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

Reserved on: 18.12.2020
Pronounced on: 01.03 2021

\+ **RFA (OS) 41/2020 & CM APPL. Nos. 33692-33697/2020**

JAIVEER SINGH VIRK …Appellant

Through: Mr. Rajshekar Rao, Advocate.

Versus

SIR SOBHA SINGH & SONS PVT. LTD. & ORS. …Respondents

Through: Mr. Ritin Rai, Sr. Advocate with Mr. Aabhas Kshetrapal and Ms. Monika Phartyal for R-1. Mr. Anand Singh, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. The present appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 [*hereinafter referred to as the* '***CPC***'] arises from the Judgment and Decree dated 21.03.2020 passed in CS (OS) No. 226/2016 [*hereinafter referred to as the* '***Impugned Judgment***']. The learned Single Judge held, *inter alia*, that the suit is not maintainable before a civil court on account of lack of a specific plea of family settlement in the pleadings, with further reasoning that the issues raised were covered under the Companies Act, 2013, and thus the remedy, if any, too lay before the specialized tribunal constituted therein, being the National Company Law Tribunal [*hereinafter referred to as the* '***NCLT***'].

FACTS IN BRIEF:

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2. The facts of the case have been noted elaborately in the impugned judgment, and therefore, shorn of unnecessary details, we are noting the factual background only to the extent it is relevant for deciding the present appeal:

2.1 In 1945, a prominent builder and real estate developer in Delhi, (Late) Sir Sobha Singh, incorporated an eponymous, family-owned private company named Sir Sobha Singh & Sons Pvt. Ltd [*hereinafter referred to as, '**Respondent No. 1**'*]. All his family members and descendants were made shareholders, including the Appellant herein, and its Board of Directors have always been chosen from amongst them. Respondent No. 1 is engaged in real estate activities such as buying, selling and renting of properties, and has, *inter alia*, built Sujan Singh Park as Delhi's first housing complex, consisting of 84 residential flats. The land thereunder is also leased in the name of Respondent No. 1.

2.2 The Appellant herein claims that it was decided that both male and female descendants of Late Sir Sobha Singh, up to the fourth generation, will receive a flat each in Sujan Singh Park. To this effect, a seniority-wise list of 23 great grand-children was made, to whom an allotment would be made by Respondent No. 1 whenever a flat fell vacant. It is also claimed by the Appellant, and denied by Respondent No. 1, that the same was recorded by way of a family settlement, as well as a Board Resolution dated 21st July 1990 of Respondent No. 1. Such documents were not produced before the Court. Nevertheless, this practice was being followed, and 17 grandchildren were allotted flats by way of seniority. The Appellant (being a 4th generation descendant) stood at number 18 in the list.

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2.3 Despite being next in line, the Appellant claims he was overlooked and the next vacant flat was allotted in 2014 to one Rahul Singh *[hereinafter referred to as,* ***'Respondent No. 2'****]* who was below the Appellant in the list. Thereafter, when another flat became vacant, Respondent No. 1, instead of allotting the flat to the Appellant, resolved to sell it.

2.4 Aggrieved by the actions of Respondent No. 1, the Appellant approached this Court in CS (OS) No. 226/2016, claiming a right to preferential allotment of flat on the basis of Board Resolution dated 21st July 1990. On the strength of his right arising out of said Board Resolution, he prayed seeking possession of flat, mandatory injunction to Respondent No. 1 to allot said flat, and cancellation of allotment made out-of-turn, as well as damages (being notional rent that could have been accumulated from timely allotment of flat).

IMPUGNED JUDGMENT:

3. Notice was issued in the suit on 10th May 2016. Later, *vide* Order dated 8th August, 2018, issues were framed and parties were relegated to lead evidence in trial. On 27th September, 2019, during the hearing, issue of maintainability of the suit came up for consideration and arguments were heard on the same. Thereafter, the learned Single Judge, *vide* the Impugned Judgment, dismissed the suit for reasons summarised as follows:

3.1. The plea of breach of a family settlement was not taken up by the Plaintiff in the plaint. The learned Single Judge noted that this ground was an ingenious concoction of the arguing counsel, first presented during oral arguments itself. Moreover, no such settlement was brought on record by either party. If indeed a family settlement was to be relied upon, the remedy for breach of the same lay in filing

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an action for specific performance, whereas the Plaintiff/ Appellant in the prayer to the suit had sought mandatory injunction instead. It was held by the learned Single Judge that if a relief of injunction can be obtained by any other usual mode of proceeding, then Section 41(h) of the Specific Relief Act, 1963 debars granting of any injunction. On this basis, the learned Single Judge rejected the claim of the Plaintiff/Appellant seeking implementation of family settlement. In this regard, it was opined that the Plaintiff's reliance on the case of ***Deepa Anant Bandekar v. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd.***, (1990 SCC OnLine Bom 435: (1992) 74 Comp Cas 42) [*hereinafter referred to as, '**Deepa Anant-1990**' case*] was misplaced, as the said case was not confirmed in appeal, as per the subsequent decision in ***Deepa Anant Bandekar v. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd.***, (1994 SCC OnLine Bom 602:(1994) 80 Comp Cas 491) [*hereinafter referred to as, '**Deepa Anant-1994**' case*].

3.2. The Defendant/Respondent No. 1 raised doubts as to whether the Plaintiff/Appellant has a legally enforceable right in approaching the civil courts for remedy. In this regard, it was observed that an action by a shareholder against a Company falls squarely within the powers of the NCLT, and in light of Section 430 of the Companies Act 2013, the civil courts are barred from exercising jurisdiction in relation thereto. Noting that the Plaintiff/Appellant's father as well as other (minority) shareholders had already approached the NCLT, on the same facts as in the present case, pleading their own oppression and the mismanagement in the hands of Respondent No. 1, it was held that the Plaintiff/Appellant is barred from making the argument that he is not qualified by shares to approach the NCLT.

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3.3. In the four years since the institution of the suit, the Board Resolution dated 21st July 1990, which reduced in writing the purported family settlement of the parties, was not produced before the Court by either party. In fact, no evidence to this effect had been placed on record, despite Respondent No. 1 vehemently denying the existence of such a resolution. Even if the Board Resolution was proved and confirmed by the Respondent No. 1, any Company, under law, is fully permitted to change its decisions regarding its own assets and properties, and thus cannot be made to be bound by an old Board Resolution, if any. It was observed that notwithstanding the existence of the Board Resolution, the only remedy available with the Plaintiff/Appellant, would be to claim oppression and mismanagement of the affairs of Respondent No. 1.

3.4. The Company is a separate legal entity distinct from its shareholders. Any agreement arrived at between the shareholders and/or directors of a company with respect to management of the affairs of the company, without being incorporated in the Articles of Association, is not enforceable against the said Company. In this regard, reliance was placed upon ***V.B. Rangaraj v. V.B. Gopalakrishnan***, (1992) 1 SCC 160, ***Vodafone International Holdings BV v. Union of India***, (2012) 6 SCC 613, ***World Phone India Pvt. Ltd. v. WPI Group Inc. USA***, (2013) SCC OnLine Del 1098 and ***HTA Employees Union v. Hindustan Thompson Associates Ltd.***, 2013 SCC OnLine Del 3000.

3.5. No case was made out by the Appellants for piercing the corporate veil, as no foundation for the same was set out in the pleadings. Moreover, maintainability of a suit cannot be justified by arguing outside the pleaded case. The piercing of the corporate veil is not a rule but an exception which is undertaken in specified circumstances

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such as, *inter alia* fraud, misrepresentation and diversion of funds, by making specific pleading to that effect. In this regard, reliance was placed upon ***Singer India Ltd v. Chander Mohan Chand***, (2004) 7 SCC 1; ***Elof Hansson (I) Pvt. Ltd. v. Shree Acids & Chemicals Ltd.***, 2012 SCC OnLine Del 572 (DB); ***Saga Lifestyle Pvt. Ltd. v. Bang & Olufsen A/S,*** 2019 SCC OnLine Del 8412; ***Anirban Roy v. Ram Kishan Gupta***, MANU/DE/3524/2017; ***VK Uppal v. Akshay International,*** 2010 SCC OnLine Del 538; ***R.K. Chaddha v. State of U.P.***, 2014 SCC OnLine All 6248 (DB); ***M. V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd.***, 2001 SCC OnLine Bom 1019 (DB); ***Binatone Computers Pvt. Ltd. v. Setech Electronic Ltd.***, 2009 SCC OnLine Del 2522; ***Kimiya Shipping Inc. Vs. M. V. Western Light***, 2014 SCC OnLine Bom 257, and ***Gopi Vallabh Solutions Pvt. Ltd. Vs. State of West Bengal***, 2018 SCC OnLine Cal 9035.

3.6. The arguments advanced by the Plaintiff under Contract Law were found to be without merit. The Plaintiff/Appellant sought to plead the implementation of partial-acceptance of offer made to him by the Respondent No. 1 by e-mail. It was held that the plea that an offer was accepted in part (and right given to the acceptor, to challenge the other part of the offer) is wholly against the tenets of Section 7 of the Indian Contract Act, 1972.

APPELLANT'S GROUNDS OF CHALLENGE:

4. Mr. Rajshekar Rao, learned counsel for the Appellant argued that the impugned judgment is unsustainable in law as well as on the facts of the present case in as much as it proceeds on the basis of various factual errors

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which are contrary to the record and appear to have permeated the judgement and influenced its final outcome. Mr. Rao's submissions are summarised as follows:

4.1. Ignoring various triable issues raised and framed in the suit, the impugned judgment erroneously dismisses Appellant's suit under Order XII Rule 6 of the CPC. The impugned judgment has been passed on the presumption of absence of pleading of family settlement in the plaint, and that the counsel for Appellant had tried to set-up a new plea; whereas, from the bare perusal of the plaint, it is abundantly clear that the case of the Appellant was premised upon family arrangement which was arrived at, in order to resolve disputes amongst family members who are shareholders of Respondent No. 1 Company. Pleas of family settlement have specifically been taken in paras 8-11 of the plaint.

4.2. The observation to the effect that there was no enforceable right vested in the Appellant, is erroneous. In fact, the right of the Appellant stemmed from a family arrangement, implementation whereof was duly admitted by the Respondents themselves. Therefore, observation of the learned Single Judge *qua* the non-existing right of the Appellant is wrong and contrary to the pleadings of the parties. The learned Single Judge failed to appreciate that in cases where a company is family-owned and incorporated for the benefit of family members, any family settlement/arrangement arrived at amongst the members of the company, binds the company. Its binding nature was clearly discernible from the conduct of Respondent No. 1 as they had allotted flats in pursuance of the aforesaid family arrangement which was allegedly reduced in writing in terms of the Board Resolution dated 21st July, 1990.

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4.3. The holding of learned Single Judge that the remedy of the Appellant is before the NCLT is wrong, as admittedly the case of Appellant was not of simply oppression and mismanagement but enforcement of family arrangement amongst the parties to the suit who are unquestionably, family members.

4.4. The initiation of oppression and mismanagement *[hereinafter referred to as,* ***'O&M']*** proceedings by the Appellant's father against the Respondent No. 1 before the NCLT is an immaterial factor in non-suiting the Appellant. The aforesaid fact was not suppressed by the Appellant, and it has been incorrectly recorded in the impugned judgment. Without prejudice to the stand of the Appellant regarding family arrangement, it was submitted that the Appellant was completely unaware of the initiation of the said proceedings. In fact, no such fact was pleaded by the Respondents in their written statement, yet, the learned Single Judge without considering this aspect, wrongly held that the Appellant had suppressed material fact. The learned Single Judge further failed to consider that the rights of the Appellant, being an independent shareholder, can in no manner be scuttled, owing to the fact that his father had pursued a remedy before the NCLT. It was emphasised that the Appellant was not a party to the said proceedings. Furthermore, the controversy pending therein do not pertain to the reliefs sought by the Appellant in the present instance, as it only pertains to oppression and mismanagement by majority shareholders. The Learned Single Judge further failed to take into consideration that the suit of the Appellant was filed on 09.05.2016, and whereas the petition for O&M was filed by Appellant's father in his independent right on 20.05.2017. The NCLT doesn't wield jurisdiction to grant relief as was sought in the

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suit i.e. the allotment of flats in terms of family settlement. Therefore, the dislodgment of the Appellant's suit on account of pendency of proceedings before learned NCLT is completely unjustified and per-se illegal.

4.5. The observations of the learned Single Judge to the effect that foundation for lifting of corporate veil was not laid in the plaint is incorrect. Clearly, the Appellant had pleaded necessity of lifting of corporate veil especially since his case hinged unto the existence of family arrangement amongst shareholders/family members and due implementation of the said family arrangement by the shareholders / family members. The finding of the learned Single Judge that the Appellant as on date is not even a shareholder of Respondent No. 1 Company is clearly wrong because the Appellant has specifically pleaded in his plaint at para 1 that he has 5 shares bearing numbers 3120 to 3124 issued on 13th August 1985. This factual averment has been admitted by Respondent No. 1.

4.6. The reliance placed by the learned Single Judge on the judgment in ***Deepa Anant-1994*** case *(supra)* is wholly incorrect. The Appellant had referred to the ***Deepa Anant-1990*** case *(supra)* to contend that, a Company is bound by a family settlement involving its shareholders. The company cannot be allowed to take refuge in the claim that it is not a party to the family settlement when it had taken benefit of the agreement.

4.7. The learned Single Judge ignored the triable issues framed by the Court in pronouncing a summary dismissal and wrongly relied upon the principles of Order XII, Rule 6 of the CPC, despite their being no admission by the Appellant to warrant such dismissal.

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4.8. The learned Single Judge has ignored the fact that the Family Arrangement was in line with Articles of Association and in consonance with objects of the Memorandum of Association of Respondent No.1.

4.9. The learned Single Judge also unjustifiably imposed cost upon the Appellant, which, as aforesaid, per the facts of the present case was unwarranted. Consequently, the impugned judgment is liable to be set-aside.

ANALYSIS:

A. WHETHER A PLEA OF FAMILY SETTLEMENT WAS MADE IN THE SUIT?

5. The learned Single Judge has held the suit to be not maintainable. This finding is premised on the lack of a specific plea of family settlement in the plaint. After careful examination of the pleadings in the suit, the learned Single Judge concluded that the suit is not founded on the purported existence or violation of any family settlement. The Appellant controverts this finding by contending that the tone and tenor of the suit indicates to the contrary, and that the learned Single Judge ignored the averments and documents placed on record. In particular, attention was invited to paras 8-11 of the plaint, which according to the counsel, refers to a family settlement. Paras 8-11 of the plaint read as under:

> *"8. That as the family members of Sir Shobha Singh had held the shares in the Company, therefore, in order to extend benefit to the shareholders of the Defendant Company, it was decided that the property viz. flats of the Defendant. Company at Sujjan Singh Park were to be allotted, to the family members and shareholders of the Defendant Company in lieu of shares held by them in Defendant Company.*

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9. That as the family expanded, allocation of flats became an issue, and in order to resolve this and in order to settle the family disputes, ***an understanding was arrived at amongst the family members/*** *descendants of Sir Shobha Singh to all the properties will be allotted to the members/descendants up to the fourth generation. A Board Resolution dated 21.07.1990 recording the aforesaid agreement was passed by the Board of Directors of the Defendant Company, which named all descendants of Shobha Singh up to the fourth generation, wherein each member of the family, either boy or girl, were entitled to a flat. Accordingly, a family tree was built in order to decide the entitlement. Whenever a flat fell vacant, the topmost on the waiting list was allotted flat. As such there was no bad blood and this system of allocating flats in a predetermined manner prevented family squabbles.*

10. The Board Resolution on flat allotment is absolutely water-tight to avoid any family squabbles and conflicts. As per the resolution the person on the seniority has to accept the first flat that becomes vacant, irrespective of its size or its location.

11. That the aforesaid Board Resolution dated 21.07.1990 as well as its implementation would also reveal that the Defendant Company is a family owned Company and once the corporate veil is lifted the whole situation will become crystal clear: Admittedly, all the shares of the Defendant Company are being held by family members and all the directors in the Defendant Company are family members only."

(emphasis supplied)

6. In our opinion, the Appellant's contention is misplaced. In the suit, several reliefs were sought, as follows:

(a) *"Pass a decree of declaration thereby declaring that the Plaintiff is entitled to be allotted Flat No. B-15 in the B-Block Apartments, Sujan Singh Park, New Delhi* ***in terms of resolution dated 21.07.1990*** *and accordingly put the Plaintiff. Into possession thereby directing Defendant No. 2 to hand over and deliver the vacant and peaceful possession of the Flat No. B-15 to the Plaintiff, or in the alternate pass a decree of mandatory injunction against the Defendant No. 1 directing Defendant No.1 to allot the Plaintiff flat No. D-38, D-Block Apartments, Sujan Singh Park, New Delhi* ***in terms of resolution dated 21.07.1990*** *directing Defendant No. 1 to put Plaintiff in possession of flat No. D-38, D-Block Apartments, Sujan Singh Park, New Delhi as allotted to the Plaintiff and to execute and register all the necessary documents, or to allot any similar flat in the same location with the same*

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specifications in favor of the Plaintiff and to execute all necessary documents in this regard.

(b) *Pass a decree of cancellation thereby cancelling the allotment of Flat No. B-15, in the B-Block Apartments, Sujan Singh Park, New Delhi allotted to Defendant No. 2* ***being in violation to the resolution dated 21.07.1990*** *is illegal, null and void.*

(c) *Pass a decree for permanent injunction restraining Defendants permanently from creating any third party right, leasing, renting, sub-letting, alienating or allotting any flat in favour of any third party or any person appearing in the list as prepared* ***pursuant to the resolution dated 21.07.1990*** *in the Apartment at Sujan Singh Park, New Delhi.*

(d) *Pass a decree for permanent injunction/ restraining Defendant No. 2, its agent, servants, nominee, assignee, licencee permanently from creating any third party right, leasing, renting, sub-letting, alienating flat No. D38, D-Block Apartments, Sujan Singh Park, New Delhi.*

(e) to (h) *XX … XX … XX"*

(emphasis supplied)

7. The afore-noted prayers lay out the gamut of the suit, which when read with the entire pleadings, demonstrate that the case of the Appellant for seeking declaration or alternatively, mandatory injunction, and the other reliefs is entirely founded on the Board Resolution dated 21.07.1990 of the Respondent No. 1. The suit was thus, in essence, an action for seeking enforcement of the right, if any, under the purported Board Resolution and nothing more. The Appellant has attempted to give the suit a different shade, by contending that an "understanding" was arrived at amongst the family members/descendants of Sir Shobha Singh which formed the basis of the suit. The paragraphs of the plaint which are relied upon by the Appellant to support this hypothesis, do not show any such correlation on being juxtaposed with the reliefs listed above. The pleadings in reference to the "understanding" are unspecific, vague, and at best make a passing reference to an informal consensus or agreement, without giving any cogent details of such purported settlement. Further, and concededly, the Appellant has not

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arrayed the participants of such a family settlement as parties to the suit. As pointed out by the learned Single Judge, the Appellant has also not sought specific performance of the alleged family settlement. During the arguments in the suit, when confronted with the bar of maintainability of a suit for implementation of a Board Resolution of a corporate entity, Appellant's counsel conveniently changed the course of his submissions and attempted to build the case on the plea of family settlement. In this backdrop, due to the lack of foundational pleadings for such an argument, the learned Single Judge was constrained to make the comment about the 'ingenuity' of the arguments put forth by the counsel for the Appellant.

8. Mr. Rao fervently contends that the basic tenets of the family settlement are set up in the suit and can also be gathered from a holistic reading of the suit. He submits that Appellant should be afforded an opportunity to build up his case by allowing the suit to proceed for trial. However, in our opinion, this prayer would be wholly unsustainable in law. The incomprehensible and indiscernible stance made in the pleadings, to our mind, is not sufficient to allow the matter to proceed for trial. The law on pleadings is well-settled. Order VI Rule 2 of the CPC requires that the pleadings should contain a statement in a concise form of material facts which the party relies upon for pleading his case or defence. The material facts are those which must be proved in order to establish Plaintiff/Appellant's right to the relief sought for in the plaint, or the Respondent No. 1's defence in the written statement. The narration of material facts is essential to disclose the complete cause of action. It needs no emphasis to say that a case can only be decided on the particulars laid out in the pleadings, and a relief not founded thereon, cannot be granted. Parties cannot travel beyond the pleadings and necessary material facts must be stated in support of the case set-up. There can be no departure from them in

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evidence. In our opinion, the Appellant has not narrated any material facts in relation to the family settlement. In absence of pleadings, evidence cannot be permitted to be adduced. We cannot see any accidental slip or omission on the part of the Appellant in drafting the suit, deserving laxity. The suit has been drafted with serious thought and is intentionally vague on the plea of family settlement. Therefore, having regard to the frame-work of the suit, even if we were to give liberal construction to the pleadings, law does not permit the Appellant to supplement the deficiency and omission in the pleadings, by producing evidence, for which trial is being requested. We find no reason to upturn the finding of learned Single Judge on this score.

B. WHETHER THE BOARD RESOLUTION CONSTITUTED A FAMILY SETTLEMENT/ ARRANGEMENT AND APPELLANT AS A SHAREHOLDER CAN SEEK ITS ENFORCEMENT AGAINST RESPONDENT NO.1 IN A CIVIL SUIT?

9. The next question that falls for consideration is *viz.* the maintainability of the suit, as framed for enforcing the right of a shareholder under the Board Resolution dated 21st July 1990. On this aspect, firstly we will briefly touch upon the existence of the purported Board Resolution. Although, the Appellant-Plaintiff had filed a copy of a list dated 21.07.1990, along with the plaint, however it is highly misconceived and specious argument that the same should be construed as a Board Resolution. In our view, the non-production of the document, which according to the Appellant is vital for determining the rights of the parties, is intriguing and peculiar. In the wake of denial of the purported Board Resolution by Respondent No.1, and the failure of the Appellant to place the said document on record, the learned Single Judge deliberated on this issue and adversely comment upon the non-existence of the said document. Interestingly, Respondent No. 1 filed it's

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version of the Board Resolution dated 21st July 1990, along with the Written Statement. However, the contents of the said document do not correspond with the description supplied by the Appellant, as it is completely silent on the aspect of any family arrangement whatsoever. Moreover, the said document does not convey the understanding that the Appellant is seeking to depict. Rather, it portrays an altogether different version and makes no mention of any of allotment of flats to the shareholders/ family members. These findings and observations non-suit the Appellant, since the existence of the foundational document is highly doubtful. Be that as it may, since the learned Single Judge has adjudicated the contentions of the Appellant on demurrer, assuming that the existence of the aforesaid resolution, we are also proceeding on that presumption and testing the merit of Appellant's contention.

10. Mr. Rao makes a nuanced submission by contending that a family arrangement can be binding on a company and that the NCLT does not wield jurisdiction to grant the relief as sought for in the Appellant's suit, i.e. allotment of flats in terms of family settlement/ arrangement. In this vein it is contended that the family settlement/ arrangement is visible from the conduct of Respondent No.1.

11. In our opinion, this argument does not help the case of the Appellant, as the proposition is hinged on the existence of a family settlement, which, as discussed above, is not satisfactorily made out in the pleadings. On this issue, the learned Single Judge rightly concluded that even if some steps are taken in furtherance of an *inter-se* understanding borne out of the actions of Respondents, it would not result in any enforceable right in favour of the Appellant. We, therefore, have no hesitation to say that the suit, as framed, is not premised on the plea of family settlement and remains as one seeking

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some perceived right stated to be flowing from the tenor of a purported Board Resolution.

12. The next question is- what is the nature of Appellant's right and whether such a right is enforceable under law? The Appellant asserts that he is a shareholder of Respondent No. 1, which is a corporate entity, incorporated in the year 1945 under the erstwhile Companies Act, 1913. This perceived right as a shareholder is asserted on the basis of a Board Resolution. Let's first understand the purport of a Board Resolution under company law. The management of the company, which comprises of the board of directors selected by the shareholders, takes decisions by passing resolutions, which are formalized as 'Board Resolutions'. A Board Resolution serves as a formal and accurate record of the important decisions taken by the Board of Directors of a Company. The learned Single Judge is correct in observing that the Company can, from time to time, change its decisions, subject to the same being in accordance with the law. If Respondent No.1 is indeed in breach of such a decision, the Appellant as an aggrieved shareholder is to raise the issue before the appropriate forum. To look for a remedial jurisdiction, firstly we must discern the right sought to be pressed by the Appellant as a shareholder. Although the Appellant would like to consider this right to be of a 'future allottee in the Family Agreement' and also as one recorded through the Board Resolution, but we cannot accede to this proposition. In our opinion, the right, if any, preserved under the alleged Board Resolution, falls within the domain of management of the affairs of Respondent No. 1. This right of Appellant as a shareholder relates to a management issue. This cannot be enforceable before a Civil Court. The dispute will have to be agitated before the appropriate forum which has the jurisdiction to deal with issues relating to the disputes of the shareholders relating to management of a company, namely the erstwhile Company Law

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Board under the Companies Act, 1956 and now the NCLT under the Companies Act, 2013.

13. It has also been argued that Section 430 of the Companies Act, 2013 was notified on 1st June, 2016, and whereas Appellant's suit was instituted on 9th May, 2016 and hence the aforesaid provision would have no applicability to the present case. We are conscious of the fact that under the Companies Act, 1956 there was no provision like Section 430 providing for ouster of jurisdiction, however, there cannot be any dispute that as on this day, the civil remedy would be completely ousted under Section 430 of the Companies Act, 2013. Relegating the parties to continue with the civil suit would thus not be appropriate remedy, considering the manner in which Section 430 of the Act is couched and the appropriate course for the Appellant would be to avail its remedy before the NCLT. Further even if one were to examine the issue is the context of Companies Act, 1956, there is sufficient case law that holds that the jurisdiction of the Civil Court in matters relating purely to issues pertaining the management of the company can not be gone into any civil suit. Here it also becomes relevant that since the father of the Appellant was pursuing a remedy before the NCLT, the appropriate course of action for the Appellant is to approach the said forum. We therefore, do not find any error in the reasoning of the learned Single Judge on this count, as well.

14. We also do not find merit in the submission of the Appellant that the Board Resolution was in line with the Article/ Memorandum of Company. This contention is advanced merely on the basis of the pleadings without placing any material on record and thus the observations made by the learned Single cannot be faulted with.

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C. WHETHER RELIANCE PLACED ON DEEPA ANANT-1990 CASE BY THE APPELLANT WAS CORRECT?

15. Appellant has argued that the learned Single Judge has misconstrued the proposition for which ***Deepa Anant*-1990** *case* was relied upon and has instead erroneously relied upon the ***Deepa Anant*-1994** *case* to reject and discard the Appellant's reliance. According to Appellant, ***Deepa Anant-1990*** *case* was cited to support the proposition that family arrangement can be binding on a company. Since we have already held that there is no family settlement on record, the proposition advanced by the Appellant is misconceived. We have also perused the aforenoted two decisions of the Bombay High Court. The ***Deepa Anant*-1990** *case*, in para 1 notes the proposition as "*whether the family arrangement dated March 11, 1987 is binding on the company*", however, the reasoning given in para 23 has not dealt with the same. Moreover, subsequently the 1990 decision was set-aside, but the Appellant did not bring the said fact to the notice of the court. Thus, the learned Single Judge was correct in noting that the ***Deepa Anant*-1990** *case* relied upon by the counsel for the Appellant, was later set aside in terms of a compromise arrived at by the parties, and the company is still existing till date. For these reasons, we do not find any merit in this contention of the Appellant, urged before us.

D. WHETHER RESPONDENT NO. 1 MADE ANY ADMISSION IN ITS WRITTEN STATEMENT FILED IN THE SUIT, AND WHETHER THE LEARNED SINGLE JUDGE WAS CORRECT IN EXERCISING JURISDICTION UNDER ORDER XII RULE 12 CPC?

16. The so-called admissions of Respondent No. 1 are strongly relied upon by the Appellant, to impugn the reasoning of the learned Single Judge,

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but do nothing to advance their cause. Firstly, we cannot read any such admissions in the written statement. Secondly, the written statement is only in response to the plaint which does not divulge any material fact relating to the family settlement and the admissions have no impact on the analysis given in the impugned judgment. We also do not agree with Mr. Rao that the exercise of jurisdiction by the learned Single Judge under Order XXII Rule 6 of CPC was not warranted. The jurisprudence relating to the exercise of power under Order XXII Rule 6 of CPC is now well established. Under the said provision the Court may, on its own, deliver judgment based on admissions either in the pleadings or otherwise. The said provision is to be interpreted widely having regard to its objective and the Court is thus not precluded to examine the question of maintainability of a suit at a stage after the issues have been framed. Indisputably, this aspect had not been examined at any anterior stage, and therefore we cannot find any error in the approach of the learned Single Judge in delving into this question and exercising jurisdiction under Order 12 Rule 6 of CPC.

E. OTHER GROUNDS URGED BY APPELLANT FOR IMPUGNING THE JUDGMENT

17. The Appellant had contended that the learned Single Judge erroneously held that the Appellant herein had failed to even establish that he was an independent shareholder in the Respondent No.1 and proceeded to rule adversely on this basis. To our minds, there is little doubt regarding the factum of shareholding of the Appellant in the Respondent Company, without which, a case for the Appellant's right *vis-à-vis* the Company could not have *prima facie* not arisen. The learned Single Judge has proceeded in the matter with the presumption of shareholding, and thus this, debate is wholly immaterial.

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HOLDING:

18. In view of the foregoing reasons, we do not find any infirmity in the impugned judgment. Accordingly, the appeal is dismissed, with the only modification that the cost imposed by the learned Single Judge is reduced to Rs. 50,000/-. The pending applications are also disposed of.

SANJEEV NARULA, J

MANMOHAN, J

MARCH 01, 2021
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