IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

APO No. 339 of 2017

GA No. 3 of 2025

Industrial Investment Bank of India Limited (In Voluntary Liqn.)

Vs.

Smt. Persis A. Khambatta & Another

For the appellant	:	Mr. Abhrajit Mitra, Sr. Adv. Mr. Chayan Gupta, Adv. Mr. S. Pal Choudhuri, Adv. Mrs. Tithi Paul, Adv. Ms. Shilpi Paul, Adv. Mrs. Sudha Adak, Adv. Ms. Baisali Saha, Adv.
For the respondents	:	Mr. Sakya Sen, Sr. Adv. Mr. Sourojit Dasgupta, Adv. Mr. Aasish Chaudhury, Adv. Mrs. Uma Bagree, Adv.
Hearing concluded on	:	30.01.2026
Judgment on	:	12.03.2026

2026:CHC-OS:82-DB

Md. Shabbar Rashidi, J.:-

1. The appeal is in assailment of an order dated November 21, 2016 passed in GA No. 2899 of 2013 arising out of CS No. 324 of 2013.

2. By the impugned order, the learned Single Judge allowed GA No. 2899 of 2013 confirming the subsisting interim order. By an order passed on December 11, 2013, a Coordinate Bench had directed the petitioner Bank to set apart properties valued at ₹ 2 crores, to satisfy the claim of the petitioners in GA 2899 of 2013, i.e. respondents herein, in case, they succeed in the application.

3. Learned Senior Advocate appearing for the appellant submitted that the learned Single Judge erred in holding that the notice issued on the part of the appellant with regard to convening the 13th Annual General Meeting was devoid of any explanatory note and for that reason, convening of the meeting was illegal. Learned Single Judge was also not justified in his conclusion that consent letter showing consent of more than 75% preference shareholders for redemption of preference shares at 20% of its face value was not appended to the record placed before learned Single Judge.

4. Learned Senior Advocate for the appellant also contended that the learned Single Judge was not justified in holding that the resolution adopted in 13th Annual General Meeting was not in consonance with the provisions of Section 106 of the Companies Act,

1956 and hence, the same was bad in law. In support of his contention, learned Senior Advocate for the appellant relied upon ***2018 SCC OnLine Cal 5878 (Sri Milon Roy Chowdhury vs. Ashish Kumar Saha)*** and ***1975 SCC OnLine Cal 321 (State of West Bengal and Others vs. Pranjiban Deay and Others)***.

5. Learned Senior Advocate for the appellant also contended that certain issues were deliberated for the first time at the time of hearing on November 21, 2016 i.e. the date of the impugned order, though, such issues were never raised either in the pleadings or at the time of hearing of the application. It was submitted that the learned Single Judge passed the impugned order without affording the appellant an opportunity to disclose documents with regard to the issues deliberated on November 21, 2016.

6. Learned Senior Advocate further submitted that the learned Single Judge erred in holding that there was no evidence of consent of more than 75% preference shareholders having been obtained in writing and therefore the second limb of Section 106 of the Act of 1956 was not complied with. No opportunity was afforded by the learned Single Judge for producing the consent letters. It was further contended that the learned Single Judge was not justified in holding that the appellant, even in final hearing did not attempt to demonstrate that it had complied with the conditions enumerated in Section 106 of the Act of 1956. In fact, the appellant had no

opportunity to demonstrate such facts as such issue was never raised either in the pleading or in course of advancing submissions on or before November 21, 2016. It was submitted that the learned Single Judge ought to have provided the appellant an opportunity to produce documents in support of its pleadings in affidavit in opposition to the effect that consent of more than 75% preference shareholders were obtained in writing.

7. Similarly, learned Senior Advocate also submitted that the learned Single Judge failed to appreciate that since the issue of accompanying explanatory statement was never raised, the appellant had no opportunity to disclose the explanatory statement to the notice convening the AGM in its affidavit in opposition**.** The learned Single Judge was not justified in passing the impugned order without providing an opportunity to the appellant to disclose whether there was any explanatory statement appended to the notice convening the 13th Annual General Meeting, which according to the learned Senior Advocate was manifest violation of the principles of natural justice. It was also contended that the impugned order was passed overlooking the statements made by the appellant in its affidavit in opposition.

8. Learned Senior Advocate also contended that the learned Single Judge was not justified in refusing to grant the appellant an opportunity to produce the minutes of the Annual General Meeting held on September 20, 2010 with the specific recording that consent

of more than 75% of the preference shareholders were obtained in writing. According to learned Senior Advocate, the respondents never made out a case that there was no written consent of more than 75% preference shareholders and that the recordings in the minutes of the Annual General Meeting dated September 20, 2010 was incorrect. He further contended that the learned Single Judge was not justified in holding that the special resolution passed in the 13th AGM cannot, in any manner affect the rights of any class of shareholders of the C – Series preferential shareholders to which the plaintiff/respondent belonged. Learned Senior Advocate further submitted that the learned Single Judge erred in coming to the conclusion that the resolution passed at the 13th AGM dated September 20, 2010, was not a special resolution recognized under the provisions of Section 106 of the Act of 1956.

9. Relying upon ***(2007) SCC OnLine Bom 427 (Mather and Platt Fire System Ltd., In re)***, learned Senior Advocate for the appellant submitted that a class consists of homogenous group with a common interest whose rights are similar in terms of the compromise which is offered to others by the company.

10. Per contra, learned Senior Advocate for the respondents submitted that the original Civil Suit was itself filed challenging the resolution adopted in 13th AGM dated September 20, 2010 on the parameters, specifically of Section 80 and Section 106 of the

Companies Act, 1956. In such suit, a declaration was sought to the effect that the resolution adopted in the 13th AGM dated September 20, 2010 was illegal. In that view of the facts, learned advocate for the respondents argued that it does not fit in the mouth of the appellants to say that the challenge to such resolution was taken into consideration by the learned Single Judge instantly and the appellants were not afforded with the opportunity to deal with such issue or produce documents in support of their contention over such issue.

11. Learned Senior Advocate for the respondent also submitted that the respondents held redeemable preferential C-class share in the respondent appellant company. No special meeting of exclusive C-class preference shareholders was ever convened. The appellant also never published or served specific explanatory note appended to the notice of meeting, specifying the issues likely to be taken up in such meeting. The alleged 13th AGM dated September 20, 2010 was a general meeting of all the preference shareholders which could not have been imposed explicitly upon the C-class preference shareholders. The learned Single Judge was quite justified in deciding such issue in favour of the respondents/plaintiffs.

12. Learned Senior Advocate for the respondents further submitted that since they held specific C-class preference shares of the appellant bank, the terms and conditions of shareholding could

not have been changed without calling for special meeting of C-class shareholders and that too, with the express consent in writing of the requisite majority of such class of shareholders. The appellant bank illegally changed such conditions in the 13th AGM held on September 20, 2010 which is in violation of the provisions of Section 106 of the Act of 1956. The learned Senior Advocate stood by the impugned judgment and order.

13. The respondents/plaintiffs invested ₹1 Crore in the appellant bank by purchasing C-class preference shares of such bank in 1998 anticipating a fair dividend profit and bounty return of their investment. The representatives of the appellant bank persuaded the plaintiffs/respondents that the appellant was a financial institution wholly owned by the Government of India. According to the prospectus issued by the bank, it was admitted that the preference shares would result in attractive returns to the subscribers on its redemption on its due date irrespective of the fact whether the company earned benefit or not. It was also represented that there was no risk involved at all in investing in the preference shares of the appellant bank. The preference shares were to be redeemed on the maturity date which was 61 months from the deemed date of allotment with an upfront incentive of 0.4% of the subscribed amount was said to be given.

14. Relying upon such representation made in the prospectus, the respondent invested an amount of ₹1 crore on December 3, 1998 and applied for ₹1 lakh redeemable cumulative nonconvertible preference shares of C series of the appellant bank. By a letter dated December 17, 1998, the petitioners were intimated that by a letter dated the December 4, 1998, 1 lakh preference shares for a value of ₹1 crore was issued in favour of the respondents along with 20 preference shares certificates which were to be redeemed on the expiry of 61 months from the date of allotment. The appellant bank also made upfront payment of the interest on the application money that was to remain with the appellant company from the date of actual payment by the petitioners.

15. It was further case of the respondents/plaintiffs that by letter dated June 28, 2002, the appellant bank intimated the present respondents that in an Extra Ordinary General Meeting of the appellant bank held on June 27, 2002, wherein decision of the board taken on June 11, 2002 proposing redemption of preference share on due date of maturity or prior to the date of redemption was approved by the shareholders. The respondents by their later dated July 3, 2002, intimated the appellant bank that they were not in India and were also not interested in prior redemption of the shares. They requested the appellant bank not to proceed with the proposed redemption until the respondents returned back to India.

16. By another letter dated July 9, 2002, the appellant bank intimated the respondents that it intended to proceed with the redemption of preference shares prior to the due date of redemption and sought their approval in this regard. The respondents by their letter dated August 10, 2002 intimated the appellant their disapproval to the proposal for premature redemption. According to the respondents, by a letter dated December 11, 2003, the appellant bank intimated the respondents that due to unfavourable financial position of the respondent bank, it would not be in a position to redeem the preference shares held by the petitioners on the due date of maturity i.e. January 3, 2004. The letter also requested the respondents to roll over the investment for a further period of 20 years with cumulative dividend. Such proposal of the appellant bank was rejected by the respondents, which was intimated by their letter dated December 23, 2003. The respondents also called upon the appellants to comply with their obligations to redeem the respondent's redeemable cumulative non-convertible preference shares within the due date i.e. January 3, 2004 and to pay the preference dividend due on such date.

17. In terms of a letter dated March 25, 2003, the appellant bank forwarded a cheque dated March 27, 2003 drawn in favour of the petitioners for a sum of ₹9,57,650/– towards interim dividend for the year ending March 31, 2003 over the preference shares amount of ₹ 1 crore in terms of the decision of the board taken in its 67th meeting

dated March 20, 2003. The respondents also made out a case that the conduct on the part of the appellant bank all along exhibited that the bank was in a sound financial position. By its letter dated December 23, 2003, the respondents/plaintiffs also requested the appellant bank to provide the details of the persons/entities who had opted for premature redemption of the preference shares. However such request of the respondents was never responded to. According to the respondents/plaintiffs, the appellant bank was under obligation to pay the respondents the redemption value of their preference shares.

18. By a letter dated March 18, 2004, through their advocate, the respondents called upon the appellant bank to pay off the redemption value as well as the dividend payable on the date of redemption to the petitioner. Such legal notice was responded by the appellant by its letter dated September 2, 2004 stating interalia that in the absence of profit and accumulated wealth, the appellants were not in a position to pay the accumulated dividend until its financial position improved. The respondents also lodged a criminal case under Section 406/409/420 of the Indian Penal Code against the appellant and its directors.

19. It was further contended by the respondents/plaintiffs that by several letters they called upon the appellants to redeem the preference shares and pay the arrears of dividend. By a letter dated April 18, 2005, the respondents were intimated that board of directors

of the company in its meeting dated March 20, 2005 decided against making payment towards dividend to the preference shares in consideration of the downward trend in operating results. Similar communications were issued with regard to interim dividend for the year 2004 – 2005 and 2006 – 2007 as well as for the succeeding years. The respondents also filed a Summary Suit No. 23 of 2007 in 2007 which is still pending.

20. It was further case of the respondents/plaintiffs that on May 17, 2010, the respondents received a letter from the appellant bank communicating a decision taken by the board to redeem the preference shares held by them by offering 20% of the principal amount of the preference capital subscribed by all the preference shareholders as full and final satisfaction of hundred percent of their preference share holding in the appellant bank. It also communicated that the board had decided that no dividend would be payable to the shareholders. The letter also required the respondents to convey their consent of the aforesaid proposal within 15 days failing which; it would be assumed that such proposal has been accepted. The respondents rejected such proposal by a letter dated June 3, 2010. They also called upon the appellant bank to disclose the source of funds for redeeming the shares by paying 20% as full and final settlement.

21. The respondents received another letter on October 26, 2010 from the appellants herein intimating that in accordance with the Special Resolution adopted by the shareholders of the respondent bank in its 13th Annual General Meeting held on September 20, 2010 which was subsequently approved by the Ministry of Finance, Government of India to the effect that the appellant bank was required to redeem the preference share capital of the shareholders at 20% of the principal amount as full and final settlement thereof. By the said letter, the respondents were requested to surrender their share certificates. The said letter was responded by the respondents by its letter dated November 4, 2010. In such letter the respondents questioned the validity of such a resolution passed in respect of redemption of preference shares at 20% of principal amount as full and final settlement. They also sought specific details in respect of the number of preference shareholders and other persons who consented for or against the Special Resolution adopted in 13th AGM.

22. The respondents made out a case that the Special Resolution adopted in the 13th AGM was wholly illegal and its decision was null and void in violation of the provisions of the Act of 1956. The respondents herein, in the original suit contended that the rights of different classes of preference shareholders could not be decided upon by all other classes of preference shareholders in a meeting convened for all classes of preference shareholders. It was also contended that a

separate meeting of each class of preference shareholders ought to have been convened to decide on the redemption of each separate class of preference shares.

23. Later on, the respondents came to know by a newspaper advertisement that an Extraordinary General Meeting of the appellant bank was held on September 5, 2012 wherein voluntarily winding up of the appellant bank was decided. Such meeting, according to the respondents, was held behind the back of the respondents. In the backdrop of the aforesaid facts, the respondents filed C. S. No. 324 of 2013 seeking following reliefs, namely: –

> *a) Decree declaring the 13th Annual General Meeting held by the defendant, to be void ab-initio being in violation of the provisions of Section 80, 106 as well as the regulations to be followed under the Companies Act, 1956.*
>
> *b) Decree for permanent injunction against the defendant restraining them from enforcing the special resolution, adopted by the defendant in its 13th Annual General Meeting held on 20. 09. 2010, redeeming the preference share capital of the shareholders at 20% of the principal amount in full and final settlement, being void ab-initio.*
>
> *c) Decree for mandatory injunction for redemption of preference shares of the defendant bank at its full value along with the outstanding areas of dividend payable to the plaintiff's.*
>
> *d) Injunction;*
>
> *e) Receiver/special officer;*
>
> *f) Attachment/attachment before judgment;*
>
> *g) Costs;*

h) For such other reliefs or reliefs as the plaintiff may be entitled to equity and justice.

24. In such suit, the respondents herein, filed an application being GA No. 2899 of 2013, seeking the following reliefs, that is to say:

a) An order of injunction restraining the respondent from taking any steps or any further steps on the basis of the purported meeting dated 20th September, 2010 and 5 September 2012 being Annexures 'Q' and 'R' respectively;

b) An order of injunction restraining the respondent and its men, agents, servants and/or assigns from alienating, transferring, removing and/or parting with the assets and/or properties of the respondent bank;

c) An order of injunction restraining respondent and its men, agents, servants and/or assigns from changing the nature and character of the assets and/or properties of the respondent bank;

d) A fit and proper person to be appointed a Receiver in respect of the properties and/or assets of the respondent and the Receiver so appointed be directed to make inventory and take inspection of the said assets and properties of the respondent bank and asserting the true value of the said properties and/or assets;

e) The respondent bank be directed to keep apart a sum of ₹1 Crore in a separate account;

f) Ad interim orders in terms of prayers above;

g) Costs of and incidental to this application be paid by the respondent;

h) Such further or other order or orders the past and/or direction or directions be given as to this Hon'ble Court may deem fit and proper.

25. Such GA No. 2899 of 2013 was heard and initially, by an order passed on December 11, 2013, interim relief was granted therein which directed the petitioner Bank to set apart properties valued at ₹2 crores, to satisfy the claim of the petitioners in GA 2899 of 2013, i.e. respondents herein, in case, they succeed in the application. It was finally heard by learned Single Judge which resulted in the impugned order, confirming the interim order.

26. According to the case made out by the respondents/plaintiffs, the decision to redeem the preference shares held by C class shareholders was unilateral by the appellant bank. No notice of the meeting for the class of shareholders to which the respondents belonged was ever issued. The matter was allegedly decided in Annual General Meeting covering all the classes of shareholders. According to the respondents, such move on the part of the appellant bank was in violation of Section 106 of the Companies Act, 1956. It was the further case of the respondents that the notice of AGM issued by the appellant bank did not contain the necessary explanatory notes with regard to the consideration of the agenda likely to be taken up in such meeting, concerning the interest of C-class of preference shareholders. Such resolution was adopted in the AGM behind the back of the respondents and all others who held C – class of preference shares in the appellant bank.

27. On the contrary, the appellants came up with a case that the resolution in the 13th AGM was adopted in accordance with the provisions of Section 106 of the Act of 1956. It was alleged that all the preference shareholders including that of C – class of preference shareholders attended the meeting and consented to such resolution being adopted. Not only that, according to the appellant, the representative of the respondents also attended such meeting in the category of preference shareholders when the impugned resolution was adopted.

28. In order to appreciate the issue, it would be appropriate to set out the provisions of Section 106 of the Companies Act, 1956 which read as follows: –

> "106. *ALTERATION OF RIGHTS OF HOLDERS OF SPECIAL CLASSES OF SHARES*
>
> a) *Where the share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class -*
>
> b) *(a) If provision with respect to such variation is contained in the memorandum or articles of the company, or*
>
> c) *(b) In the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class."*

29. It was the specific case of the appellant that notice of the Annual General Meeting was duly served upon the shareholders. Although, initially a point was raised on behalf of the respondents that the notice of the meeting did not contain the explanatory notes as required under the provisions of the Act of 1956, however, at the time of hearing the appeal such issue was not raised and pressed. The appellants relied upon the copy of notice, attendance sheet and the minutes of the meeting of 13th AGM which establishes that notice of the meeting was duly served upon the shareholders before the meeting. It also establishes that the notice dated August 23, 2010 contained sufficient explanatory notes with regard to modification in the terms of issue of redeemable cumulative preference shares at serial No. 6. The relevant extract of such notice runs to the following: –

> *"Special Business*
>
> *6) to consider and if thought fit, passed with or without modifications, the following resolution as Special Resolution (by preference Shareholders only)*
>
> *Resolved*
>
> *that person to Sec. 106 and other applicable provisions of the Companies Act, 1956 (including any amendment to or re-enactment thereof), if any, and in accordance with the provisions of the Memorandum & Articles of Association of the company and subject to such other approvals, permissions and sanctions as may be necessary, consent of the preference shareholders, be and is hereby accorded to the modifications in the terms of issue of Redeemable Cumulative Preference shares of ₹. to 221.08 crore (Series C, D, DD, G, H, capital H1,*

H1H1, K-option B, L, LL, N, O, Q and Y) raised by IIBI on private placement basis for redemption of such shares at 20% of the principal paid up capital and state of "at par" without accruing any dividend since 1 April 2003 at the specified rate (s) thereon, till the date of redemption, in full and final settlement of such preference shares, in accordance with the consent in writing given by the concerned preference shareholders, as per the prescribed format, in response to the letter of offer made by IIBI on 17th May, 2010 to all the preference shareholders and as recommended by the Board of Directors at its meeting held on 14.8.2010."

30. Accordingly, the 13th AGM was held on September 20, 2010. The respondents were represented by their proxy. In such meeting, Agenda Item No. 6 was decided to the following terms: –

"*Agenda Item No. 6-Special Business*

Modification to the Terms of issue of Preference Shares at 20% of the Principal Amount, instead of "at par" (By Preference Shareholders only)

Chairman informed the members that pursuant to the offer made by II BI to all the preference shareholders for redemption of preference shares at 20% of the principal amount in full and final settlement of the paid up preference share capital without accruing any dividend since 1.4.2003 at the specified rate, preference shareholders holding paid up capital to the extent of 85.5% have already conveyed their consent to the said proposal. Since the requisite consent already received by IIBI is more than the 75% of the paid up share capital, the following Special Resolution was recommended by the Board for adoption by the preference shareholders.

During deliberation, some of the preference shareholders have requested for improvement of the settlement. It was clarified by CMD that since there cannot be any discrepancy in the redemption of such preference shares to any preference shareholders, they are request cannot be acceded to.

Thereafter, Ms. Sunanda Lahiri, Member, proposed the following resolution as ordinary resolution and Shri Amrik Sinigh, Member, seconded the same.

Resolved

that pursuant to Sec. 106 and other applicable provisions of the Companies Act, 1956 (including any amendments to or re-enactment thereof), if any, and in accordance with the provisions of the Memorandum & Articles of association of the company and subject to such other approvals, permissions and sanction as may be necessary, consent of the preference shareholders, be and is hereby accorded to the modification in the Terms of Issue of the redeemable cumulative preference shares of ₹.221.08 crore (Series C, D, DD, G, H, capital H1, H1H1, K-option B, L, LL, N, O, Q and Y) raised by IIBI on private placement basis for redemption of such shares at 20% of the principal paid up capital and state of "at par" without accruing any dividend since 1 April 2003 at the specified rate (s) thereon, till the date of redemption, in full and final settlement of such preference shares, in accordance with the consent in writing given by the concerned preference shareholders, as per the prescribed format, in response to the letter of offer made by II BI on 17th May, 2010 to all the preference shareholders and as recommended by the Board of Directors at its meeting held on 14. 8. 2010.

The above special resolution, as proposed, was adopted with more than requisite majority of 75%."

[Emphasis supplied]

31. The appellant also relied upon the consent letters obtained by the appellant in writing from the preference shareholders prior to such meeting which was brought into the notice of the shareholders by the Chairman, in the meeting that consent for proposed alteration was already received from the requisite 75% shareholders. The materials placed before us also demonstrated that the preference shareholders who did not consent to alteration of the terms of redemption including the respondents/plaintiffs constituted only 0.9% of the total paid up Preference Capital of ₹221.08 crore whereas those who consented, constituted 99.1% thereof. In such view of the facts, it seems that the allegation that the terms were altered in violation of the provisions contained in Section 106 of the Act of 1956 does not stand.

32. As it transpires, the impugned order is premised on the ground that the alteration of the rights of preference shareholders was done in complete violation of the provisions of Section 106 of the Act of 1956 and that too, the appellant had not placed anything to establish that the appellant bank had obtained prior consent of the C-class preference shareholders. The relevant observation in the impugned order stated thus:

> *"A challenge has been scraggly made in the present suit and the instant petition to the validity of the resolution or the legality of the decision that the company sought to impose on the plaintiff and the class of preference shareholders to which the plaintiffs belong. In the light of such challenge, it was*

incumbent on the defendant company to demonstrate that the decision to alter the rights of the relevant class of shareholders was binding on the plaintiffs. Towards such and, assertions have been made in the defendant's affidavit that it obtained the consent of holders representing more than 75% of the issued share in the relevant class; but there is no evidence of such consent in writing having been obtained. It is not necessary to repeat that the second limb of the opening part of Section 106 was not complied with by the defendant company and, as such, they completely flawed special resolution passed at the 13th AGM of the company held on September 20, 2010 is not of special resolution recognized by Section 106 of the Act of 1950."

33. In ***Mather and Platt fire Systems Ltd.*** (supra), noting the authority in Miheer H. Mafatlal V. Mafatlal Industries Ltd. (1996) 87 Comp Cas 792, the Hon'ble Supreme Court observed that,

"26. The interpretation which has to be placed on the provisions of sub- section (1) of section 391 is no longer race Integra and has been dealt with in several reported cases. The leading judgement of the Supreme Court on the subject is in Miheer H. Mafatlal V. Mafatlal Industries Ltd. (1996) 87 Comp Cas 792. The judgement of the Supreme Court is an authority for the proposition that a separate meeting of the class of members or a class of creditors is required to be convened were a compromise or arrangement is proposed between the company and that class of members or creditors. Where the same terms of compromise are offered to a class of members or creditors, no separate meeting of a sub-class among them is required. The Supreme Court…."

34. In the case before us, same terms of compromise were offered to a class i.e. preference shareholders of the appellant bank in terms of resolution adopted in 13th AGM which apparently was accepted by the majority of such class. In such circumstances, the submission made on behalf of respondents/plaintiffs to the effect that separate meeting confined only to C – class of preference shareholders ought to have been convened in order to make its resolution applicable and binding upon the plaintiffs/respondents cannot be accepted.

35. The appellant bank has come up with a definite case that it was not afforded the opportunity to deal with the allegations made on the part of the respondents/plaintiffs. As noted hereinbefore, the appellant has produced the relevant documents including the attendance sheet, minutes of the meeting and copy of the consent letters showing previous consent obtained in writing, of the preference shareholders which constitutes more than 75% of such shareholders. An unambiguous statement to such effect, was made by the appellant in their affidavit is evident from the impugned order itself. Such evidence has been brought on record by the appellant supported by an application under Order XLI Rule 27 of the Civil Procedure Code. We find no reason to disallow such prayer and discard the evidence so produced.

36. The original suit being CS No. 324 of 2013 was filed by the respondents seeking a decree of declaration that the 13th Annual

General Meeting held by the defendant, as ab initio void with a decree of permanent injunction restraining the defendants from enforcing the resolution is adopted in such meeting coupled with a mandatory injunction for redemption of preference shares of the appellant bank at its full value. By filing the impugned application, the respondents prayed for an order of injunction restraining the appellant from taking any steps on the basis of meeting dated September 20, 2010 and September 5, 2012. The respondents also sought an order of injunction restraining the appellant from, transferring or parting with its assets and also for restraining the appellant from changing the nature and character of its assets. The nature of reliefs sought in the original suit seems to be quite at variance with that in the application seeking injunction.

37. In ***Pranjiban Dey*** (supra), a coordinate bench held that,

> *"31. In 1964, therefore, the Supreme Court once again affirmed the principle that an interim relief can be granted only in aid of an as auxiliary to the main reliefs which may be available to the party on final determination of his rights in a proceeding under Article 226 and not otherwise. In the instant case the relief that was granted by the learned trial judge was not in aid of or auxiliary to the main relief that the petitioners were entitled to in the application under Article 226. In these circumstances, ……".*

38. Similarly, in ***Sri. Milon Roy Chaudhury*** (supra), another coordinate bench observed to the following,

> *"18. It is settled law that breach of contract must ordinarily found in damages. The grant of a specific performance being discretionary, the same may be refused if the ends of justice do not so warrant. It is equally well settled that no interim relief can be granted unless it is in aid of final/substantial relief claimed in the suit. Now, if at the interim stage it is doubtful as to whether the court would be in a position to grant the final relief in terms, as claimed, grant of an interim order which is not in aid of the final relief would be beyond the court's jurisdiction. This aspect of the matter has to be borne in mind while proceeding to decide this appeal."*

39. In the case at hand, as noted, the main relief in the suit is centred around the legality and validity of the resolution adopted in 13th AGM. It has got no relation with the reliefs claimed in the application for injunction. At no stretch of imagination, the relief sought in the application for injunction can be said to be in aid of final or substantial relief sought in the CS No. 324 of 2013. More so, the order impugned itself notes that a separate action with regard to realization of the money due against the appellant bank is being pursued by the respondents and is pending before a competent Court. Therefore, in view of the ratio laid down in ***Pranjiban Dey*** (supra) and ***Sri. Milon Roy Chaudhury*** (supra), the impugned order cannot be sustained.

40. So far as the plea of *res judicata* raised by the respondents is concerned, as noted above, by an order passed on December 11, 2013 in connection with GA 2899 of 2013, the appellant bank was directed

to set apart properties valued at ₹ 2 crores, to satisfy the claim of the petitioners (respondents herein), in case they succeed in the application. It would be apposite to set out the relevant portion of such order for convenience, that is to say;

> *"..... I do not pass any interim order save and except that the Bank will set apart properties valued at ₹ 2 Crores, to satisfy the claim of the petitioners, in case they succeed in this application. The claim of the petitioners is that they are preference shareholders of the Bank for a very long time and that the Bank cannot be permitted to go into involuntary liquidation without securing their claim.*
>
> *Learned counsel for the Bank submits that the petitioners have agreed to only 20% of the amount being paid to them which is denied by the learned counsel for the petitioners. The Bank should have brought the necessary documents on record in an affidavit. They have not done so. That is why an extension of time is granted to them today to file such affidavit. No prejudice would be caused if ₹ 2 Crores is set aside for the time being. ....."*

41. In an order passed on March 11, 2014 in GA 610 of 2014 arising out of CS No. 324 of 2013, a coordinate bench noted that the appellant (IIBI) had already offered 20% of the value of the shares. The order allowed them to pay the said amount along with interest @ 9% P.A. on and from the date of offer being made on 20.9.2010 till the date of payment. Such order also directed the appellant to deposit further sum of ₹80 lakh with the Registrar, Original Side to be kept in a suitable interest bearing fixed deposit account in any nationalized

bank within two weeks from the date of the order. The order impugned in GA No. 610 of 2014 was directed to be stayed on such payment.

42. It is submitted on behalf of the respondents that the order dated September 10, 2015 passed in APO 86 of 2014 operates as res judicata in the present appeal. Such order reads to the following:

> *"The appeal is directed against an interlocutory order dated 11.9.2013, whereby the appellant bank was directed to set apart properties valued at ₹. 2 Crores to satisfy the claim of the respondents/petitioners, who were preferential shareholders of the bank. It appears that the bank had applied for voluntary liquidation and it is the concern of the respondent shareholders that their interest was not adequately secured. In appeal, by order dated 11.3.2014 the impugned order was stayed on the condition that the appellant has offered 20% of the value of the shares along with interest of 9% per annum from the date of the offer i.e. 20.9.2010. They were further directed to pay a deposit of ₹ 80 lakh with the Registrar, O. S., Which was to be kept in a interest bearing fixed deposit account with any Nationalized Bank. We are of the opinion that the aforesaid arrangement may continue subject to the result of the application by the learned Single Judge. Observations made by the learned Single Judge in the order impugned or the orders in appeal shall not have any binding effect and all issues are kept open to be decided by affidavits. ....."*

43. The purport of the aforesaid orders including the order dated September 10, 2015 demonstrates that the arrangements made by order dated September 11, 2013 and March 11, 2014 was directed to continue subject to the result of the application by the learned Single

Judge. The said order dated September 10, 2015 clarified that the observations made by the learned Single Judge, in the order impugned or the orders in appeal shall not have any binding effect and all issues were directed to be kept open, to be decided by affidavits. In view of such explicit observations, since all issues were kept open to be decided, anything contained in such orders cannot be construed to invite the principles of res judicata in the given facts of the case at hand.

44. Therefore, on the basis of discussions made hereinbefore, we are of the opinion that the impugned order confirming the order dated December 11, 2013 cannot be sustained. Accordingly, the impugned order is hereby set aside.

45. Consequently, the appeal being APO 339 of 2017 is allowed. Connected application(s), if any, stands disposed of.

46. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

47. I agree.

[DEBANGSU BASAK, J.]