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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.726 OF 2014

IN

SUIT NO.353 OF 2014

Satvik Rajiv Samani & Anr.

...Applicants /
Plaintiffs

Versus

Shardaben Prabhudas Samani & Anr.

...Defendants

WITH

NOTICE OF MOTION NO.1526 OF 2015

Mr. Archit Jaykar with Ms. Hetal Jobanputra and Ms. Dhvani Parekh
i/b. Jayakar & Partners for the Applicants / Plaintiffs.

Mr. Shanay Shah with Mr. Hamza Lakhani i/b. Suraj Shukla for
Defendant Nos.1 and 2.

Mr. Aseem Naphade with Mr. S.L. Shah i/b. Shal Legal for Defendant
Nos.3 and 7.

Mr. Nausher Kohli with Mr. Aditya Raut, Mr. Shyamdhara Upadhyay
i/b. Desai Desai Carrimjee & Mulla for Defendant Nos. 4 to 6.

Mr. Divyang Shukla /b. L.J. Law for Defendant No.9.

CORAM : R.I. CHAGLA J.

Reserved on : 23RD FEBRUARY 2026

Pronounced on : 6TH APRIL, 2026.

ORDER:-

1. These Notices of Motion were heard together in view of
similar relief having been sought therein, namely, for an Order of

injunction restraining the Defendants from selling, transferring, parting with possession and / or creating any third party right, title and interest in respect of the properties mentioned in the Particulars of Claim annexed to the Plaint at Exhibit 'C'. The items at Sr. Nos.1 to 6 in the Plaint include the Harileela Property which is the asset/property of Defendant No.7 – Panache Securities Private Ltd. (referred to as “Panache”). Further, in Notice of Motion 726 of 2014, the Plaintiffs have sought for appointment of the Court Receiver to take possession of the said properties from whomsoever found in possession and to order and direct the Plaintiff Nos.1 and 2 or any one of them to be put in physical possession of the Office at New Harileela House, Mint Road, Fort, Mumbai 400 001 (referred to as “Harileela Property”) as agent of the Court Receiver.

2. The Plaintiff No.1 is the son of Shri Rajiv Prabhudas Samani (“the deceased”). The deceased had purchased the Sagarkunj Flat and was shown in the Memorandum of Association (“MoA”) and Articles of Association (“AoA”) having 50% shareholding and the Plaintiff No.2 (ex-wife of the deceased) held the balance 50% shareholding in Panache.

3. The Defendant No.1 was the mother of the deceased and has since the filing of the Suit has herself expired. Defendant No.1A has been brought in place of Defendant No.1 as daughter of Defendant No.1 and is also original Defendant No.2 in the above Suit. The Defendant No.3 had been made Director of Panache and whose appointment as a Director has been impugned in the above Suit. The Defendant No.4 is the purchaser of the Harileela Property of Panache and Defendant Nos.5 and 6 are Directors of Defendant No.4. Defendant No.7 is Panache. Defendant No.8 – Fullerton India Pvt. Ltd. is the mortgagee of Defendant No.4 in respect of the Harileela Property. Defendant No.9 is the daughter of the deceased/ step sister of Plaintiff No.1. Defendant No.10 is the Sagar Kunj CHS Ltd. - Society.

4. The facts are briefly set out as under:-

- i. Rajiv Samani (the deceased) purchased Flat No.48 Sagar Kunj CHSL, 9th Floor, 78, Napeansea Road, Mumbai 400 006 (hereinafter referred as “Sagar Kunj Flat”).
- ii. The marriage between Plaintiff No.2 and the deceased took place on 26th December, 1992. They had a son named

Satvik Samani (Plaintiff No.1) on 18th December, 1993. The Memorandum of Association and Articles of Association of Panache were executed on 10th October, 1994 and which shows the deceased as having 50% shareholding and Plaintiff No.2 having balance 50% shareholding. The deceased and Plaintiff No.2 were subscribers to the MoA.

iii. Panache was incorporated by Certificate of Incorporation on 22nd December, 1994 and Form No.32 of Panache on the said date showed appointment of the deceased and Plaintiff No.2 as its Directors.

iv. The Plaintiff No.2 and the deceased began residing separately in 1995.

v. Panache purchased the Harileela Property on 11th July, 1996.

vi. The marriage between Plaintiff No.2 and the deceased was dissolved by a decree of mutual consent on 6th August, 1997.

vii. The Form 32 signed by the deceased shows the

appointment of Defendant No.1 as a Director in Panache from 29th September, 1999. It is the Defendants case that the Defendant No.1 was allotted 8000 shares of Panache and Form 2 on 3rd December, 1999 had recorded the same.

viii. The deceased married one Dipti Panchal on 12th December, 1999.

ix. The Defendant No.9 was born to the deceased and Dipti Panchal on 18th November, 2001.

x. The deceased and Dipti Panchal divorced on 8th October, 2007.

xi. The letter dated 14th February, 2011 of Panache signed by the deceased showed the Defendant No.1 to be holding 1000 shares in Panache.

xii. The deceased expressed desire to Plaintiff No.2 that he wished to devolve 90% of his assets upon Plaintiff No.1 and 10% to his Guruji Sri Sri Ravi Shankar. This is by telephonic conversation on 1st August, 2011 and text message on 3rd August, 2011 respectively.

xiii. The deceased was admitted in hospital due to brain stroke in July, 2012 and thereafter expired on 12th March, 2013. It is the Plaintiffs' case that at the time of his death he was residing in Sagar Kunj Flat.

xiv. The Plaintiff No.1 discovered in May / June, 2013 that Defendant No.1 who was residing at Nashik started residing in Sagar Kunj Flat with Defendant No.2.

xv. Defendant No.1 and/or Defendant No.2 transferred the 50% share of the deceased in Sagar Kunj Flat into the name of Defendant No.1 on 19th May, 2013.

xvi. Defendant No.1 was admitted in Breach Candy Hospital on 28th July, 2013.

xvii. An alleged resolution was passed at a board meeting of Panache at the registered office of Panache on 1st August, 2013, which has been impugned by the Plaintiffs and by which resolution Defendant No.1 and Defendant No.3 were authorized to sign the Agreement for Sale of the Harileela Property. It is the Plaintiffs' case that the Defendant No.1 was in hospital on that date and Defendant No.3 was not a

Director as he was appointed as a Director on 15th October, 2013.

xviii. Public Notices were issued by the Advocates of Defendant No.4 in Times of India and Navshakti on 5th August, 2013 and 6th August, 2013 calling for objections about the proposed sale/purchase of the Harileela property of Panache.

xix. Defendant No.9 addressed a Notice on 28th August, 2013 to Defendant No.1 not to effect any transfer of the rights, title and interest of any of the properties of the deceased.

xx. Defendant No.9 addressed a Notice dated 28th August, 2013 to the Secretary of Defendant No.10 – Society not to effect any transfer of the right, title and interest of the deceased in the Sagar Kunj Flat.

xxi. The Plaintiff No.2 claims to have discovered in September, 2013 that Defendant No.2 had accessed the Harileela Property and removed valuable furniture and files from there which belonged to Panache. She claims to have

also discovered that Defendant No.2 was negotiating with third parties for disposal of the Harileela Property.

xxii. A letter was addressed by Panache on 5th September, 2013 to the Secretary of New Harileela CHS Ltd. to issue NoC for sale of the Harileela Property.

xxiii. A legal notice was sent on behalf of Plaintiff No.1 on 12th September, 2013 to the office bearers of New Harileela CHS Ltd. (Defendant No.6 - Prateek Gupta was the Chairman) to not entertain any claim for transfer of the Harileela Property.

xxiv. A legal Notice was sent on behalf of Plaintiff No.1 on 12th September 2013 to Sub Registrar of Assurances, Fort, Mumbai calling upon them not to entertain any claim for transfer of Harileela Property.

xxv. A legal Notice was sent on behalf of Plaintiff No.1 on 12th September, 2013 to Defendant No.10 (Society) not to entertain any claim for transfer of Sagar Kunj Flat.

xxvi. A legal Notice was sent on behalf of the Plaintiff No.1

on 17th September, 2013 to Sub Registrar of Assurances calling upon them not to register any document for the transfer of the Harileela Property or the Sagar Kunj Flat.

xxvii. Reply from the Sub Registrar of Assurances on 24th September, 2013 stating that they cannot prevent any party from proceeding with registration.

xxviii. Form 32 from Registrar of Companies issued on 15th October, 2013 reflecting the date of appointment of Defendant No.3 as Executive Director (authorized by Board Resolution on 21st October, 2013 to file the Form).

xxix. The captioned Suit was filed by the Plaintiffs on 19th October, 2013.

xxx. Deed of Apartment was executed between Panache and Defendant No.4 on 19th October, 2013 for sale of the Harileela Property for Rs.3 Crore.

xxxi. Deed of Apartment was registered on 21st October, 2013. It is the Plaintiffs' case that though Defendant No.1 alleges that the Registrar had visited residence for registration

and that there is a video recording of this, Defendant No.1 has failed to produce the video recording and there is no endorsement of this on the document.

xxxii. The captioned Notice of Motion No. 726 of 2013 is filed on 28th October, 2013. Reply to the Notice of Motion filed by the Defendant No.2 on 21st November, 2013. It is stated in the Reply that on 12th March 2013 after the demise of the deceased, Defendant No.3 had been appointed as Director of Panache along with Defendant No.1. It is the Plaintiffs' case that no agenda, minutes or resolution were produced to show that Defendant No.3 was appointed as a Director in Panache.

xxxiii. Office premises were mortgaged by Defendant No.4 to the Defendant No.8 vide Deed of Mortgage on 21st November, 2013.

xxxiv. Ad-interim order passed in favour of the Plaintiffs by this Court (Dalvi, J) on 5th December, 2013 restraining Defendant No.1 and 2 from creating third party rights in respect of the Suit properties.

xxxv. Reply was filed by the Defendant No.1 to Notice of Motion No.726 of 2014 on 18th February, 2014. The Plaintiffs have contended that contradictory stand has been taken by Defendant No.1 in the said Reply in so far as her having 80% shareholding in Panache and her appointment as Director in Panache. Further, contrary stand has been taken with regard to appointment of Defendant No.3 on 17th July, 2013 as a Director of Panache.

xxxvi. Chamber Summons No.887 of 2014 was filed by the Plaintiffs on 6th September, 2014 to add Defendant Nos.3 to 8 as party Defendants and for interim reliefs by way of exhaustive amendment of the Plaint. This, the Plaintiff has stated was necessitated by various documents which came on record which they allege show the fraud on the part of Defendants.

xxxvii. The alleged Will and Testament of Defendant No.1 was executed on 25th September, 2014 whereby the entire Sagar Kunj Flat was bequeathed to Defendant No.2.

xxxviii. Reply by the Advocates of Defendant No.4 to 6 on

16th October, 2014 stating that the Deed of Mortgage with Defendant No.8 and Deed of Apartment have been registered and forms part of public record.

xxxix. Upon pleadings in Chamber Summons No.887 of 2014 having been completed, it was heard by the learned Single Judge (Coram : Patel, J.) who passed Order dated 9th February, 2015 allowing the Chamber Summons in terms of prayer Clauses (a) and (b).

xl. The Plaintiffs filed captioned Notice of Motion No.1526 of 2014 for further reliefs.

xli. An Order was passed by the learned Single Judge (Coram – Patel, J.) on 29th April, 2015 in captioned Notice of Motion No.1526 of 2015 directing the Defendant No.1 to give two weeks notice to the Plaintiffs' Advocates in the event she proposes to transfer her shares in Panache.

xlii. Reply was filed by the Defendant No.1 on 15th June, 2015 to the captioned Notice of Motion No.1526 of 2015.

xliii. Reply filed by Defendant No.5 on behalf of Defendant

Nos.4 to 6 on 22nd June, 2015 to the captioned Notice of Motion No.1526 of 2015. It is stated in the said Reply that Defendant No.4 was a bonafide purchaser for value without notice and title search has been carried out. The search report dated 18th July, 2013 has been annexed to the said Affidavit. It is mentioned in the said Affidavit that the Defendant No.4 had mortgaged the office premises to Defendant No.8. Further it was denied that Defendant No.7 was a quasi partnership and/or that Defendant No.5 was aware of the alleged fraud from notice dated 12th September, 2013 in view of him being the Chairman of the Association.

xliv. Defendant No.1 expired on 14th July, 2015.

xliv. Rejoinder of Plaintiff No.2 dated 3rd August, 2015 was filed to the Reply filed by the Defendant No.1 to the captioned Notice of Motion No.1526 of 2015.

xlvi. Rejoinder of Plaintiff No.2 dated 3rd August, 2015 to the Reply filed by Defendant No.1 to captioned Notice of Motion No.1526 of 2015.

xlvii. Chamber Summons No.396 of 2016 was filed by the

Plaintiffs on 8th February, 2016 to bring the legal heir of Defendant No.1 on record who was Defendant No.2.

xlvi. Reply of Defendant Nos.3 and 7 dated 17th November, 2017 to the captioned Notice of Motion No.726 of 2014. It was stated in the Affidavit in Reply that upon the Plaintiff No.2 having been divorced from the deceased, she resigned as Director and handed over 1000 shares to the deceased. It is further stated that Plaintiff No.2 is not a Director or shareholder in Panache. Further, it is stated that Defendant No.1 was appointed as Director on 29th September, 1999 and 8000 shares were allotted to Defendant No.1 on 3rd December, 1999. It is further stated that only Defendant No.3 and one Sunil Dudhwadkar are the current shareholders of Panache upon the demise of Defendant No.1.

xli. Reply of Defendant Nos.3 and 7 dated 17th November, 2017 filed to the captioned Notice of Motion No.1526 of 2015. In the said Reply Defendant No.3 has stated that the date on which he was appointed as Director of Panache was 15th July, 2013. It is stated that while filing Form 32 regarding appointment of Defendant No.3 as a Director of

Panache, there was an error in feeding the date in the computer system, so the date was entered as 15th October, 2013. The Sub-Registrar visited the residence of Defendant No.1 for registration of the Deed of Apartment.

1. Additional Affidavit of Plaintiff No.1 filed on 30th November, 2017 to the captioned Notice of Motion No.1526 of 2015 and captioned Notice of Motion No.726 of 2014. Reference has been made in the Additional Affidavit to the Probate Petition filed in respect of Will of Defendant No.1 in 2016 and in the Will of Defendant No.1 the properties of the deceased were included which include the Sagar Kunj Flat. Further, it is alleged in the Probate Petition that there was a bequest of 8000 shares of Panache to Defendant No.2. Further, reference is made to an Order passed by the learned Single Judge (Coram : Dhanuka, J.) on 7th April, 2014, wherein it is recorded that Defendant No.1 was illiterate, studied till 4th grade in a Gujarati medium school. It purported to bequeath the properties of the deceased (despite the ad-interim Order of Dalvi, J.) It is also recorded that the Defendant No.1 agreed to give the legitimate share of the

Plaintiff No.1 in the estate of the deceased to him, once the quantum of the estate is determined.

li. Additional Affidavit of Plaintiff No.2 dated 30th November, 2017 was filed to captioned Notice of Motion No.1526 of 2015 and Notice of Motion No.726 of 2014.

lii. Reply was filed of Defendant Nos.1A/2 dated 14th March, 2018 to the Additional Affidavit of Plaintiff No.1. It is denied in the said Affidavit that the shareholding of Plaintiff No.2 was not transferred to Defendant No.1. Further, the transfer of shares of the Sagar Kunj Flat is lawful.

liii. Reply of Defendant No.3 and Defendant No.7 (Panache) dated 23rd March, 2018 was filed to the Additional Affidavit of Plaintiff No.2. In the said Reply it is denied that the Defendant No.3 is a shareholder of Defendant No.7. That no shares of Panache have been issued to Defendant No.3 or Sunil Dudhwadkar. The Affidavit of one K.R. Manik, Chartered Accountant has been annexed, wherein it is stated that there was an error in typing of date of appointment of Defendant No.3 as a Director of Panache. His appointment

was on 15th July, 2013 (and not on 15th October, 2013 as incorrectly typed). Further, it is stated that as on 31st March, 2018, the Defendant No.1 has held 8000 shares and deceased held 2000 shares.

liv. Reply was filed by Defendant No.1A/2 on 2nd July, 2018 to the Additional Affidavit of Plaintiff No.2. It is mentioned in the said Affidavit that there is tacit admission of Plaintiff No.2 that after her divorce she has given up all her claims to the assets of the deceased and Panache and she did not exercise any rights thereupon. It has been denied that the Plaintiff No.2 did not resign as a Director or transfer her shareholding in the name of Defendant No.1 or Defendant No.3.

lv. There was a further Affidavit filed by the Plaintiff with leave of the Court on 17th January, 2025 as well as Replies of the Defendant Nos.3 and 7 to the Additional Affidavits of Plaintiff on 28th January, 2025. Reply of Defendant No.2 to the Additional Affidavit filed by the Plaintiff on 28th January, 2025 and Reply of Defendant Nos.4 to 6 to the Additional Affidavit filed by the Plaintiff on 5th February, 2015.

5. Mr. Archit Jaykar, learned Counsel appearing for the Applicants / Plaintiffs has first dealt with the preliminary objection raised by the Defendants namely that, Section 430 of the Companies Act, 2013 (“2013 Act”) bars the Plaintiffs from seeking reliefs before this Court. It is the Defendants’ contention that Section 430 of the 2013 Act bars the jurisdiction of a Civil Court from deciding any issue and / or passing any injunction in respect of a matter in which the National Company Law Tribunal (“NCLT”) has exclusive jurisdiction.

6. Mr. Jaykar has submitted that the present Suit is filed for declaration and injunction. Such reliefs can be granted only by a Civil Court. He has further submitted that the Defendants have not filed any Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) and have therefore not taken any preliminary objection to the maintainability of the Suit. He has submitted that without prejudice to the above and assuming for the sake of arguments some of the final reliefs cannot be granted, that would not be a ground to reject interim reliefs on the basis of the Suit.

7. Mr. Jaykar has submitted that the Plaintiffs have amended the Suit vide Chamber Summons No.887 of 2014, whereby

they have made appropriate submissions and sought reliefs, after they became aware (pursuant to the Affidavit in Reply filed to the Notice of Motion No.726 of 2014) that the Harileela Property belonging to Defendant No.7 was purportedly sold to Defendant No.4. Further, vide the Chamber Summons No.887 of 2014 the Plaintiffs sought to make Defendant No.3 to Defendant No.10 as parties to the Suit and sought further reliefs only after they became aware of the alleged and fraudulent sale of the Harileela Property. By an Order dated 9th February, 2015 (Patel, J) this Court permitted the Plaintiffs to amend the Suit. He has accordingly submitted that the Suit is one that can be heard and decided only by this Court.

8. Mr. Jaykar has placed reliance upon the judgment of the Supreme Court in *Rajesh D. Darbar and Ors. v. Narasingrao Krishnaji Kulkarni & Ors*¹, at paragraph 4 and the judgments of this Court in *Shaikh Mustafa Yasin v. Sharad Ganesh Tisgaonkar & Ors*². at paragraph 35 and *Gangaram Sakharam Dhuri v. Gangubai Raghunath Ayare & Ors*³, at paragraphs 25 – 26 in support of his submission that the present Suit can be heard and decided only by this Court.

1 (2003) 7 Supreme Court Cases 219.

2 2017 (1) Mh.L.J. 358

3 2007 (5) Mh.L.J.136

9. Mr. Jaykar has submitted that the bar of Section 430 of the Companies Act does not apply in the present case. The Plaintiffs have shown the fraudulent manner in which the shares of Plaintiff No.2 were illegally transferred. He has submitted that the declaration sought in respect of Plaintiff No.2's shares (in prayer Clause (b1) (I) of the Complaint) can only be granted by this Court. Therefore, the rectification of the register of members is only a consequential and subsequent step. Moreover, this Court had already passed order dated 9th February, 2015 regarding the shares of Panache and the same has not been disputed.

10. Mr. Jaykar has submitted that Section 59 of the 2013 Act and/or Section 11A of the Companies Act, 1956 ("the 1956 Act") deals with the rectification of register which is a summary power and is to be exercised on the basis of clear, undisputed and evident facts. He has submitted that therefore, complex issues of fraud or to grant declaratory or injunctive relief cannot be decided by the NCLT and could only be tried by a Civil Court. He has submitted that the Courts have consistently held that where serious allegations of fraud and disputed ownership exists, such questions require full adjudication by a Civil Court, before rectification can be effected. Such matters would

fall outside the limited jurisdiction to be adjudicated by NCLT.

11. Mr. Jaykar has submitted that the relief sought in the Plaintiff cannot be said to merely seek rectification of the register of members that would eventually be consequential and / or subsequent step, after the Plaintiffs make out and establish the entitlement to the shares. He has in this regard relied upon the following judgments :-

1. ***Shazia Rehman vs Anwar Elahi - (2023) SCC OnLine Del 4807*** (Paras 15 – 26);
2. ***Dhirubhai vs Lataben Abuwalla – 2016 SCCOnline Bom 14089*** (Paras 9 – 14);
3. ***Meghmala vs G. Narsimha Reddy - (2010) 8 SCC 383*** (Paras 28 – 26)
4. ***Satori Global Limited vs Shailja Krishna - Company Appeal (AT) No. 379 of 2018*** (Paras 4,7, 10-16)
5. ***State of A.P. & Anr. vs T. Suryachandra Rao - (2005) 6 SCC 149*** (Paras 8 – 16)
6. ***IFB Agro Industries Limited vs Sicgil India Limited - (2023) 4 SCC 209*** (Paras 22 - 28)
7. ***Jai Mahal Hotels Pvt. Ltd. vs Devraj Singh - (2016) 4 SCC 469*** (Paras 16 – 18)
8. ***Phool Chand Gupta v Mukesh Jaiswal – 2013 SCC Online Cal 1812*** (Paras 32-43)

12. Mr. Jaykar has submitted that as the facts will show, the entire fraud played on the Plaintiffs has arisen after the demise of the deceased on 12th March, 2013. Up to the demise of the deceased, the Plaintiff No.2 and the deceased were 50% shareholders and the only

Directors in Defendant No.7.

13. Mr. Jaykar has submitted that in the present case given the nature of fraud perpetrated upon the Plaintiffs, the corporate identity of Defendant No.7 ought to be pierced, to ascertain the persons who are claiming to be acting for Defendant No.7.

14. Mr. Jaykar has submitted that by strange set of events, the entire 50% shareholding of Plaintiff No.2 has disappeared and even the Defendants cannot justify that how they are making a claim to the shareholding of Plaintiff No.2. Not stopping there, Plaintiff No.2 and the deceased were the only shareholders and Directors of Defendant No.7 since incorporation and till the demise of the deceased. Under further mysterious circumstances, Plaintiff No.2 no longer remains as such Director.

15. Mr. Jaykar has submitted that Defendant Nos.1 and 3 somehow claim to be Directors of Defendant No.7 and pursuant to this purported authority, they have purportedly sold the only asset of Defendant No.7 being the Harileela Property to Defendant No.4 for a depressed price of Rs.3 Crore. He has submitted that the Defendants have not even been able to show that the said amount of Rs.3 Crore

was received by Defendant No.7.

16. Mr. Jaykar has submitted that in the facts of the present case, it is eminent for this Court to pierce the Corporate Veil, and see the fraud played by the persons claiming to act on behalf of Defendant No.7. The facade of the corporate entity cannot be taken as a defence to camouflage the illegalities of the Defendant(s). He has therefore, submitted that the present case warrants this Court to depart from the general principle enunciated in the judgment of *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*.⁴

17. Mr. Jaykar has submitted that it has been consistently held that the Courts are justified in lifting the Corporate Veil where the corporate personality is employed for fraudulent, improper, oblique purposes. He has submitted that the Courts have recognized that the Corporate Veil may be lifted, where the Corporate structure is used as a device to perpetrate fraud. The Courts are entitled to look beyond the Corporate facade when it is used to circumvent the law, emphasizing that the doctrine of separate corporate personality is not absolute and cannot be invoked to legitimize fraud or illegality. He has placed reliance upon the judgments of the Supreme Court in

⁴ (1954) 2 Supreme Court Cases 563.

*Singer India Ltd. v. Chander Mohan Chadha & Ors*⁵, at paragraph 15, *Estate Officer, UT, Chandigarh and Ors. v. Esys Information Technologies PTE., Ltd.*⁶, at paragraph 16 and *State of Rajasthan and Ors. v. Gotan Lime Stone Khanij Udyog Private Ltd. & Anr*⁷, at paragraph 24 – 27.

18. Mr. Jaykar has submitted that the above principle is more so relevant in the case of companies that are in the nature of quasi partnership. He has submitted that in the present case, it is not abundantly clear that Panache was in the nature of quasi partnership. He has submitted that this is apparent from the deceased and Plaintiff No.2 being the only shareholders of Panache; the deceased and Plaintiff No.2 were the only Directors of Panache and other than the asset being the Harileela Property, Panache had no other assets and was not doing any other significant business.

19. Mr. Jaykar has submitted that in amended paragraph 1A of the amended Plaint, the Plaintiffs have specifically averred that Panache was a quasi partnership. This has been reiterated by the Plaintiffs in paragraph 9A of the amended Plaint. Pertinently in

5 (2004) 7 SCC.

6 (2016) 12 SCC 582.

7 (2016) 4 SCC 469.

paragraph 14 of the Written Statement of Defendant No.3 (claiming to be the Director of Panache itself) and 7, they have admitted the contents of paragraph 1A of the amended Plaint. Furthermore in paragraph 17 of the Written Statement being the reply to paragraph 9A, they have not denied that Panache was a quasi partnership.

20. Mr. Jaykar has submitted that the fact that Panache was admittedly a quasi partnership, this Court ought to have exercised its powers to pierce the Corporate Veil to do justice and grant the equitable reliefs claimed by the Plaintiffs.

21. Mr. Jaykar has submitted that there is fraud in the transfer of 50% shareholding of Plaintiff No.2 and there are perjurious contradictions made by the Defendants. He has submitted that Plaintiff No.2's name reflects in the Memorandum of Association (MoA) as a subscriber of 1000 shares constituting 50% shareholding in Panache. The deceased held the other 1000 shares i.e. 50% shareholding. Panache has only one asset i.e. the Harileela Property. He has submitted that at various times, various differing statements have been made by the Defendants, with regard to the shareholding of Plaintiff No.2. He has submitted that in the Reply dated 21st

November 2013 filed to Notice of Motion No.726 of 2014, the Defendant No.2 falsely stated that under the Divorce Decree between Plaintiff No.2 and the deceased dated 6th August, 1997 (Divorce Decree), the shares of Plaintiff No.2 were agreed to be transferred to Defendant No.1 (paragraph 9). However, in the Divorce Decree between Plaintiff No.2 and the deceased there is no reference to the above (Plaint Page 35). The alleged shareholding pattern of Panache as on 14th February, 2011, has been annexed to the Reply, in which, Defendant No.1 is shown to be holding 1000 shares representing 50% of the shareholding (Reply Page 15). Further, in the reply dated 14th March, 2018 filed to Notice of Motion No.1526 of 2015, Defendant No.2 has denied that the Plaintiff No.2 was a 50% shareholder in Panache and that her shareholding was transferred to Defendant No.1 without any basis and without executing any transfer documents (Reply paragraph 25 (h)). He has submitted that this statement is contradictory to her own earlier reply dated 21st November, 2013, wherein she admitted that Plaintiff No.2 was a 50% shareholder.

22. Mr. Jaykar has submitted that there are contradictions and falsities in the contentions of Defendant No.1. In the Reply dated

18th February, 2014 filed to Notice of Motion No.726 of 2014, Defendant No.1 falsely stated that the deceased was a 10% shareholder, Plaintiff No.2 was a 10% shareholder and she was an 80% shareholder (Reply Paragraph 11(b)). That 8000 shares were allotted to her on 3rd December, 1999 (Reply paragraph 11(c)). She has further quoted Clause 10 of the Divorce Decree to claim that the Plaintiff No.2 handed over her 1000 shares to the deceased (Reply paragraph 11(f)).

23. Mr. Jaykar has submitted that the above statements are false as the Divorce Decree never had this condition. Moreover, the said statements are contradictory to the statements of Defendant No.2 regarding the shareholding percentage and also regarding to whom the shares of Plaintiff No.2 were transferred under the Divorce Decree. Defendant No.1's contention is also contradictory to the annexure in the Reply of Defendant No.2, that shows Defendant No.1 holding 1000 shares representing 50% of shareholding of Panache as on 14th February, 2011.

24. Mr. Jaykar has submitted that there are contradictions and falsities in the contentions of Defendant No.3 and Defendant

No.7 as well. In their Reply dated 17th November, 2017 to Notice of Motion No.726 of 2014, Defendant No.3 and Defendant No.7 have contended that pursuant to the Divorce Decree, Plaintiff No.2 handed over 1000 shares held by her to the deceased (Reply Paragraph 9). This statement is also false as it also relies on the Divorce Decree. Moreover, this statement is contradictory to the statement made by Defendant No.1 in her reply.

25. Mr. Jaykar has submitted that an additional Reply to Notice of Motion No.1526 of 2015 was filed on 23rd March, 2018, wherein an Affidavit of one Mr. K. R. Manik (Chartered Accountant) is annexed in which it is claimed that the deceased held two lakh shares and Defendant No.1 held eight lakh shares as per the financial statements for the year ended 31st March, 2010 (Reply Exhibit A.)

26. Mr. Jaykar has submitted that at the time of oral arguments, an argument was made on behalf of Defendant No.3 and 7, that as the Plaintiff No.2 had not produced her share certificate on record, she could not be considered as the owner or holding any shares. However, this argument was contradictory to their own pleadings as well as the pleadings of the other Defendants. He has

submitted that it is pertinent to note that Defendant No.2, in her Reply dated 21st November, 2013, admitted that she had access to the deceased's office and that certain files were found therein. She further acknowledged that the deceased had kept share certificates of various companies in his office, of which they had no prior knowledge. He has submitted that, they had taken physical control of the office during the deceased's paralytical condition during his final months, and Defendant No.2 had prevented Plaintiff No.2 from meeting the deceased during his last days. In these circumstances, there exists a strong and reasonable apprehension that Defendant No.2 and her husband may have destroyed the share certificates pertaining to Plaintiff No.2 and the deceased.

27. Mr. Jaykar has submitted that noticing the false statement of Defendant No.2, the learned Single Judge (Dalvi, J.) had passed ad-interim order on 28th November, 2013, wherein it was stated in paragraph 3 that :- "since no transfer of shares is shown nor the resignation of the Plaintiff No.2 is alleged or shown, she continues as such. Her 50% share in the assets and liabilities of the company continues". He has submitted that this order was never challenged by any of the Defendants and holds the field, even today.

He has submitted that Defendants have not been able to show, with unimpeachable documents, how the shareholding of Plaintiff No.2 was transferred and to whom it was transferred.

28. Mr. Jaykar has submitted that all that the Defendants allege is that the shareholding was transferred pursuant to the Divorce Decree. However, as stated above, the Divorce Decree did not have any clause pertaining to any such transfer. At no point, did the Plaintiff No.2 transfer her 50% shareholding. Furthermore, she never resigned as a Director nor was she removed from her position during the life time of the deceased.

29. Mr. Jaykar has submitted that the alleged transfer is also in contravention of the following sections of 2013 Act viz., a) Section 56(1), that requires an instrument of transfer to be signed by the transferor and transferee and shall be delivered to the Company; and b) Section 56(4) that provides a period by when the company is to handover the certificates of the securities transferred i.e. one month. He has submitted that the aforesaid provisions have not been followed.

30. Mr. Jaykar has submitted that the Defendants have not

placed any document on record that Panache issued new share certificates to the deceased and / or Defendant No.1, as the case may be. Therefore, using the argument made by the Counsel on behalf of Defendant No.3 and Defendant No. 7, infact, Defendant No.1 was unable to prove that she was a shareholder in Panache as she had not placed any share certificate on record of her shareholding in Panache.

31. Mr. Jaykar has submitted that in light of such grossly false statements made on oath by the Defendants, this Court ought to exercise its power to invoke suo moto contempt against the Defendants, so that the litigants are not permitted to get away with making such palpably false and fraudulent statements on record. He has in this regard placed reliance upon the judgment in *Suzuki Parasrampuriah Suitings Pvt. Ltd. v. The Official Liquidator of Mahendra Petrochemicals Ltd. (In Liquidation) and Ors*⁸, at paragraphs 12 and 13.

32. Mr. Jaykar has submitted that there is fraud in the removal of Plaintiff No.2 as a Director, and the appointment of Defendant No.1 as a Director of Panache. He has submitted in this context, various perjurious contradictions have been made by the

⁸ Civil Appeal No.10322 of 2018 dated 8th October, 2018.

Defendants.

33. Mr. Jaykar has submitted that till the demise of the deceased i.e. 12th March, 2013, the Plaintiff No.2 and the deceased were the only two Directors of Panache. He has submitted that the entire fraud has been perpetrated on the Plaintiffs, after the demise of the deceased by taking advantage of the vulnerable position. He has submitted that similar to the manner in which the shares of Plaintiff No.2 have disappeared, her Directorship in Panache has also, mysteriously disappeared.

34. Mr. Jaykar has submitted that there are contradictions and falsities in the contentions of Defendant No.2. In the Reply dated 21st November, 2013, Defendant No.2 has stated that after the Divorce Decree on 6th August, 1997 between Plaintiff No.2 and the deceased, the Defendant No.1 was appointed as Director in place and stead of Defendant No.2 (Reply Paragraph 9) and thereafter Defendant No.3 was appointed as a Director on 15th October, 2013.

35. Mr. Jaykar has submitted that there are contradictions and falsities in the contentions of Defendant No.1. In a Reply, dated 18th February, 2014 in Notice of Motion No.726 of 2014, she has

allegedly stated that she was appointed as Director on 29th September, 1999 (paragraph 11(c)). She has further falsely said that after the Divorce Decree (6th August, 1997), Plaintiff No.2 tendered her resignation as a Director. The date of appointment as a Director as stated by Defendant No.1 i.e. 29th September, 1999 is contrary to the date of appointment stated by Defendant No.2 i.e. 6th August, 1997.

36. Mr. Jaykar has submitted that there are contradictions and falsities in the contentions of Defendant No.3 and Defendant No.7 as well. In their Reply dated 17th November, 2017, they have alleged that the Plaintiff No.2 resigned as a Director after passing the Divorce Decree. That Defendant No.1 was made a Director on 29th September, 1999. Further, on 4th April, 2018, Defendant No.3 and Defendant No.7 filed their Written Statement, in which it is reiterated that Defendant No.1 became a Director on 29th September, 1999. However, Defendant No.3 and Defendant No.7 have also relied on a list of Directors of Panache as on 11th October, 2014 that appears to be from MCA website (at Exhibit 'D') and the Master Data issued by MCA, (WS page 284) in which the date of appointment of Defendant No.1 is shown to be 30th June, 2007 (WS paragraph 9 read with

Exhibit D at Page 261 and 284). These two paragraphs and documents are inherently contradictory.

37. Mr. Jaykar has submitted that an additional Affidavit in Reply to Notice of Motion No.1526 of 2015 was filed on 23rd March, 2018, wherein the Affidavit of one Mr. K. R. Manik (Chartered Accountant) is annexed in which it is reiterated that Defendant No.1 was appointed as a Director of Panache on 30th June, 2007. He has submitted that therefore, even the removal of Plaintiff No.2 and/or the appointment of Defendant No.1 as a Director of Panache is shrouded in mystery. There is no evidence of any resolution being passed by Panache to remove Plaintiff No.2 as a Director. Moreover, no notice was given to Plaintiff No.2 of any meeting of Panache to remove her as a Director. There is no form No.32 or DIR-11 and DIR-12 filed regarding the purported cessation/removal of Plaintiff No.2 as a Director. The Form No.32 of Defendant No.1 does not exist on the records of the Registrar of Companies. Defendant No.3 and Defendant No.7 have failed to produce it inspite of being called upon to do so several times. He has submitted that the Defendants once again claim that the purported removal was as per the Divorce Decree, but the Divorce Decree does not state this in any manner.

38. Mr. Jaykar has submitted that the relevant provisions of the 2013 Act, for Appointment, Resignation and Removal of Directors are Sections 161-Appointment of Additional Director; Section 168 – Resignation of Director and Section 169 – Removal of Director. He has submitted that neither of the procedures in the said provisions have been followed. Neither Defendant Nos.1, 3 or 7 have been able to show how the above provisions have been followed, to claim that Plaintiff No.2 was validly removed as a Director and/or Defendant No.1 was appointed as an Additional Director.

39. Mr. Jaykar has submitted that the case and pleadings of the Defendants are not only factually false, contradictory but also in contravention of the law. Moreover, the Defendants have relied on records that disproved their own contentions. In these circumstances, this Court ought to exercise its powers to take suo moto contempt action against the Defendants.

40. Mr. Jaykar has submitted that it is alleged by the Defendants that on 1st August, 2013 there was an alleged meeting held at the Registered Office of Panache (alleged meeting). The alleged meeting was allegedly attended by the purported Directors of

Panache, being Defendant No.1 and Defendant No.3. At the alleged meeting, a resolution was allegedly passed (the alleged Resolution) that the Sale Agreement for the Harileela Property belonging to Panache be entered into with Defendant No.4 and that Defendant Nos.1 and 3 were authorized to sign the documents of resignation on behalf of Panache. Therefore, by inference, it is the case of the Defendants that Defendant No.1 and Defendant No.3 claimed to be Directors of Panache on the date of alleged resolution. He has submitted that Defendant Nos.1 and 3 empowered by the alleged resolution, executed a Deed of Apartment on behalf of Defendant No.7 with Defendant No.4.

41. Mr. Jaykar has submitted that the documents on record will show that the alleged meeting never took place and the alleged resolution is completely false. He has submitted that at the outset, the Defendants have relied on doctored and fabricated documents. He has submitted that both versions of the alleged Resolution(s) form part of the alleged Deed and the sign of Defendant No.3 at the bottom are at different places.

42. Mr. Jaykar has submitted that it is the case of the

Plaintiffs that the alleged meeting and alleged resolution has been retrofitted by the Defendants, to suit their narrative. He has submitted that no notice or agenda of the alleged meeting has been placed on record. It is the case of the Defendant No.1 in a Reply to Notice of Motion No.726 of 2014 dated 18th February, 2014 that on the date of the alleged meeting i.e. 1st August, 2013, she was in ICU in Breach Candy Hospital. It is her case that she was discharged on 3rd August, 2013.

43. Mr. Jaykar has submitted that in their Reply to Notice of Motion No.726 of 2014 dated 17th November, 2017, Defendant Nos.3 and 7 have annexed the printout from MCA website, which shows that Defendant No.3 was allegedly appointed as a Director on 15th October, 2013; letter issued by MCA dated 17th July, 2013 on which date Defendant No.3 was issued DIN Number and Form 32 pertaining to the alleged appointment of Defendant No.3 as a Director which shows his alleged date of appointment as 15th October 2013. He has submitted that to cover up the above discrepancy, on the same date i.e. 17th November, 2017, Defendant Nos.3 and 7 have filed another reply in Notice of Motion No.1526 of 2015 in which it is claimed that the Defendant No.3 was appointed as

a Director of Panache on 15th July, 2013, but by mistake and error in the feeding the date in the computers/system that date of appointment was entered into as 15th October, 2013. The Defendants have stated that attempts were made to rectify the error but the Defendants were informed that the said error cannot be rectified. However, Defendant No.3 and 7 have not placed any documents on record to show that Defendant No.3 was appointed as a Director of Panache on 15th July, 2013. He has submitted that other than the bold statement, there is no corroborative record. The statement is nothing but an after thought, and a blatant lie. Pertinently, if Defendant No.3 was issued a DIN Number on 17th July, 2013, he could not have been appointed as a Director on 15th July, 2013.

44. Mr. Jaykar has submitted that Defendant Nos.3 and 7 have thereafter filed an Additional Affidavit on 23rd March 2018 in Notice of Motion No.1526 of 2015, to which they have annexed an Affidavit of one Mr. K.R. Manik, who claims that Defendant No.3 was appointed as a Director on 15th July, 2013, but by mistake and error the date of appointment was entered as 15th October, 2013. Mr Jaykar has submitted that this is again a false statement/affidavit for

the said deponent was not the person who filled up the Form 32 of Defendant No.3. The person who has filled up the said Form was one Ms. Neela Vyas, who was the Company Secretary. Therefore, the Affidavit of K R Manik is irrelevant and the alleged acceptance of the alleged mistake, is nothing but another attempt at a cover up.

45. Mr. Jaykar has submitted that the relevant provision of the 2013 Act, that disprove the case of the Defendants that Defendant No.3 was appointed as a Director on 15th July, 2013 is Section 152 (3) which states that no person can be appointed as a Director, unless he has been allotted a DIN Number. Hence, if Defendant No.3 was issued a DIN Number only on 17th July, 2013, he could never have been appointed as a Director on 15th July, 2013, as claimed. He has submitted that for all the above reasons, it is abundantly clear that the alleged meeting and/or alleged resolution, had never taken place or passed.

46. Mr. Jaykar has submitted that the Defendant No.3 had no authority to sign the alleged Deed on behalf of Panache as he was not a Director. Moreover, if the alleged meeting and the alleged

resolutions are held to be invalid, the entire edifice of the case of the Defendants is called into question and the case must fail. He has submitted that there is no dispute with the proposition of law that “fraud vitiates all”. He has placed reliance upon the judgment of the Supreme Court in *S.P. Chengalvaraya Naidu (Dead) By LRs. v. Jagannath (Dead) by LRs & Ors*⁹ .

47. Mr. Jaykar has submitted that there is absolutely no details of how Defendant No.3 claims to have been appointed on behalf of Panache as its Director. He has submitted that Defendant No.3 claims that he was appointed as a Director on 15th July, 2013 but this claim is false and untenable. The only other date of appointment of Defendant No.3 as a Director is 15th October, 2013. However, this is also unbelievable and/or bad in law as there was no notice/agenda of any meeting to be held on 15th October, 2013 to appoint Defendant No.3 as a Director. There was no resolution passed to appoint Defendant No.3 as a Director. Under Section 152 (2) of the 2013 Act, a Director can be appointed only at at the General Meeting of the Company. However, there are no minutes produced of such appointment.

⁹ (1994) 1 SCC 1.

48. Mr. Jaykar has submitted that Defendant No.1 has admitted that she was uneducated and studied only upto the 4th standard. He has referred to the recording in the Order dated 18th July 2014 (Dhanuka, J) at paragraphs 4 and 12 to that effect. He has submitted that it is unclear how Defendant No.1 was able to even understand how to appoint Defendant No.3 as an alleged Director.

49. Mr. Jaykar has submitted that in the absence of any document to show that the appointment of Defendant No.3 as a Director was valid in law, this Court cannot accept the mere statement of the Defendants, that Defendant No.3 is a Director of Panache, and has taken steps in such capacity, particularly to dispose of the Harileela Property of Panache.

50. Mr. Jaykar has submitted that the Defendant No.3 is a complete usurper. He has submitted that Defendant No.3 is the employee of the husband of Defendant No.2, one Mr. Mihir Mehta and is acting on the instructions of him who appears to be the mastermind behind the fraud perpetrated on the Plaintiffs. He has submitted that the Defendant No.2 has also admitted in her Written Statement that Defendant No.3 is associated with Mr. Mihir Mehta

(Written Statement dated 16th June, 2016 – paragraph 36). He has submitted that in these circumstances, strict action should also be taken against Defendant No.3 who is claiming to be a Director of Panache, without any supporting record.

51. Mr. Jaykar has submitted that Defendant Nos.4 – 6 are not bonafide purchasers for value without notice. He has submitted that the Harileela Property belongs to Panache and which was situated in New Harileela House Owners Association (Association). The Defendant No.5 was the Chairman of the Association. He has submitted that on 12th April, 2013 (within a month of the demise of the deceased), the alleged valuation was carried out by Defendant No.4 of the Harileela Property. No notice of this alleged valuation was given to the Plaintiffs. Defendant No.1 did not place on record any notice that she received the alleged valuation. He has submitted that thereafter on 19th June, 2013, a legal notice was sent on behalf of Plaintiff No.1 to Defendant No.1 for the accounts of the estate of the deceased. A reply was sent on 8th July 2013, by Defendant No.1's Advocates that they were looking for the documents. Thereafter, on 18th July, 2013, Defendant Nos.4 – 6 allegedly carried out a title search of the Harileela Property. On 5th September, 2013, Panache

allegedly sent a letter to the Association to issue a NoC for the sale of Harileela Property. He has submitted that the said letter is fraudulent and untenable, because, as seen from the above, the only date when it could be claimed that the Defendant No.3 was appointed as Director of Panache is 15th October, 2013. On the every same day, 5th September, 2013, Defendant No.6 passed a resolution authorizing its Directors to purchase the property of Panache for a consideration to be mutually agreed upon.

52. Mr. Jaykar has submitted that the Defendants have not provided any documentary evidence to show when the said consideration was eventually agreed upon. More strangely and without waiting for the NoC, on 5th September, 2013, the stamp duty of Rs.15 lakh was paid by Defendant No.4 on the alleged Deed. This shows that entering into the alleged Deed was a forgone conclusion. More importantly on 12th September, 2013, a legal notice was sent on behalf of Plaintiff No.1 to the Association (including Defendant No.5, who was the Chairman) to not entertain any transfer of the Harileela Property. Pertinently, the NoC was never issued by the other managing committee members of the Association.

53. Mr. Jaykar has submitted that despite all of the above, under the alleged authority of the alleged Resolution, Panache (through Defendant Nos.1 and 3) sold the Harileela Property to Defendant No.4 under the alleged Deed dated 19th October, 2013 for a sum of Rs.3 Crore. The Defendants allege that the Ready Reckoner rate of the Harileela Property was approximately Rs.2.85 Crore and so the sale at Rs.3 Crore was above the Ready Reckoner rate.

54. Mr. Jaykar has submitted that it is pertinent to note that the Defendant No.4, being a Company, its Directors were Defendant Nos. 5 and 6. Therefore, the Harileela Property of Panache (that was forming part of the Association in which the Defendant No.5 was the Chairman) was sold to Defendant No.4 (whose Directors were Defendant Nos.5 and 6). Thus, the Defendant No.5 was effectively wearing two hats - one as Chairman of the Association, the very body from whom the NoC was required for the alleged sale of the Harileela Property, and the other as Director/Shareholder of the alleged purchasing entity, Defendant No.4. He has submitted that this clearly shows that Defendant No.4 was not a bonafide purchaser for value without notice.

55. Mr. Jaykar has submitted that on 21st October, 2013, the alleged Deed was registered. He has highlighted discrepancies in the document. He has submitted that Defendant No.1 who alleged that the Registrar visited her residence for registration of the alleged Deed and there is video recording of this, has failed to produce the video recording and there is no endorsement of this on the document.

56. Mr. Jaykar has submitted that knowledge of the legal notice not to entertain any transfer of the Harileela Property, once acquired by Defendant Nos.4 – 6, cannot be compartmentalised. In this connection he has placed reliance upon the Reply filed by Defendant No.6 to Chamber Summons No.887 of 2014 dated 18th November, 2014 at paragraph 12. He has submitted that the alleged artificial segregation of the capacities of Defendant No.5 is a calculated fraudulent attempt to evade the consequences of the prior notice and defeat the Plaintiffs' rights. He has submitted that Defendant No.5 was also aware that the Association had not issued the NoC. He has submitted that Defendant No.5 was admittedly wearing two hats. Notice to him in one capacity cannot be conveniently disowned in another, particularly when the transaction in question required an NoC from the very Association over which he presided.

57. Mr. Jaykar has submitted that the alleged Valuation Report (to justify the value of the Harileela Property) being Rs.3 Crore was placed on record by Defendant Nos.4 – 6 in their Written Statement filed on 30th November, 2015. He has submitted that the alleged Valuation Report is also retrofitted by the Defendants as the alleged Valuation Report was dated 16th November, 2015 but the alleged Deed was allegedly executed on 19th November, 2013. Hence, it is after two years. He has also shown other discrepancies in the Valuation Report. He has submitted that the alleged Valuation Report does not refer to or analyze any comparable sale instances in the same building or in the immediate vicinity so as to ascertain the prevailing fair market value. There is no objective benchmarking against market data. He has submitted that in the absence of contemporaneous inspection, comparable market analysis, and a transparent methodology, the alleged Valuation Report is a mere *ipse dixit* and cannot be relied upon to justify the consideration reflected in the alleged Deed, particularly when the Harileela Property was sold at a rate substantially below the prevailing market rate.

58. Mr. Jaykar has submitted that the Defendant Nos.4 – 6 in collusion with Defendant No.1 – 3 have acted together to defraud the

Plaintiffs and claimed to have sold the Harileela Property and usurped all the money. He has submitted that the claim of Defendant Nos.4 – 6 that they were bonafide purchasers for value without notice, is patently false, illegal, untenable. He has placed reliance upon the following judgments in this context :-

1. Manjit Singh vs Darshana Devi - (2024) SCC Online SC 3431 - **(Paras 11-15, 18-19)**
2. Dr. Sharda vs Nagpur Municipal Corporation - (2022) SCC OnLine Bom 1794 - **(Para 44)**
3. Vithal Mane vs Balasaheb Masal - (2017) 3 Mah LJ 232 (Bom) **(Para 7)**
4. Nitin Gandhi vs Dinyar Pheroz Dubash - 2015(2)MhLJ 850 **(Para 34-37)**
5. Uthandia Pillai vs. Ramayai Ammal - 1988-2-L.W 362 - **(Para 13)**

59. Mr. Jaykar has submitted that there is a fraud in the appointment of Sunil Dudhwadkar, as Director of Panache. He has submitted that in the Written Statement of Defendant No.3 and Defendant No.7 dated 4th April, 2018, they have claimed that one Sunil Dudhwadkar was appointed as a Director of Panache on 14th February, 2016. He has submitted that notably, the alleged letter of appointment issued by Panache to Sunil Dudhwadkar dated 13th February, 2016 was not signed by anyone on behalf of Panache, but has been accepted by Sunil Dudhwadkar. He has submitted that there

is no Minutes of Meeting produced or Board Resolution placed on record to demonstrate a valid appointment of the said Sunil Dudhwadkar as a Director of Panache. He has submitted that such unilateral appointment is *ex-facie* illegal, void *ab initio*, and further evidences the continued manipulation of the affairs and records of the company. The appointment is also *ex facie* in violation of the order dated 28th November, 2013 (Dalvi J.) that recorded that the Plaintiff No.2 stated that, it is the case of the Defendants that at present only Defendant No.1 and one Nayak, are the shareholder and Directors of the Company. He has submitted that this Order has not been challenged by the Defendants. Therefore, as per the said Order, Plaintiff No.2 continued as a Director of Panache. This is in view of the conclusion in paragraph 3 that since no transfer of shares is shown nor the resignation of the Plaintiff No.2 is alleged or shown, she continues as such.

60. Mr. Jaykar has submitted that the facts of the present case justify the appointment of a Court Receiver for the Harileela Property as well as for the other premises i.e. the Sagar Kunj Flat. The material on record *prima facie* establishes grave and continuing acts of fraud, fabrication of resolutions, manipulation of

shareholding, back dating of statutory records and unlawful alienation of Defendant No.7's sole immovable assets. He has submitted that with regard to Sagar Kunj Flat, it is presently lying vacant and unoccupied. The Sagar Kunj Flat is neither being used nor generating any income. He has submitted that in order to safeguard and optimize the value of the said asset pending adjudication of the Suit, it is in the interest of all the parties that the Court Receiver be appointed so that it can be monetized by the Court Receiver and proceeds deposited in this Court. He has placed reliance upon judgments in support of his submission that the appointment of the Court Receiver would ensure preservation of the Suit properties, prevent further misuse or clandestine dealings, and secure income without causing prejudice to the rights and contentions of the either side. These judgments include :-

1. Haldyn Glass Limited vs. Saumyalata Shayam Shetty - (2014) SCC OnLine Bom 1178 - **(Paras 15-19)**.
2. Subroto Ghose vs. Ashok Kumar Gupta - 1996 (36) DRJ **(Paras 5, 12, 19)** ;
3. T. Krishnaswamy Chetty vs. C. Thangavelu Chetty & Ors. **(Para 17)**

61. Mr. Jaykar has distinguished the judgment cited on behalf of Defendants namely ***Shashi Prakash Khemka (Dead)***

*Through LRs and Anr. v. NEPC Micon (Now NEPC India Ltd.) & Ors*¹⁰.

He has submitted that in that case the Supreme Court had neither decided nor delved into disputed questions of fact or law, or allegations of fraud, misrepresentation, wrongful acts by the Company or Directors. The Supreme Court did not explicitly address the issue of whether the Civil Courts have jurisdiction over the disputes involving fraud, disputed question of law, or facts whilst holding that the bar of Section 430 applies to the case at hand.

62. Mr. Jaykar has also distinguished the judgment cited by the Defendants namely *Vikram Jairath v. Middleton Hotels Pvt. Ltd*¹¹. on the ground that in that case the aggrieved parties had already filed a Petition before the NCLT, which was not disclosed in the Complaint, raising issues of overlapping jurisdiction and potential forum abuse. He has submitted that this is not the same as the facts of the present case. Consequently, the reasons regarding suppression of facts does not apply here, and the Civil Court may exercise jurisdiction without concerns of duplicity of conflicts with the statutory forum under Section 430 of the 2013 Act. He has submitted with respect to the other observations about Section 430 of the 2013

¹⁰ (2019) 18 SCC 569.

¹¹ (2019) 151 CLA 38.

Act, the same is not binding in view of *IFB Agro Industries Ltd. v. Sicgil India Ltd. and Ors.*¹².

63. Mr. Jaykar has also distinguished the judgment cited by the Defendants viz. *Invesco Developing Markets Fund v. Zee Entertainment Enterprises Ltd.*¹³. This on the ground that this case also did not involve allegations of fraud, misrepresentation, wrongful acts by the Company or its Directors. There were no disputed questions of fact in that case. The moot question was interpretation and enforcement of statutory rights under the Companies Act, not on resolving factual disputes or claims of title/inheritance.

64. Mr. Jaykar has also distinguished the judgment in *Shankar Assana Gaddam v. Achanak Associates Realtors Pvt. Ltd.*¹⁴, relied upon by the Defendants. He has submitted that in that case the Petitioner had initially filed a Petition before the NCLT which was admitted, but the NCLT did not grant any interim reliefs. Since the NCLT already considered the matter, the Civil Court could not have entertained the same relief, as doing so would amount to *res judicata*.

¹² (2023) 4 SCC 209.

¹³ (2022) 3 Bom CR 602.

¹⁴ 2021 MhLJ 159.

65. Mr. Jaykar has distinguished the judgment in *Adesh Kaur v. Eicher Motors Ltd. & Ors*¹⁵, relied upon by the Defendants, wherein the Supreme Court held that the Appellate Tribunal erred in relegating the Appellant to the Civil Court, emphasizing that the NCLT possesses jurisdiction under Section 59 of the 2013 Act, to rectify the register of members in cases of fraud and forgery, even if a criminal complaint is pending. However, the Supreme Court qualified this by noting that such jurisdiction applies only when the issues of fraud are “open and shut cases of fraud” i.e. straightforward and undisputed. He has submitted that on a demurer, if the Defendants are placing reliance on this judgment, it ought to be noted that they are impliedly accepting that it is an open and shut case of fraud, and so a summary inquiry by the NCLT would be sufficient.

66. Mr. Jaykar has distinguished the judgment in *Chalasan Udaya Shankar & Ors. v. Lexus Technologies Pvt. Ltd. & Ors*¹⁶, relied upon by the Defendants on the ground that the Court therein observed that rectification is required when the entries ought to have been made but were not, or were incorrectly recorded, and the role of the NCLT is to ensure that the register accurately reflects the true

¹⁵ (2018) 7 SCC 709.

¹⁶ (2024) 10 SCC 303.

ownership. Whilst factual verification is necessary, the process does not involve resolving disputes on merits or adjudication, but simply correcting the register to reflect what ought to have been done. He has submitted that in paragraph 38 the Supreme Court has held that contentious issues that are raised before it for adjudication do not fall within the purview of rectification.

67. Mr. Jaykar has distinguished the judgment in *Chiranjeevi Rathnam and Ors. v. Ramesh and Anr*¹⁷. The Madras High Court had in that case examined the provisions of the Companies Act, particularly Section 430, which restricts Civil Courts from adjudicating the matters that the NCLT is empowered to determine. Unlike in that case, the existence of contested questions of fact and documentation which arises here precludes such summary jurisdiction, and Civil Court intervention cannot be barred merely by Section 430.

68. Mr. Jaykar has also distinguished the judgment of the Supreme Court in *Shailja Krishna v. Satori Global Ltd*¹⁸, relied upon by the Defendants. He has submitted that in that case both the Gift

¹⁷ (2020) 222 Comp Cas 85.

¹⁸ 2025 SCC OnLine SC 1889.

Deed and Board Resolution under challenge were found to be in direct violation of the Company's Articles of Association. As these acts were patently unauthorized and contrary to the Company's governing provisions, there was nothing to be adjudicated, and the error was apparent on the face of it. Unlike in that case, the existence of contested questions of fact in documentation here preclude such summary jurisdiction and Civil Court intervention cannot be barred merely by Section 430.

69. Mr. Jaykar has accordingly submitted that the Plaintiffs are entitled to the reliefs sought in Notice of Motion No.726 of 2014 and Notice of Motion No.1526 of 2015.

70. Mr. Shanay Shah, learned Counsel for the Defendant Nos. 1A and 2 has submitted that admittedly the Harileela Property stands in the name of Defendant No. 7 i.e. Panache Securities Pvt. Ltd. ("**Panache**"). He has submitted that in view thereof, the case pleaded by the Plaintiffs dis-entitles them to get any relief qua the Harileela Property. He has submitted that though the Plaintiffs have named properties in paragraph 7 of the Plaint, which according to them, stand in the name of the deceased i.e. late Rajiv Samani,

however, the Harileela Property which belongs to Panache is named in that list at Sr. No. 1. In paragraph 8 of the Plaint, the Plaintiffs state that the deceased left the aforesaid property and other movable and immovable properties. In the same paragraph, the Plaintiffs refer to particulars of claim at Exh.C, which according to them, contains the share of the Plaintiffs. In that the Plaintiff No. 2 has claimed 50% share and Plaintiff No. 1 has claimed 90% of the remaining share in the Harileela Property.

71. Mr. Shah has submitted that it is the Plaintiffs' case that the said Harileela Property is the self acquired property of the deceased and the same was purchased in the name of Panache. He has submitted that it is the Plaintiffs' case that she is purportedly a shareholder and director of Panache. Assuming without admitting that she is still a shareholder and director, that does not *ipso facto* make her the owner of Harileela Property.

72. Mr. Shah has submitted that the Plaintiff No. 2 has contended that she has a 50% share in the assets of Panache. At the same time, the Plaintiffs have proceeded on the basis that the Harileela Property is a self acquired property and has sought a

declaration from this Court that the Plaintiff No. 1 is entitled to a 50% share i.e. the share of deceased in the said Harileela property and/or in the alternative 90% of the 50% share of the deceased. Pertinently, the Plaintiffs have not sought any declaration that the deceased was the owner of the Harileela Property. He has placed reliance upon the decision of the Supreme Court in *Kayalulla Parambath Moidu Haji Vs. Namboodiyil Vinodan*¹⁹ at paragraphs 10 to 13, 18 and 19 in this context.

73. Mr. Shah has submitted that according to the Plaintiffs, Panache could not have sold the property, as it was a self acquired property of the deceased. Further, according to the Plaintiffs, the value of the Harileela Property was Rs. 6,00,00,000/- and the Defendants have suppressed the real value of the property. He has submitted that it is pertinent to note that the Plaintiffs have failed to produce any document to show that the value of the Harileela Property was Rs. 6,00,00,000/-.

74. Mr. Shah has submitted that the Plaintiff No. 2 has no right, title and interest in Panache, as she was no more a shareholder

¹⁹ (2022) 20 SCC 310

of the company and it was only the deceased and Defendant No. 1 who were the shareholders. Further, Plaintiff No. 1 only has a 1/3rd right in the shareholding of the deceased in Panache and cannot object to the sale of the Harileela Property which was owned by Panache. He has submitted that the ready-reckoner value of the Harileela Property was Rs. 2,38,61,500/- and has therefore been rightly sold at Rs. 3,00,00,000/-.

75. Mr. Shah has submitted that the Plaintiff No. 2 and the deceased got divorced on 6th August 1997. He has submitted that the Plaintiff No. 2 cannot claim any right, title or interest in the estate of the deceased after obtaining a divorce. He has placed reliance upon the Divorce Decree dated 6th August 1997 (annexed at Exh. B to the Plaintiff). He has in particular placed reliance upon Clause 6 of the Divorce Decree, which states *“The parties hereby declares that both of them have mutually exchanged their respective ornaments, articles, clothes and things and therefore they have no claim against each other in that regard.”* He has submitted that it is clear that Plaintiff No. 2 has acted on the decree dated 6th August 1997, which is why from 6th August 1997 till 11th October 2013 (date of filing the Plaintiff), not a single issue has been raised by Plaintiff No. 2 either

in the capacity as a director or as a shareholder of Panache. He has submitted that this assumes significance as no person who otherwise was a director / shareholder would maintain radio silence for nearly 16 years before filing the Suit in 2014.

76. Mr. Shah has submitted that there are inconsistencies in the Plaint with what has been urged in the oral arguments. This is apparent from the Plaintiff No. 2 not answering when and how from 1997 till October 2013, did Plaintiff No. 2 assert, act and conduct herself in Panache as a shareholder or director thereof. Further, Plaintiff No. 2 did not inform this Court about how does she claim rights as a shareholder in the assets of Panache which otherwise in law is not permissible. He has placed reliance on the decision of the Supreme Court in *Bacha F. Guzdar* (supra).

77. Mr. Shah has submitted that mutually destructive pleas are taken by the Plaintiffs in the Plaint qua entitlement to the Harileela Property. He has submitted that it is the pleaded case of the Plaintiffs that by virtue of being a shareholder, Plaintiff No. 2 is entitled to a share in the assets of Panache. He has submitted that it is pleaded by Plaintiffs that Plaintiff No. 2 being under the *bona fide*

belief that she as a shareholder was entitled to the Harileela Property of Panache situated at Harileela House, Mint Road, Fort, Mumbai and the same could not be dealt with without her consent, did not bother to involve herself in the affairs of Panache. The Plaintiffs have further stated that this Court may be pleased to declare that the Plaintiff No. 2 is entitled to 50% share in the Harileela Property.

78. Mr. Shah has submitted that on the other hand Plaintiff No. 1 has pleaded that the Plaintiff No. 1 as a heir of the deceased is also entitled to a share in the estate of the deceased which will include a share in the 50% shareholding in Panache and the consequent right and entitlement in the assets of the closely held company.

79. Mr. Shah has placed reliance upon the judgments which follow *Bacha F Guzdar* (supra), including *Great Eastern Shipping Co. Ltd. Vs. Oil and Natural Gas Corporation Ltd.*²⁰; *Amratlal Bhanji Laxman Vs. Kusum Prabhudas Laxman & Ors.*²¹ in support of his submission that it is settled law that a company as a juristic entity is

²⁰ 2005(3) Mh.L.J.824

²¹ (2009)4 Bom CR 645

distinct from its shareholders and it is the company that own its assets and not the shareholders.

80. Mr. Shah has also placed reliance upon the judgment of the Supreme Court in **Kayalulla Parambath Moidu Haji** (supra) at paragraphs 10 to 13 and 18 in support of his submission that without declaration of title, no relief for injunction can be granted. This in support of his contention that though the case pleaded by the Plaintiffs is that the deceased Rajiv Samani was the owner of Harileela Property but have not sought any declaration in support thereof. Hence, no injunction can be granted qua the said Property.

81. Mr. Shah has submitted that the reliefs prayed for by the Plaintiffs are barred under Section 430 of the Companies Act, 2013 qua the Harileela Property. He has placed reliance upon the judgment of the Supreme Court in **Shashi Prakash Khemka** (Supra) and in particular paragraphs 4 to 7 thereof. He has also placed reliance upon the judgment of the Calcutta High Court in **Vikram Jairath** (Surpa); judgments of this Court in **Invesco Developing Markets Fund** (Supra) and **Shankar Assana Gaddam** (Supra), which all have held that where the dispute is covered under Section 430 of the 2013 Act

as in this case qua the Harileela Property, the reliefs in the Civil Suit are barred. He has submitted that in the present Suit, the Defendants have sought for a rectification of the register for bringing the names of the Plaintiffs as shareholders in Panache. He has submitted that this relief can only be sought before the NCLT which has exclusive jurisdiction in view of the bar under Section 430 of the Companies Act, 2013. He has submitted that under the said provision 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 the 2013 Act or any other law for the time being in force. A conjoint reading of Section 241/242 with Section 430 of 2013 Act would make it clear that in respect of such matters, which the NCLT or NCLAT is empowered to determine, the jurisdiction of the Civil Court would be expressly barred.

82. Mr. Shah has submitted that the attempt made by the Plaintiffs to distinguish the aforementioned judgments, ought not to be countenanced, as it is settled law that the jurisdiction of the Civil Court would be expressly barred under Section 241 / 242 read with Section 430 of the 2013 Act in respect of matters which the NCLT or NCLAT is empowered to determine. In the present case, the issue of

rectification of the register is to be determined by the NCLT and hence the jurisdiction of the Civil Court would be expressly barred.

83. Mr. Shah has submitted that in so far as the Sagar Kunj Flat is concerned, the Sagar Kunj Flat stood in the joint name of the deceased and Defendant No.1 and was not a self acquired property. He has submitted that it is Defendant No.2's case that the Sagar Kunj Flat was the sole property of Defendant No.1 as the same was purchased by Defendant No.1 after selling Flat No.407, Chandralok Building, Napeansea Road, which was in the name of Defendant No.1 and that the name of the deceased in Sagar Kunj Flat was only added for the sake of convenience. He has submitted that the payment receipts evidencing payments made by Defendant No.1 towards the purchase of Sagar Kunj Flat have been produced in the Additional Affidavit of Defendant No.2. He has further submitted that the deceased passed away and at the time of his death, he was residing in the Sagar Kunj Flat.

84. Mr. Shah has submitted that Defendant No.10 transferred 50% share of the deceased in the Sagar Kunj Flat in favour of Defendant No.1. The Plaintiffs have not challenged the

transfer of Share Certificate in the competent Court or even before this Court.

85. Mr. Shah has submitted that the Plaintiffs allegedly felt that Defendant No.1 and Defendant No.2 were taking steps to dispose of the Sagar Kunj Flat without the knowledge of the Plaintiffs and therefore, the Plaintiffs issued legal Notice on 19th June, 2013 calling upon Defendant No.1 to give particulars of the estate of the deceased. In the said legal notice, Plaintiff No.1 claimed that he was entitled to 50% share in the estate of the deceased. This has been duly responded by Defendant No.1 on 8th July, 2013 denying the allegations and further stating that she was searching for documents of the deceased to issue a detailed reply.

86. Mr. Shah has submitted that there is no pleading in the Plaint for appointment of Court Receiver as has been sought for by the Plaintiffs in oral arguments. Further, the circumstances pertaining to such reliefs qua the Sagar Kunj Flat is absent in the Plaint.

87. Mr. Shah has submitted that Defendant No.1 has registered a Will and Testament on 25th September, 2014 bequeathing her entire estate to Defendant No.2 including the Sagar

Kunj Flat.

88. Mr. Shah has submitted that from the date of filing of the Suit, no change in circumstances has also been pleaded by the Plaintiffs to seek appointment of Court Receiver. He has referred to paragraph 16P of the Plaint wherein it is stated that the Plaintiffs reserve their right to adopt appropriate proceedings with regard to transfer of share certificate in respect of the Sagar Kunj Flat. Further, it is submitted that the Defendant No.1 be restrained from dealing exclusively with the said property and claiming to be the exclusive owner of the said property in any manner whatsoever. He has submitted that it has been held by the Supreme Court in ***Akella Lalitha v. Konda Hanumantha Rao & Anr***²², at paragraph 16 – 18, that if the reliefs are not found in pleadings, the same cannot be granted. He has submitted that since the Plaintiffs have not pleaded for the appointment of the Court Receiver qua the Sagar Kunj Flat, the reliefs with respect to the same cannot be granted.

89. Mr. Shah has submitted that in any event, Defendant No.1 was the real owner of the Sagar Kunj Flat and has paid sale consideration to purchase the said flat and was further entitled to

²² 2022 SCC OnLine SC 928.

receive income and benefits thereof. He has relied upon the averments in the Affidavit in Reply in support thereof. He has submitted that the averments have not been controverted by the Plaintiffs. He has submitted that atleast prima facie, it is clear that the Defendant No.1 was the real owner of the Sagar Kunj Flat.

90. Mr. Shah has placed reliance upon the judgment of the Supreme Court in *Commissioner of Income Tax, Bombay and Ors. v. Podar Cement Pvt. Ltd. & Ors*²³ at paragraph 24 – 28 and 55; *Shivani Madan v. Pr. Commissioner Of Income Tax*²⁴, at paragraphs 4, 8 and 10.

91. Mr. Shah has submitted that when an injunction is granted and status quo has been maintained, no relief can be granted to appoint Court Receiver, especially when it is not even pleaded. He has submitted that this proposition has been accepted by the Supreme Court in *Hitesh Bhuralal Jain v. Rajpal Amarnath Yadav & Ors*²⁵.

92. Mr. Shah has submitted that without prejudice to the

²³ (1997) 5 SCC 482.

²⁴ ITA No.573 of 2023 dated 8th January, 2025.

²⁵ SLP No.51132 of 2023.

above submission, that there are no pleadings warranting appointment of a Court Receiver for Sagar Kunj Flat, the Plaintiffs have failed to demonstrate any emergency, danger or loss demanding immediate reliefs for the appointment of Court Receiver. He has relied upon the judgment of the Supreme Court in *Parmanand Patel (Dead) by LRs & Anr. v. Sudha A. Chowgule and Ors*²⁶, at paragraphs 23 and 24, *T. Krishnaswamy Chetty v. C. Thangavelu Chetty & Ors*²⁷, at paragraph 17 and *Sesa International Ltd. v. Avani Projects & Infrastructure Ltd. & Ors*²⁸, at paragraphs 98 to 109, in this context.

93. Mr. Shah has accordingly submitted that the prayer for appointment of Court Receiver qua the Sagar Kunj Flat ought not to be allowed by this Court.

94. Mr. Shah has distinguished the judgments which have been cited by the Plaintiffs. He has submitted that the judgment of Calcutta High Court in *Phool Chand Gutpa & Ors. v. Mukesh Jaiswal & Ors*²⁹, relied upon by the Plaintiffs does not pertain to the proposition on lifting of Corporate Veil for which the said judgment had been cited. He has submitted that when there are disputed

²⁶ (2009) 11 SCC 127.

²⁷ 1954 SCC OnLine Mad 374.

²⁸ 2017 SCC OnLine Cal 13063.

²⁹ 2023 SCC OnLine Cal 1812.

questions of fact involved, the Civil Court's jurisdiction is not ousted in Company matters. The Calcutta High Court does not consider the judgment of the Supreme Court in the case of ***Shashi Prakash Khemka*** (Supra), wherein the Supreme Court in a similar case has held that in view of Section 430 of the 2013 Act being widely worded, the jurisdiction of the Civil Court is barred. Accordingly, the judgment is not good law and runs counter to several judgments of this Court cited by the Defendants.

95. Mr. Shah has also distinguished the judgment cited by the Plaintiffs viz. ***Estate Officer, UT, Chandigarh and Ors.*** (Supra) in support of their submission that the Court is required to lift the Corporate Veil in the present case. He has submitted that the facts in that case are entirely different from the facts of the present case. He has submitted that the Supreme Court in the facts of that case had directed lifting of Corporate Veil as the promoters of the Company had failed to comply with the directions of the Court. This does not arise here.

96. Mr. Shah has also distinguished ***Jai Mahal Hotels Pvt. Ltd. v. Devraj Singh & Ors***³⁰, and ***State of Rajasthan and Ors. v. Gotan***

³⁰ (2016) 1 SCC 423.

Lime Stone Khanij Udyog Private Ltd. (supra) cited by the Plaintiffs on the ground that they are clearly distinguishable from the facts of this case. He has submitted that the Supreme Court in *Adesh Kaur* (Supra) and *Chalasani Udaya Shankar & Ors.* (Supra) have considered the proposition advanced by the Plaintiff, and held that even in matters of fraud, the jurisdiction vested in the NCLT in view of Section 430 of 2013 Act, is not ousted.

97. Mr. Shah has also distinguished the judgment in *Singer India Ltd.* (Supra) cited by the Plaintiffs in support of their contention that the Corporate Veil requires to be lifted in the present case. He has submitted that in that case there were FERA violations on the part of the Assignor and the Assignee Company and therefore, the Court ordered piercing of the Corporate Veil. Hence, the facts of that case are clearly distinguishable from the facts of this case.

98. Mr. Shah has also distinguished the judgment in *Satori Global & Anr. v. Shailja Krishna & Ors*³¹, cited by the Plaintiffs on the ground that the facts are clearly distinguishable from the facts of the present case. He has submitted that the decisions of the NCLAT cannot bind this Court in any event. Further, the view taken by the

³¹ Company Appeal (AT) No.379 of 2018.

Supreme Court in *Adesh Kaur* (Supra) and *Chalasan Udaya Shankar & Ors.* (Supra) considers the proposition advanced by the Plaintiffs and holds that even in matters of fraud, the jurisdiction is vested with the NCLT in view of Section 430 of the 2013 Act.

99. Mr. Shah has also distinguished the judgments cited by the Plaintiffs including **Meghmala** (Supra), on the ground that the judgments are the general observation by the Court as to what constitutes fraud and does not warrant any comment.

100. Mr. Shah has submitted that the judgments cited by the Plaintiffs in support of their contentions that the reliefs can be moulded including *Rajesh D. Darbar and Ors.* (Supra) is distinguishable on facts. It has been held that reliefs may be moulded by the Court in view of subsequent facts and events which make the original reliefs obsolete or unserviceable. However, this power has to be exercised with great caution. He has submitted that no case has been made out by the Plaintiffs compelling this Court to mould the reliefs from what was originally prayed. Further, no arguments have been advanced to show that the reliefs originally prayed by the Plaintiffs have become obsolete or unserviceable in the facts and

circumstances of the present case.

101. Mr. Shah has submitted that the judgment cited by the Plaintiff namely *Haldyn Glass Ltd. v. Saumyalata Shyama Shetty & Anr*³², is not applicable to the facts of the present case as there is already an injunction operating against the Defendants in favour of the Plaintiffs till date for the Sagar Kunj Flat. Further, no case that the properties are in danger of being waisted by the Defendants has been even pleaded or made out to seek appointment of the Receiver.

102. Mr. Shah has submitted that the judgments cited by the Defendants in *Hitesh Barulal Jain* (Supra) and *Parmanand Patel* (Supra) distinguishes the law cited by the Plaintiffs. Further, the judgment of *T. Krishnaswamy Chetty* (Supra) relied upon by the Plaintiffs favours the Defendants.

103. Mr. Shah has submitted that the case cited by the Plaintiff namely *Suzuki Parasrampuriah Suitings Pvt. Ltd.* (Supra) pertains to a Company Appeal wherein contradictory stands were taken by the parties. He has submitted that infact as urged by these Defendants, the Plaintiffs have taken several contradictory and

³² 2014 SCC OnLine Bom 1178.

mutually destructive pleas regarding their very basis and entitlement to the Harileela Property. Therefore, this decision infact goes against the Plaintiffs.

104. Mr. Shah has also distinguished the other judgments cited by the Plaintiffs on 3rd October, 2025 on the ground that these judgments run counter to well settled law laid down by the Supreme Court in *Shashi Prakash Khemka* (Supra), wherein the Supreme Court has held that in view of Section 430 of 2013 Act being widely worded, the jurisdiction of the Civil Court is barred. He has also submitted that the judgment cited by the Plaintiffs namely *Satori Global & Anr.* (Supra) has been overruled by the Supreme Court in Appeal viz. *Shailja Krishna* (Supra), which has been tendered by Defendant Nos.1A and 2. The Supreme Court has held that with respect of Company matters, the NCLT will have jurisdiction to try and entertain cases of fraud.

105. Mr. Shah has accordingly submitted that the present Notices of Motion require to be dismissed in view of non-maintainability as well as no case made out for grant of the reliefs as sought for by the Plaintiffs.

106. Mr. Aseem Naphade, learned Counsel appearing for the Defendant Nos.3 and 7 has submitted that there is no prima facie proof that Plaintiff No.2 was the shareholder in Panache. He has submitted that in any case this Court cannot rectify the register of members owing to the bar under Section 430 of the 2013 Act.

107. Mr. Naphade has submitted that the Plaintiffs in the present Suit have sought for a declaration that Plaintiff No.2 continues to be a shareholder of Panache holding 1000 shares i.e. 50% share in Panache since incorporation. He has submitted that Plaintiff No.2 and the deceased were shown as holding 1000 shares each in the MoA and AoA of Panache. However, the same does not establish the fact that Plaintiff No.2 followed and / or complied with the procedure for issuance of such shares.

108. Mr. Naphade has submitted that Section 13 of the 1956 Act provides for requirements with respect to Memorandum. Section 13(4) provides that in case of Companies having share capital, the Memorandum ought to state the amount of share capital and division of shares. Section 13(4) (c) provides that each subscriber of the Memorandum shall write opposite to his / her name the number of

shares he / she takes. Therefore, the MoA of Panache records Plaintiff No.2's name as a subscriber agreeing to subscribe to 1000 shares of Panache. However, the same does not establish and / or indicate that Plaintiff No.2 actually held and / or continues to hold 1000 shares in Panache.

109. Mr. Naphade has submitted that the purpose of the requirement under Section 13(4) (c) becomes clear from Section 36 of the 1956 Act. Section 36 provides for the effect of MoA and AoA. Section 36 (2) provides that the money payable by any member to the Company under the Memorandum shall be the debt due from him to the Company. Therefore, the same does not establish payment and actual vesting of shares but merely creates an obligation on the subscriber to pay the amount and / or consideration against the shares subscribed.

110. Mr. Naphade has submitted that it is settled law that the share certificate is a prima facie proof of title of shares. Section 84 of the 1956 Act provides that a share certificate bearing the seal of a Company and specifying the shares is a prima facie evidence of title of shares of a member. He has in this context placed reliance upon

the judgment of the Supreme Court in *Vasudev Ramchandra Shelat v. Pranal Jayanand Thakar & Ors*³³, at paragraph 13. The Supreme Court has held that share certificate is a prima facie evidence of title of shares as it presupposes transfer of shares. Therefore, in the absence of any share certificate and/or marketable and / or transferable document, Plaintiff No.2 cannot seek reliefs prayed for in the present Suit.

111. Mr. Naphade has then referred to Section 164 of the 1956 Act which provides that the register of members is prima facie evidence of the matters authorized to be inserted therein i.e. the entries of members of the Company and other details as mentioned in the said register. Section 164 attaches significant evidentiary value to the documents referred. Plaintiff No.2 has not produced the said register which could reflect the shares held by Plaintiff No.2. Therefore, in the absence of the necessary prima facie evidence as provided for in the Companies Act i.e. share certificate and the register of members, Plaintiff No.2 has failed to make out a case for grant of relief.

112. Mr. Naphade has submitted that the Plaintiff No.2 has

³³ (1974) 2 SCC 323.

not produced any other ancillary document establishing and/or indicating that Plaintiff No.2 is/was a shareholder in Panache. This would include receipt of return on the allotted shares (Section 75); receipt of dividends (Section 93); register of members (Section 150 read with Section 164); Statutory Report issued prior to Statutory Meetings (Section 165); Notices issued prior to Annual General Meeting (Section 166); Minutes of the Meeting showing participation in the affairs of Panache (Sections 183, 194 and 196) and receipt of copies of balance sheet and Auditors Report (Section 219).

113. Mr. Naphade has submitted that the Plaintiffs cannot claim that as Panache has not denied Plaintiff No.2's shareholding expressly, the same establishes title in her favour. He has submitted that it is settled law that the title cannot be created through estoppel as held by the Supreme Court in *Kamakshi Builders v. Ambedkar Education Society*³⁴ at paragraphs 23 and 24.

114. Mr. Naphade has submitted that Plaintiff No.2 has not produced any documents to establish title and the surrounding facts and circumstances negate the likelihood of issuance of shares to Plaintiff No.2. Moreover, even if it is to be assumed that the Plaintiff

³⁴ (2007) 12 SCC 27.

No.2 was the shareholder, the declaration that the Plaintiff No.2 continues to be a shareholder cannot be sought before this Court as the same falls in the jurisdiction of the NCLT as Section 59 provides for rectification of the register of members. Therefore, by virtue of Section 430 of the 2013 Act, this Court cannot grant reliefs sought for by the Plaintiffs.

115. Mr. Naphade has submitted that the challenge of the Plaintiffs to the appointment of Defendant No.3 cannot be adjudicated by this Court owing to Section 430 of the 2013 Act. He has supported the submissions of Mr. Shanay Shah in this context.

116. Mr. Naphade has submitted that the property of a Company does not belong to a shareholder and in this context has also supported the arguments of Mr. Shanay Shah on behalf of Defendant Nos.1A and 2.

117. Mr. Naphade has accordingly submitted that the present Notices of Motion ought to be dismissed on ground of maintainability of the Suit as well as on merits.

118. Mr. Nausher Kohli, learned Counsel appearing for the

Defendant Nos.4 to 6 has submitted that Defendant Nos.4 to 6 are complete outsiders to the present dispute, which is essentially a family dispute between the family members of the deceased Rajiv Samani. He has submitted that Defendant No.4 is a bonafide purchaser with full and adequate consideration of the Harileela Property. Defendant Nos.5 and 6 were the Directors of Defendant No.4 at the relevant time.

119. Mr. Kohli has submitted that the Harileela Property admittedly never belonged to the deceased Rajiv Samani and/or to any individual from the Samani family at any point in time and therefore, can never by any stretch of imagination be treated as part of the estate of the deceased Rajiv Samani. He has submitted that the Harileela Property admittedly always belonged to Panache which is a duly incorporated private limited company. The deceased Rajiv Samani was only a shareholder of Panache. It is settled law that a shareholder has no personal right of any nature whatsoever over the assets of a Company. He has placed reliance upon the judgments which have also been relied upon by Mr. Shanay Shah on behalf of Defendant Nos.1A and 2. This include *Bacha F. Guzdar* (Supra). He has further relied upon *Bharat Hari Singhania & Ors. v.*

Commissioner of Wealth Tax (Central) and Ors³⁵.

120. Mr. Kohli has drawn reference to the pleadings filed by Defendant Nos.4 to 6 detailing their stance in the matter which have also been relied upon by Mr. Shanay Shah. He has submitted that with a view to counter the false, frivolous and baseless allegations of undervaluation of the Harileela Property as alleged by the Plaintiffs, the Defendant Nos.4 to 6 have procured a Valuation Report of Dadbhawala Architects, Engineers and Valuers Pvt. Ltd. in respect of the Harileela Property at the time when it was purchased. The valuation report has been annexed at Exhibit 'D' to the Written Statement dated 30th November, 2015. He has submitted that the Valuation Report, after considering all the applicable facts and circumstances, including that there is an ongoing dispute in relation to the Harileela Property, has valued the premises at less than Rs.3 Crores, the consideration for which the Harileela Property was purchased by the Defendant Nos.4 to 6.

121. Mr. Kohli has submitted that looking at it from any parameter, the Defendant No.4 has by virtue of paying a sum of Rs.3 Crores, paid far in excess of the market value for the said premises.

³⁵ 1994 Supp (3) SCC 46.

Thus the allegation of undervaluation needs to be only stated to be rejected. He has submitted that the Plaintiffs have not put forth any evidence to counter the above and/or produce any documents to justify its baseless allegation of undervaluation of the said Property.

122. Mr. Kohli has submitted that prior to completion of the sale, the Defendant Nos. 4 to 6 undertook the necessary due diligence and took all necessary steps as are taken by a bonafide purchaser intending to purchase any property. He has submitted that Defendant No.4 undertook a title search prior to purchasing the said Harileela Property. The said search confirmed that Panache was the owner of the said Harileela Property. The title report dated 18th July, 2013 has been annexed at Exhibit A to both the Affidavit in Reply and Written Statement filed by Defendant Nos.4 to 6. He has submitted that Defendant No.4 even issued two public notices being public notice dated 5th August, 2013 in the Times of India (English Edition) and public notice dated 6th August, 2013 in the Navshakti (Marathi Newspaper), both of which have wide circulation in Mumbai. He has submitted that no objections were received from any party to the present proceedings and/or any third party to the said public notices.

123. Mr. Kohli has submitted that the Defendant Nos.4 to 6 have subsequently mortgaged the said Harileela Property vide a Deed of Mortgage dated 21st November, 2013 to one Fullerton India Private Limited. Since then, the facility procured under the said mortgage is being serviced by Defendant No.4.

124. Mr. Kohli has referred to injunction granted vide order dated 28th November, 2013 passed by this Court which has been relied upon by the Plaintiffs and which they submit continue in respect of the said Property. He has submitted that this would be required to be examined in the light of the fact that at the time when the said order was passed, the Defendant Nos.4 to 6 were not parties to the present proceedings. They were only added subsequently. The said Order injuncts the Defendants (who were then parties to the Suit) from creating any third party rights in respect of the said Harileela Property. He has submitted that in any case the Harileela Property was sold much before the passing of the said Order dated 28th November, 2013. A Deed of Apartment between Panache (as the Vendor) and Defendant No.4 (as the purchaser) was executed on 19th October, 2013.

125. Mr. Kohli has submitted that a perusal of the Order dated 29th April, 2015 passed in captioned Notice of Motion (L) No.924 of 2015 would show that all the parties to the present proceedings understood that the said order dated 28th November, 2013 would not apply as far as the present Defendants i.e. Defendant Nos. 4 to 6 are concerned. This is evident from the fact that this Order clearly records that “The remaining reliefs in regard to the immovable property known as Harileela House are not pressed at this stage.”. He has submitted that Defendant Nos.4 to 6 are simply putting the above facts on record to enable this Court to take a holistic view of the matter rather than the one sided picture that the Plaintiff has attempted to paint before it.

126. Mr. Kohli has submitted that the Plaintiffs have made an allegation that the Plaintiff No.1 vide a letter dated 12th September, 2013 addressed to the New Harileela CHS Ltd. put the Defendant Nos.4 to 6 to notice not to entertain any claim for sale of the said Harileela Property. The Plaintiffs have stated that Defendant No.6 was the Chairman of the said Society. He has submitted that this contention needs to be only stated to be rejected. Firstly it is settled law that a mere letter written by any person directing another person

to do an act cannot by itself operate as an injunction. In the present case, the Plaintiff No.1 (who claims to have an imaginary right in the said Property) purportedly wrote a letter to the New Harileela CHS directing them to not entertain any claim for sale of the said Harileela Property. He has submitted that the said letter has little value in the facts and circumstances of the case especially considering that firstly the Plaintiff No.1's predecessor (through whom he claims his imaginary rights to the said premises) had no right, title or interest in the said Harileela Property. Also the Plaintiff No.1 at the relevant time made no effort to approach this Court to secure any injunction in his favour. Secondly, the fact that Defendant No.6 was the Chairman of the New Harileela CHS at the time has no relevance whatsoever. The letter was addressed to New Harileela CHS of which Defendant No.6 was the then Chairman together with the other office bearers. Further, the said Harileela Property was purchased by Defendant No.4 which is a separate legal entity in law.

127. Mr. Kohli has submitted that in light of the settled legal position that the shareholder has no personal right, title and interest over the assets of a Company, the present Notices of Motion deserve to be dismissed as against Defendant Nos.4 to 6. The said Harileela

Property admittedly belonged to Panache which is a private limited Company and the deceased was a mere shareholder in the same. He has submitted that the deceased (through whom the Plaintiff No.1 claims) could never have had any right, title or interest in the said Harileela Property, and therefore, the same can never form a part of the estate of the deceased He has accordingly submitted that the Notices of Motion deserve to be dismissed as against Defendant Nos.4 to 6.

128. Having considered the submissions, the Plaintiffs have sought a declaration in the present Suit viz. Plaintiff No.2 claiming 50% share and Plaintiff No.1 claiming 90% of the remaining 50% share or as may be decided by this Court in the Harileela Property which has been shown at Sr.No. 1 of list of the properties stated to have belonged to the deceased Rajiv Samani at paragraph 7 of the Plaint. However, it is pertinent to note that the Harileela Property admittedly stood in the name of Defendant No.7 i.e. Panache. The Plaintiffs have not sought any declaration in the above Suit that the deceased was the owner of the Harileela Property.

129. The Plaintiff No.2 and the deceased got divorced on 6th

August, 1997. It is pertinent to note that the Divorce Decree dated 6th August, 1997 (annexed at Exhibit 'B' to Plaintiff) at Clause 6 reads as, "the parties hereby declares that both of them have mutually exchanged their respective ornaments, articles, clothes and things and therefore they have no claim against each other in that regard.". There is much merit in the contention of the Defendant No.1A and 2 that the Plaintiff No.2 has acted on the Divorce Decree dated 6th August, 1997 and that is the reason why from 6th August, 1997 till 11th October, 2013, (date of filing of the Plaintiff), the Plaintiff No.2 did not raise a single issue either in her capacity as a Director or as a shareholder of Panache. Further, this assumes significance since no person who was otherwise a Director/Shareholder would maintain radio silence for nearly 16 years before filing the present Suit in 2014.

130. Further, the Plaintiff filed by the Plaintiffs is replete with inconsistencies as it is pleaded therein that by virtue of being a shareholder, Plaintiff No.2 is entitled to a share in the assets of Panache including the Harileela Property.

131. The Plaintiff No.2 has claimed 50% share in Panache

solely on reliance placed on the Memorandum of Association (MoA) and Articles of Association (AoA) as it is reflected therein that Plaintiff No.2 holds 1000 shares and the deceased holds balance 1000 shares in Panache. It is on this premise that the Plaintiff No.2 has sought a declaration that she continues to be a shareholder of Panache, since incorporation. Out of the balance 50% shares stated to have been held by the deceased in Panache, 90% is claimed to be held by Plaintiff No.1 i.e. the son of the deceased after the demise of the deceased. However, the Plaintiffs have not produced any other ancillary documents issued by Panache to establish their claim to be the owners / shareholders of Panache.

132. Section 13 of the 1956 Act provides for requirements with respect to the MoA. Section 13(4) provides that in case of Companies having a share capital, the MoA ought to state the amount of share capital and division of shares. Further, Section 13(4) (c) provides that each subscriber of the MoA shall write opposite to his/her name the number of shares he/she takes. Accordingly, the MoA of Panache records the Plaintiff No.2's name as a subscriber agreeing to subscribe 1000 shares of Panache. This does not establish and/or indicate that Plaintiff No.2 actually held and/or continues to

hold 1000 shares in Panache. This would be made clear from Section 36 of the 1956 Act and in particular Section 36(2) which provides that the money payable by any member to the Company under the MoA shall be debt due from him to the Company. Therefore, the same does establish payment and actual vesting of shares but merely creates an obligation on the subscriber to pay the amount and/or consideration against the shares subscribed.

133. It is settled law that only a Share Certificate is the prima facie proof of the title of shares. This is borne out from Section 84 of the 1956 Act which provides that a Share Certificate bearing the seal of a Company and specifying the shares is prima facie evidence of title of shares of a member. The Supreme Court in ***Vasudev Ramchandra Shelat*** (supra) held that the Share Certificate is the prima facie evidence of title of a share as it presupposes transfer of shares. In the absence of a share certificate and / or marketable and / or transferrable documents in the present case, the Plaintiff No.2 cannot seek a relief viz. declaration that she is a 50% shareholder in Panache.

134. It is also pertinent to note that Section 164 of the 1956

Act provides that the register of members is a prima facie evidence of the matters authorized to be inserted therein. Absent the necessary prima facie evidence including the production of the register of members, Plaintiff No.2 has failed to make out a case for grant of reliefs.

135. Presuming that the Plaintiff No.2 and the deceased by virtue of their shareholding in Panache can claim that they had shares in the Harileela Property which belonged to Panache, this claim would be contrary to the settled law that a Company as a juristic entity is distinct from its shareholders and it is the Company that owns its assets, not the shareholders. This has been held by the Supreme Court in the landmark case of *Bacha F. Guzdar* (supra) and which has been followed by this Court in *Great Eastern Shipping Co. Ltd.* (supra), *Amratlal Bhanji Laxman* (Supra) and *Bharat Hari Singhania* (supra).

136. Further, Plaintiff No.2 by seeking a declaration that she continues to be shareholder, inspite of the register of members of Panache showing otherwise, is in effect seeking a rectification of the register of members. Section 59 of the 2013 Act deals with

rectification of a register. This cannot be sought before this Court, as the same falls within the exclusive jurisdiction of the NCLT, in view of the bar by virtue of Section 430 of the 2013 Act on a Civil Court granting reliefs which can only be granted by the NCLT.

137. Section 430 of the 2013 Act provides that 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. Further, 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.

138. It has been held by the Supreme Court in *Shashi Prakash Khemka (Supra)* that the effect of the aforesaid provision is that in matters in respect of which the power has been conferred on the NCLT, the jurisdiction of the Civil Court is completely barred. Further, the Supreme Court has held in the said judgment that relegating the parties to a Civil Suit would not be the appropriate remedy, especially

considering the manner in which Section 430 of 2013 Act is widely worded. In that case, in view of subsequent developments, the Supreme Court adopted the appropriate course of action viz. to relegate the Appellants to seek remedy before the NCLT under the 2013 Act. Further, in view of lapse of time, the Supreme Court permitted the Appellants to file a fresh Petition within a maximum period of two months from the date of the said order.

139. There would also be a bar to the Plaintiff's challenge to the appointment of Defendant No.3 as Director of Panache in view of Section 430 of the 2013 Act. Section 242(2)(h) of the 2013 Act, vests the Tribunal with the power to remove the Directors of a Company.

140. It has been the contention of the Plaintiffs that Section 430 of 2013 Act is not applicable in the present case, as the Plaintiffs have allegedly shown the fraudulent manner in which the shares of Plaintiff No.2 were illegally transferred as well as the fraud in the appointment of Defendant No.3 as a Director of Panache. It is the Plaintiffs' contention that the issues of fraud cannot be determined by the Tribunal / NCLT and would necessarily have to be determined by the Civil Court. They have distinguished the Judgment relied upon by

the Defendants viz. *Adesh Kaur (Supra)* where the Supreme Court had held that the Appellate Tribunal erred in relegating the Appellant to the Civil Court, emphasizing that the NCLT possesses jurisdiction under Section 59 of the 2013 Act, to rectify the register of members in case of fraud and forgery, even if the criminal complaint is pending. This on the ground that the Supreme Court had noted that such jurisdiction applies only when the issues of fraud are “open and shut cases of fraud” i.e. straight forward and undisputed. The Plaintiffs have contended on a demurrer, that if the Defendants are placing reliance on this Judgment, it is to be noted that they are impliedly accepting that this is an open and shut case of fraud, and so summary enquiry by the NCLT Court would be sufficient. This contention overlooks the fact that it is the Plaintiffs who have contended that the present case is an open and shut case of fraud and in view of which they have called upon this Court to *prima facie* determine the issue of fraud at the interim stage. The Supreme Court in *Adesh Kaur (Supra)* had considered that the jurisdiction of the NCLT is widely worded and held that even in matters of fraud, the jurisdiction is vested with the NCLT in view of the bar under Section 430 of the 2013 Act. This Judgment would apply in the present case, particularly in view of the contention of the Plaintiffs that the fraud

in the present case is apparent from the record.

141. The Plaintiffs have sought lifting of Corporate Veil in view of the alleged entire fraud played on the Plaintiffs which according to them has arisen after the demise of the deceased on 12th March, 2013. It is further contended that upto the demise of the deceased, Plaintiff No.2 and the deceased were each 50% shareholders and the only Directors of Panache. They have contended that the co-operate identity of Panache ought to be pierced, to ascertain the persons who are claiming to be acting for Panache, which in my view, is misconceived. In the present case, the issue whether the Plaintiff No.2 had a 50% shareholding and was a Director of Panache are issues which are required to be determined by the NCLT, particularly considering the bar under Section 430 of the 2013 Act. Further, this is not a case as in the case relied upon by the Plaintiffs viz. *Estate Officer, UT, Chandigarh* (Supra), where the Supreme Court had directed lifting of Corporate Veil as the Promoters of the company had failed to comply with the directions of the Court. Lifting of Corporate Veil is not as a matter of course but an exception.

142. In the present case, the Plaintiffs are seeking ownership

of the Harileela Property which admittedly belonged to Panache. Further, the other Judgments relied upon by the Plaintiffs in support of their contention that this Court ought to lift the Corporate Veil in order to determine the corporate identity of Panache and to ascertain the persons, who are claiming to be acting for Panache, are inapplicable and clearly distinguishable on facts.

143. I find merit in the submissions of Defendant Nos. 4 to 6 that Defendant No.4 is a bonafide purchaser with full and adequate consideration for the Harileela Property. The Defendant Nos. 4 to 6 have prima facie been able to establish that the Harileela Property which was purchased for a sum of Rs.3 Crores is in excess of the market value for the said property. This is borne out from the Valuation Reports which they have relied upon and which are annexed at Exhibit-D to their Written Statement dated 30th November, 2015. The Defendant Nos. 4 to 6 have also been able to prima facie establish that they had undertaken necessary due diligence and took all necessary steps as are taken by a bonafide purchaser intending to purchase the Harileela Property.

144. It is pertinent to note that Defendant Nos. 4 to 6 have

subsequently mortgaged the Harileela Property vide a Deed of Mortgage dated 21st November, 2013 to Fullerton India Private Limited. Since then, the facility procured under the said mortgage is being serviced by Defendant No.4.

145. The order of injunction dated 28th November, 2013 passed by this Court which the Plaintiffs have relied upon to contend that it operates in respect of the Harileela Property, is to be seen from the fact that when the said order was passed Defendant Nos. 4 to 6 were not parties to the proceedings. The Harileela Property was sold much before passing of the said Order dated 28th November, 2013. The Deed of Apartment between Panache (as the Vendor) and Defendant No.4 (as a Purchaser) was executed on 19th October, 2013 i.e. before the said order of injunction. This is also the understanding of the parties that the said Order dated 28th November, 2013 would not apply to Defendant Nos. 4 to 6 as borne out from the Order dated 29th April, 2015 passed in the captioned Notice of Motion (L) No.924 of 2015 wherein it is recorded that “The remaining reliefs in respect of the immovable property known as Harileela House are not pressed at this stage.”

146. The contention of Plaintiffs that Plaintiff No.1 had addressed communication dated 12th September, 2013 to new Harileela CHS putting them to notice, to not entertain any claim from sale of the said property, is required to be seen from the perspective that the communication had been issued to Defendant No.6 as a Chairman of new Harileela CHS. The said Harileela Property was purchased by Defendant No.4 and merely the fact that Defendant No.6 was a Director of Defendant No.4 cannot in my prima facie view come in the way of Defendant No.4, which is a separate legal entity, purchasing the said Harileela Property. Further, it is settled law that a mere communication addressed by any person directing another person to do an act cannot by itself operate as an injunction. The communication in the facts and circumstances of the case would have no value considering the prima facie view taken above viz. that Plaintiff No.1's predecessor viz. the deceased Rajiv Samani had no right, title or interest in the Harileela property as the Harileela Property belonged to Panache. Further, the Plaintiff No.1 who has addressed the communication at the relevant time had made no efforts to approach this Court to secure an injunction in his favour.

147. The contention of the Plaintiffs that in view of the

alleged acts of fraud, fabrication of resolutions, manipulation of shareholding, back-dating of statutory records, and unlawful alienation of Panache's sole immovable asset viz. Harileela Property, a Court Receiver is required to be appointed by this Court is in my view misconceived. Apart from these contentions, requiring to be examined by the Tribunal in view of the bar under Section 430 of the 2013 Act, there is prima facie no merit in these contentions which would warrant the appointment of a Court Receiver. This also applies to the Sagar Kunj Flat. The Plaintiffs have with respect thereof contended that in view of it lying vacant and unoccupied and not generating income, a Court Receiver is required to be appointed so that it can be monetised by the Court Receiver and the proceeds deposited in this Court. In the present case, there is no pleading in the Plaint for appointing a Court Receiver. In Paragraph 16(p) of the Plaint, the Plaintiffs have reserved their rights to adopt appropriate proceedings with regard to transfer of the Share Certificate and they have submitted that the Defendant No.1 be restrained from dealing exclusively with the said property and claiming to be the exclusive owner of the said property, in any manner whatsoever.

148. In *Akella Lalitha* (supra) it has been held that if reliefs

are not found in pleadings, the same cannot be granted. The Plaintiffs have not pleaded for appointment of a Court Receiver *qua* Sagar Kunj, and therefore the reliefs to the same cannot be granted. Further, when an injunction is granted and status-quo has been maintained, no relief can be granted to appoint a Court Receiver, especially when it is not even pleaded. This proposition has been accepted by the Supreme Court in *Hitesh Barulal Jain (Supra)*, relied upon by the Defendants. Thus, the Plaintiffs have failed to demonstrate any emergency, danger or loss demanding immediate action for appointment of a Court Receiver. Further, there is already an injunction operating against the Defendants in favour of the Plaintiff till date for the Sagar Kunj Flat. The Judgments relied upon by the Defendants viz. *Hitesh Barulal Jain (Supra)*; *Parmanand Patel (Supra)*; *T. Krishna Swamy Shetty (Supra)*; & *Sesa International Limited (Supra)* are apposite.

149. I do not find any merit in the attempt made by the Plaintiffs to distinguish the Judgments which have been relied upon by the Defendants, in particular with regard to the bar under Section 430 of 2013 Act as well as on the issue of lifting of Corporate Veil. The Judgments which have been cited by the Plaintiffs are

distinguishable on facts. In the present case, considering the reliefs sought for and which include rectification of the register and the removal of Defendant No.3 as a Director, these cannot be granted by a Civil Court in view of the bar under Section 430 of the 2013 Act and such bar is not excluded in the present case where the Plaintiffs have pleaded fraud and forgery and which according to them is an open and shut case of fraud.

150. Accordingly, I do not find merit in the captioned Notices of Motion and the relief sought for therein. The captioned Notices of Motion having no merit are dismissed. There shall be no orders as to costs.

[R.I. CHAGLA J.]