

Co.App. 2/2012
BEFORE
HON'BLE THE CHIEF JUSTICE MR. A.K. GOEL
HON'BLE MR. JUSTICE N. KOTISWAR SINGH

(AK Goel,CJ)

This order will dispose of Company Appeal Nos. 1/2011, 2/2011, 3/2011, 4/2011, 2/2012 and 4/2012 as some of the parties and genesis of the litigation are common. Doloo Tea Co. (India) Ltd. (the company) is party in all the six appeals. The appeals have been preferred under Section 10F of the Companies Act, 1956 against the following orders passed by the Company Law Board (CLB) -

No. of Appeals and the Cause Title	Date and nature of the orders of the CLB
Company Appeal No.1/2011 Asharam Leasing & Finance Pvt. Ltd. vs. Doloo Tea Co. (India) & 12 Ors.	Order dated 28.7.2010 in CP (KOL) 619/2010 not granting ad-interim order for holding Annual General Meeting (AGM) to finalize the accounts and for reconstruction of record, leaving the question of interim relief for reconstruction of record after completion of pleadings.
Company Appeal No.2/2011 Doloo Tea Company & Ano Vs. Hasmukh Bhai & Ors.	Order dated 19.7.2010 in CA 37/2010 in CP(KOL) 5/2010 rejecting the prayer for dismissal of the main petition challenging the proposed removal of the Director, Hasmukh Patel, on the ground that the same issue was pending before the Calcutta High Court between the same parties.
Company Appeal No.3/2011 Doloo Tea Company & Ano Vs. Hasmukh Bhai & Ors.	Order dated 19.7.2010 in CP (KOL) 5/2010 issuing direction against increase of share holding and creation of third party rights on assets of the company, subject to any order by the Company Court of the Calcutta High Court in pending proceedings.
Company Appeal No.4/2011 Asharam Leasing and Finance Private Limited vs. Doloo Tea Company (India) Ltd. and 14 Ors.	Order dated 10.2.2011 in CA 229/2010 in CP(KOL) 5/2010 permitting amendment of pleadings, subject to payment of Rs.5000/- towards cost.
Company Appeal No. 2/2012 Kanubhai C. Patel and 4 Ors. vs. Doloo Tea Company (India) Ltd. and ors.	Order dated 7.12.2011 in CP (KOL) 994/2011 declining the prayer for interim relief seeking inter alia altering of share holding of the company.
Company Appeal No. 4/2012 Doloo Tea Company Ltd. and 4 Ors. Vs. Kanubhai C. Patel and ors.	Order dated 7.12.2011 in CP (KOL) 994/2011 dismissing the application (CA 369/2011) seeking to declare the main Company Petition under Section 397-398 to be not maintainable.

2. Basic facts giving rise to these appeals are:
Substantial shares of the company were held by Chunilal Ambalal Patel (CAP Group) and Rambhai Ambalal Patel (RAP Group) who were from same family. Dispute arose between the said two Groups, which led to signing of Memorandum of Understanding (MOU) dated 1.7.1991. The RAP Group was allotted the company, apart from some other assets and the CAP Group was allotted another company viz. Lallamookh Tea Company Pvt. Limited and some other assets. RAP Group was to pay to the CAP Group a sum of approximately Rs. 4 crores on different dates specified in the MOU and till the said payment, the shares of the Company were to be held by Jayantibhai G. Patel along with the blank transfer form duly signed and executed by the CAP Group for being handed over to the RAP Group on receipt of the total amount, with further stipulation that shares would be sold in the event of RAP Group failing to pay the amount. Proceeds of such sale were to be paid to the CAP Group to the extent of its entitlement under the MOU. The CAP Group was to resign from the

he Directorship of the company and in case of any dispute, the same was to be referred to Jayantibhai G. Patel, whose decision was to be final and binding on the parties.

Though the RAP Group paid the major part of the stipulated amount (more than 50%), disputes arose which were referred to the arbitrator on 30.4.2002, who, vide award dated 27.3.2006, held that the arbitrator will hold the share of the CAP Group till payment of Rs. 1.45 Crores with interest from the date of MOU. Proceedings were taken for execution of the award in the Calcutta High Court and SLP was filed against an order passed therein before the Hon'ble Supreme Court, wherein status quo was directed to be maintained vide order dated 11.4.2008 and the said matter is said to be still pending. The CAP Group also filed an application under Section 18 of the Arbitration Act, 1940 before the Calcutta High Court seeking injunction against the creation of any encumbrance over the properties of the Company. Vide order dated 11.3.2010, injunction was granted against alienating or encumbrancing of the assets of the company and also against transfer of shares of the company with further observation that the business of the company could be carried out. The said application has been finally disposed of on 10.2.2012 in same terms. It appears that there was further dispute between two brothers of the RAP Group Harish Patel, elder brother of Hasmukhbhai Patel, who was managing the company, filed CS 128/2009 in Calcutta High Court, inter alia, seeking injunction against Hasmukhbhai Patel holding himself out as a Director. Therein, order dated 20.6.2009 was passed appointing an Advocate as a Special Officer, which was followed by order dated 14.9.2009 directing maintenance of status quo. On 16.1.2010, substantial shares of the company were transferred to M/s. Asharam Leasing and Finance Private Limited.

In above background, the CLB was approached by Kanubhai C. Patel (CAP Group) alleging mismanagement and oppression by way of CP(KOL) 994/2011 on the one hand, by Asharam Leasing and Finance Pvt. Limited by way of CP (KOL) 619/2010 seeking holding of AGM for approving the accounts and reconstruction of records and by Hasmukhbhai Patel by way of CP(KOL) 5/2010 against his apprehended removal as Director. Harish Patel sought dismissal of the said petition by filing CA 37/2010. As is clear from the chart in the beginning of this order, six orders have been passed by the CLB during pendency of the three main petitions. The prayer for holding of AGM to approve the accounts and to reconstruct the records is pending but no ad-interim relief has been granted by which Asharam Leasing and Finance Pvt. Limited is aggrieved. Amendment in pleadings has been allowed in the petition filed at the instance of Hasmukhbhai Patel under Section 397-398 of the Companies Act to implead Asharam Leasing and Finance Pvt. Limited to the proceedings, by which also Asharam Leasing and Finance Pvt. Limited is aggrieved. Harish Patel, along with the Company, is aggrieved by the order declining to dismiss the petition filed by Hasmukhbhai Patel as well as grant of interim relief in favour of Hasmukhbhai Patel. The company is also aggrieved by the order declining to dismiss the petition filed by Kanubhai C. Patel as not maintainable. Kanubhai C. Patel is aggrieved by declining of injunction sought against change of share holding.

3. We have heard Mrs. M Hazarika, learned Senior Advocate, appearing for the company, Mr. Talukdar, learned counsel appearing for Kanubhai C. Patel, Mr. A Roy, learned counsel appearing for Asharam Leasing and Finance Pvt. Limited, Mr. KR Surana, learned counsel appearing for Hasmukhbhai Patel and perused the records.

4. Mr. Talukdar submitted that allotment of new shares without notice to the existing shareholders, was violative of Section 81 of the Companies Act. The increase of the share capital had the effect of reduction of value of shares of the existing share holders giving rise to cause of action for a petition under Sections 397-398 of Companies Act. The share holding of the CAP Group was 36.5% which has been reduced to 1.42%. Reasons given by the CLB for declining injunction are not valid. Inducting a third party with the 88% share was prejudicial to the interest of the shareholders. The CLB has erred in law by holding that there w

as no prima facie case in favour of the CAP Group on the ground that the said Group had entered into MOU, received part payment and also was party to the arbitration proceedings. It was submitted that the injunction was being sought against the company, which was not a party to the arbitration proceedings or to the MOU. It was wrongly observed that the CAP Group was knowing the developments and remained silent in the matter and approached the CLB only after all the developments had taken place. It was submitted that the CAP Group had no idea about the development of allotment of shares to a third party. Mr. Talukdar submitted that Company Appeal No. 2/2012 be allowed. Reliance has been placed on judgments of the Hon'ble Supreme Court in Balkrishan Gupta and Ors. vs. Swadeshi Polytex Ltd. and Anos., (1985) 2 SCC 167 Paras. 17, 21 and 22, Dale & Carrington Invt. (P) Ltd. vs. PK Prathapan & Ors. (2005) 1 SCC 212 Para 24 and judgment of Bombay High Court in Killick Nixon Limited and Ors. vs. Bank of India & Ors. (1985) 57 Comp. C as 831 (Bom) to submit that even if the CAP Group had agreed to surrender their rights in the company, so long as they are registered share holders, they are entitled to maintain the application under Sections 397-398. Reduction of share holding value was an act of oppression.

5. Mrs. Hazarika appearing for the Company and Mr. Roy appearing for M/s Asharam Leasing and Finance Pvt. Limited supported the impugned order by submitting that grant or refusal of interim order was a matter of discretion which in the facts of this case was not liable to be interfered with by the Appellate Court.

Having regard to practical realities, though technically the company is a separate person, absence of the company being a party to the MOU was not enough to ignore the fact that majority share holders have reached family settlement by which the CAP Group surrendered their rights for consideration. They have also received major part of the money and, for the remaining, dispute was subject matter of arbitration proceedings noted above. The dispute raised was in the nature of inheritance dispute or money claim which cannot be subject matter of proceedings under Section 397-398. Reliance has been placed on judgments of the Hon'ble Supreme Court in Sangramsinh P. Gaekwad and others vs. Shantadevi P. Gaekwad (dead) through Lrs and others, (2005) 11 SCC 314 para 144, Chatterjee Petrochem (India) Private Limited vs. Haldia Petrochemicals Limited and others, (2011) 10 SCC 466 and judgment of Calcutta High Court in Subal Chandra Maity & Ors. v. Usha Banerjee & Ors. AIR 2009 Cal 210.

6. Mrs. Hazarika submitted that Company Appeal Nos. 2/2011, 3/2011 and 4/2012 be allowed and the petition filed before the CLB by Kanubhai C. Patel and Hasamukhbhai Patel be dismissed. Mr. Roy submitted that Company Appeal Nos. 1/2011 and 4/2011 be allowed as M/s Asharam Leasing and Finance Pvt. Limited has paid more than Rs. 8 crores (for more than 88% shares) to liquidate the loan to save the company. By impleading his client the CAP Group in collusion with the RAP Group could not put its rights in jeopardy.

7. We have given due consideration to the rival submissions. Questions for consideration are -

- (a) Correctness of the order declining to stay allotment of new shares sought by Kanubhai C. Patel (in Company Appeal No.2/2012),
- (b) Correctness of the order declining to dismiss the petition filed by Kanubhai C. Patel (in Company Appeal No.4/2012),
- (c) Correctness of the order permitting amendment of the petition filed by Hasamukhbhai Patel (in Company Appeal No.4/2011),
- (d) Correctness of interim order in favour of Hasamukhbhai Patel (in Company Appeal No.3/2011),
- (e) Correctness of the order declining to dismiss or to stay the application of Hasamukhbhai Patel (in Company Appeal No.2/2011), and
- (f) Correctness of order not giving the ad-interim order in favour of M/s Asharam Leasing and Finance Pvt. Limited (in Company Appeal No.1/2011).

8. We proceed to deal with the above questions seriatim.

9. Re.(a) - Correctness of the order declining to stay allotment of new shares sought by Kanubhai C. Patel (in Company Appeal No.2/2012)

It is not disputed that the CAP Group represented by Kanubhai C. Patel reached MOU dated 1.7.1991 and has already received more than 2.5 crores for their share value. Under the MOU, the remaining amount of Rs. 1.45 Crores with interest has been claimed by the said Group for which arbitration proceedings have been taken and award given. The same dispute may not give further cause of action to entitle the applicant to obstruct the working of the company. In this view of the matter, Section 81 of the Companies Act may not be available to the said applicant. No doubt, allotment of new shares may amount to oppression in a given case, as laid down by the Hon'ble Supreme Court in Dale & Corrington Invt. (P) Ltd. (supra) and reiterated in Chatterjee Petrochem (India) Private Limited (supra), in the present case it may not be so. Moreover, the appellate court has to be slow in interfering with the exercise of discretion unless the exercise of discretion is arbitrary and perverse. The CLB, after due consideration of the matter, observed -

8. In view of the factual situation, I have not noticed any prima facie case in favour of the petitioners to pass interim orders interfering with the affairs of the company because they have been all through fighting for the money to which they are entitled in the award passed by the Arbitrator. Hence, this Bench is not granting the interim reliefs sought by the petitioners.

In Ramdev Food Products (P) Ltd. v. Arvinbhai Rambhai Patel, (2006) 8 SCC 726, it was observed -

126. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, the appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this Court time and time again. [See for example Wander Ltd. v. Antox India (P) Ltd. (1990 Supp SCC 727, Laxmikant V. Patel v. Chetanbhai Shah (2002) 3 SCC 65 and Seema Arshad Zaheer v. Municipal Corpn. of Greater Mumbai (2006) 5 SCC 282.]

127. The appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.

Again in Purshottam Vishandas Raheja v. Shrichand Vishandas Raheja, (2011) 6 SCC 73, it was held -

31. A Bench of three Judges of this Court laid down the law in this behalf in para 14 of the judgment which is as follows: (Wander Ltd. Case 1990 Supp SCC 727, SCC p. 733)

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion

usion different from the one reached by the court below if the one reached by that court was reasonable possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles, Gajendragadkar, J, in Printers (Mysore) (P) Ltd. V. Pothan Joseph AIR 1960 SC 1156 held: (AIR p.1159, para 9)

9. & These principles are well established; but, as has been observed by Viscount Simon in Osenton (Charles) & Co. v. Johnston 1942 AC 130: (AC p.138)

& The law as to the reversal by a Court of Appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case.

The appellate judgment does not seem to defer to this principle.

It is to be noted that the proposition laid down has been consistently followed thereafter.

For the above reasons, we do not find any merit in Company Appeal No. 2/2012 and the same will stand dismissed.

10. Re. (b) - Correctness of the order declining to
dismiss the petition filed by Kanubhai C. patel
(in Company Appeal No.4/2012)

Mrs. Hazarika submitted that the petition filed by Kanubhai C. Patel should have been dismissed in view of the MOU and arbitration proceedings. We do not find any merit in this submission in view of law laid down in Balkrishan Gupta & ors., Dale & Corrington Invt. (P) Ltd. and Killick Nixon Limited and Ors. (supra), laying down that there was no bar to maintainability of the application so long as shares are in the name of the share holders. Maintainability of the petition is different from prima facie case. The CLB observed:-

9. As to maintainability of the application, since the petitioners disputed reduction of share holding to below 10% who held more than 10% before MOU, it could not be said that this petition is hit by the ingredients of Section 399 of the Companies Act.

In view of above, no interference is called for. The Company Appeal No. 4/2012 is accordingly dismissed.

11. Re.(c) - Correctness of the order permitting
amendment of the petition filed by Hasmukhbhai
Patel (in Company Appeal No.4/2011)

Order of amendment permitting impleadment of Asharam Leasing and Finance Private Limited cannot be held to be illegal. The amendment cannot be held to have made out a new case. The main petition is for protection of rights by Hasmukhbhai Patel, claiming to be Director. The CLB observed: -

By virtue of an amendment, a party gets a right to have legal determination over a dispute; it does not mean that other party got impleaded in the case will have his rights waived by an amendment. The real question involved here in is reduction of shareholding of the petitioners. The same is the cause of action in the main petition and in the amendment sought to the present application, thereby it cannot be called a new case, and it is only bringing subsequent facts alleging further oppression against the petitioners and some other facts left out in the main petition. The citations placed by the respondents are not applicable to the present case, because they are the cases where facts disclosed seeking amendme

nts are unrelated to the original cause of action, which is not the case in the present case.

12. Therefore, this Bench is of the view that the present facts are required to determine the real question involved in this case. As the allotments questioned by the petitioners are not after expiry of long time, it cannot be said as a diverse party is settled with legal rights by efflux of time. Since this amendment will not cause any prejudice to any of the parties, the petitioners herein are entitled for amendment of the pleadings mentioned. Since these petitioners failed to place some facts happened before filing of the original petition, at the most, the petitioners are to be visited with costs for want of diligence.

13. In view of the above observations, this Bench is of the view that there is just and reasonable cause to allow this application by imposing costs upon the petitioners for want of being diligent as to not bringing in some facts presumed to be knowing to the petitioner prior to filing of the original petition.

14. It is open to R-9 to seek the trial of the CP filed by R-9 along with the case of the petitioner, if at all, R-9 is of the view that hearing of this matter separately would cause prejudice to the rights canvassed in the company petition moved by R-9.

15. Hence, the application is allowed subject to payment of ` 5,000/- towards costs by the petitioners to R-9, within 15 days from the date of receipt of the order.

It is well settled that the power of amendment has to be exercised liberally to advance the interest of justice. In B.K. Narayana Pillai v. Parameswaran Pillai, (2000) 1 SCC 712, it was observed -

3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

Again in Ganga Bai v. Vijay Kumar (1974) 2 SCC 393 this Court held: (SCC p. 399, para 22)

The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court.

In Ganesh Trading Co. v. Moji Ram (1978) 2 SCC 91 it was held: (SCC p. 93, para 4)

4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not inc

apable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

In view of above, the order passed by the CLB cannot be held to be erroneous. Accordingly, Company Appeal No.4/2011 will stand dismissed.

12. Re (d) - Correctness of interim order in favour
of Hasmukhbhai Patel (in Company Appeal
No.3/2011)

As noticed above, interim order granted in favour of Hasmukhbhai Patel is against the increase of share holding and creation of third party rights on assets of the company. Such an order has been held by the CLB to be necessary to protect the claim of the Hasmukhbhai Patel and thereby no prejudice is caused to the appellant company, in view of various other proceedings noticed above. The CLB observed-

14. As the petitioners have shown prima facie case as to reduction of share holding of the petitioners, the brothers being at loggerheads, the respondents are, on the ground of equity, hereby directed not to increase the share holding by any rights issue and not to create third party rights over the assets of the company until further orders. This order is subject to the orders passed or to be passed by the Honorable Company Court or Honorable High Court of Calcutta and I make it clear any portion of this order that is inconsistent to any order of Honorable Supreme Court or Honorable High Court will not be operative.

We are unable to hold that the exercise of discretion by the CLB, in granting in junction, is perverse or arbitrary. Company Appeal No.3/2011 will thus stand dismissed.

13. Re.(e) Correctness of the order declining to
dismiss or to stay the application of
Hasmukhbhai Patel (in Company Appeal
No.2/2011)

Mrs. Hazarika submitted that the issue involved before the Calcutta High Court in suit filed against the Hasmukhbhai Patel and in application filed by Hasmukhbhai Patel before the CLB was identical and therefore, application filed before the CLB should have either been dismissed or stayed on the principle of Section 10 of the CPC. The CLB, after perusing the pleadings in the suit filed before the Calcutta High Court and in the pleadings before it, observed :-

7. On reading it in holistic manner, it is prima-facie evident that share holding pattern is drastically changed affecting the interest of the petitioner, and there is restraint order against first petitioner in CS 128/2009 on the allegation of fraud. In the present case, the petitioners sought reliefs for being reduced to minority, for being removed as directors by R-2 to R-7. These issues are different from allegations made against 1st petitioner in CS 128/2009. In view of it, this Bench felt that the disputes in the present petition are not identical to the issues in CS 128/2009. Apart from this, since these brothers are at loggerheads, there is every likelihood of taking advantage of the situations depending on their turns, in that situation; the equity is to protect the interest of either party, irrespective of their positions in the company until a comprehensive verdict is passed. The only restraint to be maintained by CLB is to see its orders not inconsistent to or overlapping the orders of Honorable High Court or Honorable Company Court.

In view of the above reasons, the application moved by the respondents has no merit. Accordingly, the application is hereby dismissed.

The view taken by the CLB cannot be held to be erroneous. In proceedings before the Calcutta High Court grievance against the change of pattern of share holding was not in issue.

The object of principle of sub-judice under Section 10 of the CPC is to prevent two parallel proceedings between the same parties in respect of the same matter.

In *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*, (2005) 2 SCC 256, it was observed -

8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are the matter in issue is directly and substantially in issue in the previous instituted suit. The words directly and substantially in issue are used in contradistinction to the words incidentally or collaterally in issue. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical.

In *Pukhraj D. Jain v. G. Gopalakrishna*, (2004) 7 SCC 251, it was held -

However, mere filing of an application under Section 10 CPC does not in any manner put an embargo on the power of the court to examine the merits of the matter. The object of the section is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The section enacts merely a rule of procedure and a decree passed in contravention thereof is not a nullity. It is not for a litigant to dictate to the court as to how the proceedings should be conducted, it is for the court to decide what will be the best course to be adopted for expeditious disposal of the case. In a given case the stay of proceedings of later suit may be necessary in order to avoid multiplicity of proceedings and harassment of parties. However, where a subsequently instituted suit can be decided on purely legal points without taking evidence, it is always open to the court to decide the relevant issues and not to keep the suit pending which has been instituted with an oblique motive and to cause harassment to the other side.

In view of above, we do not find any merit in Company Appeal No.2/2011 and the same will stand dismissed.

14. Re.(f) - Correctness of order not granting the ad-interim order in favour of M/s. Asharam Leasing and Finance Pvt. Limited (in Company Appeal No.1/2011)

The grievance of Asharam Leasing and Finance Private Limited is that since it has become owner of substantial share holding, it was entitled to effectively take over the company. This is a matter which is yet to be gone into and the CLB has left the issue open to be considered after pleadings are completed. Instead of waiting for the further proceedings, the appellant has rushed to this Court. The CLB observed:-

Ld. Counsel appearing for R-2 & R-3 submitted that the Hon'ble Supreme Court by an order dated 11.04.2008 in Appeal (Civil) No.8386/2008 directed the parties to maintain status quo. Hon'ble Calcutta High Court also passed an order appointing a Special Officer to take charge of the records of the Company (Supplementary Affidavit Volume II - Page 655: report of the Special Officer). Besides this, t

his petitioner, who is a rank outsider, became 88.89% shareholder of the family company on 18th January, 2010 effecting the shareholding of R-2 & R-3, which is in violation of the order dated 11.04.2008 passed by Hon'ble Supreme Court. In pursuance of the above orders, ld. Counsel further submitted that due to the disputes between brothers of the family, the petitioner was set up to fight out the cause of R-4.

This Bench, having heard the arguments of the ld. Counsel for the respective sides and in view of various orders subsisting in the litigation, directs respondents to file reply within 2 weeks. The petitioner is at liberty to file rejoinder, if any, within 2 weeks thereafter.

List the matter on 03.09.2010 at 2.30 P.M.

Ld. Counsel for the petitioner is at liberty to press for interim relief for reconstruction of records, in case of necessity, after completing pleadings in this case.

It is well settled that ad-interim order may not be granted unless absolutely necessary. The CLB having declined to exercise its discretion for passing ad-interim order, no interference is called for by this Court. Company Appeal No.1/2011 will stand dismissed.

In view of above, all the appeals are dismissed.