the Companies Act 2013.

153. The learned Senior Counsels for the plaintiff had taken the Court through Section 241 and 242 of the Companies Act, 2013 and had stated that the plaintiff could not approach the National Company Law Tribunal since he was not a *member* as defined under Section 2 (55) of the said Act. A *member* in accordance with the said definition is a subscriber whose name had been entered in the Register of members and includes every person who holds shares of the company.

154. Section 241 of the Companies Act, 2013 is provided in Chapter-XVI relating to Oppression and Mismanagement. It had been provided that any member, who complains that the affairs of a company are being conducted in a manner prejudicial to public interest may apply to the Company Law Tribunal.

155. But Section 241(3) also provides that where the Central Government is of the opinion that any person concerned in the management of a company is guilty of fraud then the Central Government may initiate a



case against such person. Therefore, Section 241(1) would apply to prevent oppression and mismanagement but when fraud and misappropriation is alleged, it goes beyond the scope of oppression and mismanagement.

156. Section 213 of the Companies Act 2013 is brought under Chapter XIV which relates to Inspection, Inquiry and Investigation.

157. Section 206 relates to calling for information, right to inspect books and to conduct enquiries by the Registrar of Companies.

158. Section 210 again provides the right to the Central Government to investigate into the affairs of a company in public interest on receipt of a report of the Registrar or on intimation of a special resolution passed by the company.

159. Section 210(2) provides that when an order is passed by a Court or Tribunal that the affairs of a company has to be investigated, then the Central Government can order an investigation into the affairs of that company.



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160. The investigation is to be conducted by the office called the Serious Fraud Investigation Office. The establishment of the same had been provided in Section 211 of the Act.

161. Section 212 of the Act provides for investigation by the Serious Fraud Investigation Office without prejudice to the provision under Section 210 where a report or the Board Resolution or an order of the Court is required.

162. Thus under Section 212, the Central Governance may direct investigation into the affairs of the companies by the Serious Fraud Investigation Office also on the report of the Registrar or on the intimation of a special resolution or in public interest or on the request from any department of the Central Government or State Government.

163. Section 213 of the Companies Act, 2013 provides for investigation into the affairs of a company *in other cases*.



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164. The relevant portions of the said provision are extracted hereunder:-

'Section 213: Investigation into Company's affairs in other cases:-

(a)

*(b) on an application made to it by **any other person or otherwise**, if it is satisfied that there are circumstances suggesting that—*

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose; (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or



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(iii),

order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct: Provided that if after investigation it is proved that

—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default



and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447 '

165. Section 213 (b) provides that on an application made to the Tribunal by *any person* and I am of the firm opinion that the word *any person* would also include an independent Director, that the business of the company is being conducted to defraud its creditors or for fraudulent or unlawful purpose, then an investigation can be conducted by the Tribunal.

166. The plaintiff has not whispered as to why he had not take recourse to Section 213(b) of the Companies Act 2013.

167. He has alleged:

- (i) misappropriation by the third and fourth defendants,
- (ii) misappropriation by the second defendant,
- (iii) passing of unlawful board resolution by the second defendant,
- (iv) he has suppressed allegation of misappropriation against the



fifth defendant;

(v) he has suppressed registration of FIR under the provisions of the Prevention of Corruption Act and the allegations of commission being received by a certain Krishnamurthy.

(vi) he had suppressed his direct and indirect pecuniary interest and transactions with the second defendant. A cursory reference alone was made relating to M/s. Geetanjalai Enterprises but the plaintiff did not disclose the actual transactions in the plaint.

168. All these factors would show that the plaintiff, the second, third, fourth, fifth and sixth defendants will have to be ultimately investigated with respect to the allegations of misappropriation. No person, who knocks at the doors of the Court by suppression of material facts and with unclean hands can be entertained by the Court and relief granted.

169. I am extremely conscious that extensive arguments had been



advanced on behalf of the plaintiff by two eminent Senior Counsels citing a number of Judgments and arguing that the plaintiff is entitled for the reliefs sought. But the plaintiff will have to set his house in order first. He had suppressed material facts. That amounts to fraud on the court. He had actively colluded with the fifth defendant and projected the interest of the fifth defendant. Fraud and collusion are dangerous partners. He had suppressed material facts about his own pecuniary transactions with the first defendant. He had raised allegations of misappropriation of cash of more than two crores by the third and fourth defendants and of Rs.900 crores and Rs.150 crores by the second defendant without disclosing that it was also the fifth defendant who had a share in those spoils. He had himself directly or indirectly benefitted by the previous transactions with the second defendant. Thus, I hold that the litigation is a collusive litigation launched by the plaintiff with all the defendants. There is no iota of credibility in the plaint.

170. When the above conclusion is reached, this Court can never examine the further allegations about the manner in which the Board meeting dated 30.04.2024 was held or the manner in which it should have been held. The plaintiff should have approached the Tribunal under Section 213(2) of



the Companies Act, 2002 and when that alternate relief is available, the jurisdiction of this Court is ousted under Section 430 of the Companies Act.

171. Section 430 of the Companies Act 2013 is as follows:-

“430. Civil court not to have jurisdiction.— No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal. ”

172. The bar placed is very clear. When the Tribunal is empowered to determine and investigate into the affairs of the company under Section 213(2) of the Companies Act, 2013 on an allegation **made by any person** then the jurisdiction of the Civil Court stands ousted. Probably, the plaintiff and all the defendants want to avoid such investigation and



therefore have filed the present suit. It is clear that they have indulged in shadow boxing and though the real intention is not decipherable, it is clear that the plaintiff lacks bona fide.

173. As pointed out in *Arunima Baruah (2007) 6 SCC 120* referred supra, *he who seeks equity must do equity*. Unfortunately, the plaintiff's hands are tainted and smeared. I am not prepared to examine his credentials any further.

174. In view of these reasons:-

- (i) O.A.No. 360 of 2024 is dismissed;
- (ii) O.A.No. 361 of 2024 is dismissed;
- (ii) A.No. 2602 of 2024 is dismissed;
- (iii) A.Nos. 2623 to 2625 of 2024 are allowed;

175. In view of the vexatious litigation launched by the plaintiff, I further hold that it would only be appropriate that costs are imposed and accordingly, costs of Rs.5,00,000/- is imposed on the plaintiff but not to pay any of the defendants, but to the Dean, Rajiv Gandhi Government General Hospital, Chennai, which sum would be hopefully used for treatment of a few needy patients.



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vsg

03.07.2024

Index:Yes/No

Neutral Citation:Yes/No

Speaking order : Yes/No

Copy to: (Registry is directed to forthwith forward a copy of this Order to:

1. Serious Fraud Investigation Office, Regional Office, Chennai,
Corporate Bhawan, Ground Floor No.29,
Rajaji Salai, Chennai – 600 001.

(to enquire into the fraudulent activities of the Directors, Independent Directors of M/s. Binny Ltd., to the detriment of the general public)

2. Bombay Stock Exchange
Phiroze Jeejeebhoy Towers
Dalal Street, Mumbai – 400 001.

[M/s. Binny Ltd., is listed with the said Stock Exchange. To inform about the nature of the order passed and the allegations against the Directors]

3. The Registrar of Companies,
Block No.6, B Wing, 2nd Floor,
Shastri Bhawan,
26, Haddows Road
Chennai – 600 034.



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C.V.KARTHIKEYAN, J.

vsg

Pre Delivery Order made in
O.A.Nos. 360 & 361 of 2024
And
A.Nos. 2602 & 2623 to 2625 of 2024
IN
C.S.No. 111 of 2024



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03.07.2024