Karnataka High Court Suresh Kumar Manchanda vs Prakash Roadlines Ltd. And Others on 8 March, 1994 Equivalent citations: 1996 87 CompCas 102 Kar, 1994 (4) KarLJ 393 Author: T S Thakur Bench: S Majmudar, T S Thakur JUDGMENT Tirath Singh Thakur, J. 1. This appeal directed against the order dated March 1, 1991, passed by the learned company judge whereby Company Petition No. 87 of 1990 under section 155 of the Companies Act, 1956, seeking rectification of the register of member of the first respondent has been dismissed. Before proceeding any further, it is necessary to briefly state a few facts relevant to the disposal of this appeal. 2. The respondent-company was incorporated under the Indian Companies Act, on June 26, 1961. It became a deemed public company with effect from June 15, 1988, and is engaged in the business of carriage and distribution of merchandise in India and elsewhere by motor trucks, etc. 3. The company has an authorised share capital of Rs. 50 lakhs divided into 50,000 equity shares of Rs. 100 each. Out of the total authorised capital a sum of Rs. 30 lakhs has been subscribed and fully paid. Appellants No. 1 on whose behalf this appeal has already been dismissed as withdrawn was holding 1,500 equity shares of Rs. 100 each whereas appellant No. 2 on whose behalf alone the present appeal survives holds 783 equity shares. 4. It appears that by a resolution passed by the board of directors of the company on March 31, 1990, the board resolved to permit the following transfers of shares inter se the existing members.

Sl. No.	No. of Shares	Transferor	Transferee
1.	1,318	Manchanda Suraj Prakash Chanandas (HUF) (respondent No.6)	Vijay Kumar Narang (respondent No. 3)
2.	175	Suraj Prakash Manchanda (respondent No.2)	Rajan Kumar Manchanda (respondent No. 4)
3.	1,628	Suraj Prakash Manchanda (respondent No.2)	Rajan Kumar Manchanda (respondent No. 4)
4.	907	Shanthilal Narang (respondent No. 5)	Vijay Kumar Narang (respondent No. 3)

Subsequently, on April 4, 1990, an extraordinary general meeting of the company was held in which the then managing director of the company, Shri S.P. Manchanda, respondent No. 6, herein, was removed. The respondents, it is not disputed, participated in the said extraordinary general meeting as transferees of the shares which now form the subject-matter of the controversy between the parties and exercised their voting rights in respect of the same. 5. On April

14, 1990, the board of directors confirmed the minutes of the previous board meeting held on March 31, 1990. Nearly five months later, and annual general meeting of the company was held on September 17, 1990, in which again the transferees of the disputed shares participated on the strength of the transfer of shares in question in their favour. 6. A petition under section 155 of the Companies Act was, thereafter, filed before the company judge on September 19, 1990, by the petitioners, appellants herein contending that the transfer of 1,318 shares from respondent No. 6 to respondent No. 3 was bad on account of the same being in violation of article 7 of the articles of association of the company. It was also contended that the transfer of the remaining shares, namely, 175 and 1,628 shares transferred in favour of respondent No. 4 and 907 shares transferred in favour of respondent No. 3 was illegal being in violation of the mandatory provisions of sections 108 and 108(1A) of the Companies Act. It was urged that the share transfer forms utilised for effecting the transfers in question were stale being more than two months old from the date of their presentation. It was in terms contended that the transfers based on any such share transfer forms were non est in the eye of law and, therefore, the addition of the names of the transferee in the register of members was illegal and without sufficient cause. The petitioners accordingly prayed for a direction to respondent No. 1 to rectify the register of members by annulling the transfers registered pursuant to resolution of the board of directors of the company dated March 31, 1990. A further direction asking the respondents to follow the procedure prescribed by article 7 of the articles of association of the company was also prayed for in so far as the transfer of 1,318 equity shares of respondent No. 6 were concerned. 7. In the reply filed by respondents Nos. 2 to 6 before the learned company judge, a number of defences were set up. The petition was however, primarily opposed on the ground that the petitioners had waived their rights of raising any objection by reason of their having acquiesced in the transfer of the shares in question, in the meeting held on March 31, 1990, in which both the petitioners were present as special invitees as also in the next board meeting dated April 14, 1990, where the said petitioners were present and participating as members of the board of directors. It was also urged that the failure on the part of the petitioners to raise any objection as to the validity of the transfers in question in the extraordinary general meeting held on April 4, 1990, and the annual general meeting held on September 17, 1990, in which meetings the transferees had admittedly participated on the basis of the shares in question, was sufficient to legally prevent the petitioners from raising any objection at this belated stage. 8. It was alternatively submitted that the resolution dated March 31, 1990, transferring the shares in question was passed not on the basis of the forms set up by the petitioners but on the basis of a second set of transfer forms which were admittedly valid and usable. It was also urged that the provisions of section 108(1) and 108(1A) were directory in nature and could not therefore invalidate the transfers in question. 9. The learned company judge by the judgment impugned upheld all the three contentions raised on behalf of the respondents. He found that the transfers in question had actually been registered on the basis of a second set of share transfer forms and not the forms which

had become stale. He also found that the petitioners had by their deliberate inaction and acquiescence waived their rights to raise any objection against the transfers in question. It was also held that section 108(1A) of the Companies Act, was directory in nature and, therefore, any violation of the same did not invalidate the transfers in question. 10. Aggrieved by the aforesaid judgment, the petitioners have filed the present appeal which, as already mentioned has since been withdrawn and dismissed as such in so far as appellant No. 1 is concerned. The appeal therefore, survives only on behalf of appellant No. 2. 11. We have heard learned counsel for the parties at great length and carefully perused the record. 12. Sri Udaya Holla, learned counsel appearing for the respondent, urged that the remedy provided by section 155 of the Companies Act, being discretionary in nature, the appellants cannot invoke the same. He contended that the appellants had not come with clean hands and had suppressed material facts from the court. He submitted that an equitable relief like the one envisaged by section 155 of the Act could not be granted to the appellants, particularly when they had waived their rights to object to the so-called illegal transfer of shares and acquiesced in the process of their registration, and subsequent use in the annual general meeting and in the extraordinary general meeting of the respondent-company. 12. Shri Raghavan, appearing for the appellant on the contrary, strenuously urged that the appellant had in no way acquiesced in the registration of the transfers in question, and that the petition under section 155 had been presented by them shortly after coming to know about the invalidity of the share transfer forms used by the respondents. He further contended that there was no occasion for the appellants or any one out of them to waive his right, to oppose the registration since they were unaware about their right to object to the invalidity attached to the forms in question. He urged that the learned company judge had fallen into error in holding the appellants guilty of laches, acquiescence and waiver, and prayed that the appellants were entitled to the benefit of the remedy provided by section 155 in the facts and circumstances of the case. 13. Section 155 of the Companies Act, 1956, before its deletion from the statute book by the Companies (Amendment) Act, 1988, with effect from May 31, 1991, read as under : “Power of court to rectify register of members. - (1) If - (a) the name of any person - (i) is without sufficient cause, entered in the register of members of a company; or (ii) after having been entered in the register is, without sufficient cause, omitted therefrom; or (b) default is made, or unnecessary delay takes place, in entering on the register the fact of any person having become, or ceased to be, a member : the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register. (2) The court may either reject the application or order rectification of the register; and in the latter case, may direct the company to pay the damages, if any, sustained by any party aggrieved. (3) On an application under this section, the court - (a) may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and (b) generally, may decide

any question which it is necessary or expedient to decide in connection with the application of rectification. (4) From any order passed by the court on the application, or on any issue raised therein and tried separately, an appeal shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (5 of 1908) - (a) if the order be passed by a District Court, to the High Court; (b) if the orders be passed by a single judge of a High Court consisting of three or more judges, to a Bench of that High Court. (5) The provisions of sub-sections (1) to (4) shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members." 14. A plain reading of the provisions reproduced above shows that the same vests the court with the power to direct rectification, the exercise of which power is discretionary with the court as is apparent from the word "may" used in the section. The court can in an appropriate case decline to exercise its power under section 155 if it finds that the petitioner before it has disentitled himself of the said relief for any reason like suppression of material facts, acquiescence, delay and laches, etc. Relief envisaged by section 155 is equitable in nature, and all such considerations as are relevant to the grant or refusal of any such relief would be attracted to proceedings under the said provision. In Benarsi Das Saraf v. Dalmia Dadri Cement Ltd. , while dealing with the scope of section 155 it was held that the grant or refusal of relief under section 155 was in the discretion of the court, and that relief under section 155 could not be granted ex debito justitiae. The court observed thus (page 444) : "I do not think that according to the scheme of the Act, section 155 was intended to provide relief where a remedy specifically provided under section 395 had not been availed of or relief, if sought, could not be given because of non-compliance with the provisions. Relief under section 155 is not in the nature of an additional or alternative remedy. It is true that the jurisdiction conferred on the court under section 155 is very wide. it is almost unlimited but there is a discreation in the court to grant or refuse the reliefs sought in the circumstances of each case and the applicant is not entitled to an order ex debito justitiae." 15. In T.S. Somasundaram Pillai v. Official Liquidator [1967] 37 Comp Cas 440, the Madras High Court while dealing with a petition under section 155, held that the onus lies heavy on a shareholder of the company to set right the mistake in the register without any delay. The court in this regard observed thus (page 444) : "This doctrine of laches has a very great significance as a member in any event should repudiate the contract in unequivocal terms and without undue delay as otherwise such delay would be fatal to his application for rectification. If the name of a person appears in the register of members, he cannot at his whims and fancies ask for rescission of such a contract to take shares as it would be lost because of inaction or lack of prompt action on his part... Therefore, the onus is heavily on the shareholder to set right the mistake, if any, in the register without any delay. The above decision has been quoted with approval by a Division Bench of the Bombay High Court in Mahomed Akbar Abdulla Fazalbhoy v. Official Liquidator [1950] 20 Comp Cas 26. A Division Bench of this court also in R. Lakshmi Narasa Reddi v. Official Receiver, Sree Films Ltd. [1951] 21 Comp Cas 201, observed that where a person allows his name to re-

main on the register without having it removed promptly he will be liable on the doctrine of holding over." In Bellerby v. Rowland and Marwood's Steamship Co. Ltd. [1901] 2 Ch 265, it was held that : "In considering an application for rectification the court has always had regard to the lapse of time and to any facts and circumstances indicating acquiescence in the existing state of things by those on whose behalf the application is made to disturb it." A Division Bench of this court in Muniyamma v. Arathi Cine Enterprises Pvt. Ltd. [1993] 77 Comp Cas 97, while examining the scope of proceedings under section 155 of the Act, held that even though the said proceedings were summary in nature, yet, the court could in appropriate case, examine and grant relief even when the same might involve complicated questions of law and fact. It was further held that the jurisdiction being discretionary it was open to the court to examine the propriety of the petitioners and their conduct, while deciding whether or not to grant relief under section 155. The court, speaking through K.A. Swami J. (as his Lordship then was), observed thus (at page 124) : "Thus, the conspectus of these decisions lead us to a conclusion that even though the proceeding under section 155 of the Companies Act is a summary proceeding, as it is a relief provided under the statue, in a proper and appropriate case, it is open to the court to grant relief even though it may involve complicated questions of law and facts. Whether in a particular case relief should be granted or not, because the jurisdiction is discretionary as the word used in 'may' in section 155 of the Act, would depend upon the facts and circumstances of the case but the exercise of jurisdiction cannot be refused on the ground that it involves complicated questions of law and facts. Of course, the propriety of the petitioners and their conduct having a bearing on the subject-matter of the petition would be relevant to the decision as to whether the discretion should or should not be exercised."
16. There is a cleavage in judicial opinion as to whether relief under section 155 of the Act can be granted even when complicated questions of law and fact are involved in a given case. While the High Courts of Punjab and Haryana, Allahabad, Calcutta, Delhi, have taken the view that jurisdiction under section 155 being summary in character, complicated questions cannot be determined in proceedings for the same, the High Courts of Gujarat and Kerala have taken a contrary view. This court in Muniyamma v. Arathi Cine Enterprises Pvt. Ltd. [1993] 77 Comp Cas 97, has upon a construction of the two rival views, held that the involvement of complicated questions cannot be made a basis for refusal to exercise jurisdiction under section 155. The true legal position in our opinion is that while the very fact that complicated questions of fact and law are involved cannot by itself be a ground for refusal of relief under section 155, yet, the exercise of power under section 155 being equitable and discretionary, it would constitute one of the relevant factors for deciding whether the power should or should not be exercised; in a given case. Summarising therefore, it can be said that : (a) The jurisdiction under section 155 is summary in character; (b) The exercise of the power under section 155 is discretionary for the court; (c) The power cannot be exercised ex debito justitiae; (d) The relief under section 155 is equitable in character, and considerations like delay and laches, acquiescence, etc., would be relevant while granting or refusing the same; (e) The fact

that complicated questions of fact and law requiring oral evidence are involved is a relevant if not decisive factor for determining whether or not to exercise the powers vested under section 155 of the Act. Coming then to the facts of the instant case, certain important events and facts which are established on record, may be summarised thus : (i) The share transfer forms in question specially mentioned that the transfer is being made for valuable consideration; and the consideration changing hands was clearly and specifically mentioned in the relevant column of the prescribed form; (ii) In the board meeting held on March 31, 1990, the petitioners/appellants herein were both present and participating as special invitees; (iii) The resolution approving the transfers in question was passed unanimously without any dissent, protest or murmur from the appellants or any of them; even when details about the transfers were disclosed in the meeting by the chairman, on the asking of Shri Ashok Kumar Manchanda, another special invitee attending the meeting; (iv) An extraordinary general meeting of the board was held on April 4, 1990, in which the transferees of the shares in question exercised their voting rights on the basis of the disputed shares, without any protest from any quarter including the appellants herein; (v) In the board of directors meeting held on April 14, 1990, the proceedings and the minutes of the previous meeting dated March 31, 1990, were confirmed when the appellants were present and participating as members of the board of directors; (vi) In the annual general meeting held on September 17, 1990, the transferee of the disputed shares, again participated without any objection from the appellants. Now, the circumstance detailed above, lead to the irresistible conclusion that the appellants were not only aware of the transfers effected by the respondents inter se but had by an overt act of approval of the same unanimously with other members of the board registered the said transfers. The fact that the details of the transfers were known to the appellants is apparent from the minutes of the meeting of the board dated March 31, 1990, which specifically mention that the details of the transfers were disclosed to the board by the chairman of the company. That apart, the registration of the transfers was once again approved by the appellants in the board meeting dated April 14, 1990, where they were participating as full-fledged directors of the company and not simply as special invitees. The appellants did not even at that stage express any reservation about the validity of the transfers effected. The fact that acting upon the transfers in question the transferees exercised their rights in the extraordinary general meeting and the annual general meeting of the company is also beyond dispute. All these circumstances not only show acquiescence on the part of the appellants, but their active participation in bringing about the situation which they now seek to have altered by means of proceedings under section 155 of the Companies Act. 17. Mr. Reghavan, learned counsel for the appellant, however, contended that the appellants are only special invitees in the meeting dated March 31, 1990, and, therefore, could not have protested against the registration of the shares in question. He further submitted that the registration of the transfers in question was not on the agenda for the meeting in question; and that the chairman himself being one of the transferors, the whole exercise was rushed through giving no opportunity to any one to protest

against the registration which according to the appellants was illegal. 18. We do not find any merit in the submissions of learned counsel. It is true that the appellants were only special invitees at the meeting but there was nothing which prevented them from objecting to the registration of the transfers in question which was according to them illegal and in violation of the provisions of the articles of association. The special invitees, instead of joining issues, joined the respondents in passing a unanimous resolution registering the transfers in question. As if this was not enough, the appellants confirmed the minutes of the previous meeting dated March 31, 1990. On April 14, 1990, without in the least suggesting either that the proceedings of the previous meeting had been rushed through or that their dissent on the registration of the transfers had been stifled as is now being suggested in the present proceedings. The explanation tendered by the appellants is an afterthought to say the least. Similarly, there is no valid explanation from the appellants for their silence to the participation of the transferee in the extraordinary general meeting and the annual general meeting of the company; in which meetings, the appellants exercised their rights qua the shares transferred to them. A petition filed nearly six months after the registration of the transfers in question was belated in the facts and circumstances of the case. 19. Mr. Raghavan, then argued that the appellants did not know that the shares in question were being transferred by way of a sale; and, therefore, they could not object to the registration of the transfers in the board meeting held on March 31, 1990. There is no merit in this submission either. The share transfer forms themselves mentioned that the shares were being transferred for valuable consideration mentioned in each form. Besides the details of the transfers were disclosed to the members attending the board meeting by the chairman. It is not, therefore, open to the appellants to contend that the details about the sale of the shares were not known to them to enable them to raise an objection at the appropriate time. 20. It was next urged by Mr. Raghavan, that the conduct of the appellants may have been negligent, or indifferent, but the same did not either amount to waiver or render the registration of the transfers on the basis of the stale share transfer forms valid. He argued that the invalidity attached to the forms remained, regardless of whether the appellants protested or remained silent, as they have actually done in the present case. We are not impressed by this argument either. Relief under section 155 of the Act, being a discretionary and equitable relief, no one claiming such a relief can come to the court, and expect an order in his favour even when he has been negligent or indifferent as suggested by Mr. Raghavan. Equity it is well known aids the diligent and not the indolent. Laches, which are suggestive of acquiescence is a good reason to refuse relief in equity, and one who comes in equity must come with clean hands. 21. We may at this stage also deal with Mr. Holla's submission that the petition under section 155 of the Act, filed by the appellants was totally silent as to their participation in the board meetings dated March 30, 1990, and April 14, 1990, as also about the transferees having exercised their rights qua the shares in question in the extraordinary general meeting dated April 4, 1990, and the annual general meeting dated September 17, 1990. The appellants had, therefore, suppressed material facts from

this court disentitling them from claiming any relief as contended by learned counsel. We find that the submission is not without substance. The petition is indeed silent about the events and facts mentioned above, which by no means could be said to be irrelevant or insignificant for the adjudication of the issues involved in the controversy. Mr. Reghavan's submission that facts on which he did not rely and which would be relevant or material from the opponents' angle only need not have been stated by appellants, does not appeal to us. It is true that the petitioners need not in a given case anticipate all possible defences to the action brought by him, and deal with the same, in his pleading, but, matters which are material and which need to be explained before the petitioners could claim relief, must be stated in fairness to all concerned. The deliberate withholding of material facts from the court would in our opinion make the intentions of the person responsible, suspect, in the view of the court. In the instant case, facts which showed acquiescence on the part of the appellants, and which incidentally have become the basis for the refusal of relief to the appellants were not disclosed by the appellants in the petition filed by them. This in our opinion is a factor which cannot be lost sight of while deciding the present proceedings. 22. That takes us to the question whether in the circumstances of the case that summary jurisdiction of this court under section 155 of the Act should be exercised for resolving the complicated and disputed questions of fact raised by the parties. As pointed out in the earlier part of this judgment, the very fact that complicated questions of law and fact arise in the case may not by itself be a ground for refusing to exercise jurisdiction under section 155 or the Act, but is certainly a relevant factor for exercise of the equitable and discretionary powers available under the same. Now in the case before us, there is a serious dispute between the parties, as to whether the registration of the transfers in question has been ordered on the basis of the forms which the appellants claim were stale or fresh forms as argued by the respondents. The appellants contended that resolution dated March 31, 1990, was passed on the basis of stale share transfer forms and have produced the copies of those forms which no doubt bear an endorsement to that effect. The respondents on the other hand contend that the staleness of the forms having been pointed out to them, fresh and usable forms were procured and filed for purposes of registration of the transfers. An affidavit of the company secretary has been filed by the respondents to buttress their plea that the fresh set of forms was actually the basis of the registration. 23. Upon a consideration of the rival contentions of the parties the learned company judge came to the conclusion that the transfers in question were actually registered on the basis of the fresh forms and not the forms which were originally filed. This was done by placing reliance upon the reasons given by the company secretary. 24. Mr. Raghavan, learned counsel appearing for the appellants, strenuously contended that the affidavit of the company secretary was not worth any credence. He argued that the version about a fresh set of forms having been filed and utilised was a total concoction and afterthought which could not be relied upon. Mr. Holla, on the other hand with equal vehemence supported the findings of the learned company judge and urged that the version given in the affidavit of the company secretary not having

been subjected to cross-examination, there is no reason to disbelieve the same. Be that as it may, one thing which is certain is that the issue whether any fresh set of forms were at all submitted or not is a seriously disputed question of fact which would require recording of evidence both for and against. Such an enquiry we are not inclined to conduct in the peculiar facts and circumstances of the case; nor in our opinion, should the learned company judge have gone into that question having found that the petitioners had waived their rights to object to the registration of the transfers or at least acquiesced in the same. 25. In the light of the view taken by us regarding the entitlement of the appellants to claim relief under section 155 of the Act, it would have been unnecessary to deal with the merits of other contentions raised by Mr. Raghavan, in support of the appellants' plea for rectification. Since however, one of these points touching upon the true scope and meaning of articles 7 and 8 of the articles of association, was argued at length before us, we may as well deal with the said point. While doing so, we may point out at the outset that the conduct of the appellants as noticed in the earlier part of this judgment, clearly spells out waiver of their rights if any in terms of articles 7 and 8 (supra). This is particularly so for the reason that the appellants sought to lay a claim to the shares in dispute on the principle of pre-emption, as envisaged by article 7 of the articles of association. On the contrary, however, on the transfers in question coming up for registration before the board of directors in its meeting on March 31, 1990, the appellants even when they were present in the said meeting, agreed to the passing of the unanimous resolution for recognising the said transfers as valid and for registering the same. This conduct of the appellants in recognising and registering the transfers in question, even when they claim to have had a preferential right to purchase the shares amounts to clear waiver on their part of their rights if any under the said articles. That apart, the argument that the appellants were entitled to purchase the shares in question in preference to the respondents-transferees, does not appear to us to be well founded even on the merits. It is pertinent in this connection to re-produce articles 7 and 8 of the articles of association : "7. Any member desiring to sell any of his shares must notify the board of directors of the number of shares, the market price and the name of the proposed transferee and the board must offer to the other shareholders the number of shares referred at the market price and if the offer is accepted the shares shall be transferred to the acceptor or acceptors, and if the shares or any of them are not so accepted within one month from the date of notice to the board, the holder may sell or transfer them or any of them at the same or higher price to third parties. In case of any dispute regarding the market price of the shares, it shall be decided and fixed by the company's auditors whose decision shall be final. 8. No transfer of any shares shall be made or registered without the previous sanction of the directors, except when transfer is made by one member of the company to another or to a member's wife or child or children or his heirs and the directors may decline to give such sanction without assigning any reason and shall so decline in case of any transfer of which shall involve a contravention of clause 3 of these articles." 26. Mr. Raghavan, learned counsel appearing for the appellants, submitted that the transfer of shares by the re-

spondents inter se was governed by article 7 (supra). He argued that whenever any member was desirous of selling any of his shares he was in terms of article 7 obliged to notify the board of directors about the number of shares, the market price and the name of the proposed transferee in whose favour he intended to make the sale. According to Mr. Raghavan, the moment any member intended to make any transfer by way of sale, article 7 came into operation and entitled all shareholders of the company to purchase the shares intended to be sold at the market price. It is submitted that shares could be transferred to the third parties only if the existing shareholder of the company declined to purchase the same. This procedure according to Mr. Raghavan, not having been followed in the instant case, the sale in favour of the transferees was illegal and so also its registration by the board. 27. Mr. Udaya Holla, learned counsel appearing for the respondents on the other hand submitted that article 7 applied only where the transfer of the shares was being made in favour of a third party other than an existing member of the company. He urged that when a transfer was being made by one of the members of the company to another or to a member's wife or child or his legal heirs, the procedure prescribed by article 7 was wholly inapplicable regardless of whether the transfer was by way of sale or otherwise. He urged that article 8 was by way of an exception to article 7 and since in the instant case, the transfers in question were made by one member in favour of another, the situation was squarely covered by article 8 instead of article 7 argued by Mr. Raghavan. 28. We find considerable merit in the submission of Mr. Holla. The scheme and the object behind articles 7 and 8 appear to be to prevent an outsider from purchasing the shares of the respondent-company by way of sale or otherwise and in that direction the provisions of articles 7 and 8 envisage that before the third party, i.e., a non-member can be allowed to purchase shares of the company, the option to purchase the said shares must first be given to the existing members. It is only when the existing members decline to purchase the shares offered for sale, that an outsider should be allowed to purchase the same. To this scheme however, article 8 provides an exception, i.e., in case the transfer is intended to be made in favour of an existing member or a member's wife, children or legal heir, the previous sanction of the directors is not required. In other words, if the sale takes place within the existing family of members of company, or their legal heirs or children or spouses, there is no requirement of previous sanction from the board of directors. This exception to us appears to be logical for the entire object behind articles 7 and 8 being to prevent an outsider purchasing the shares without the existing members exercising their rights, is achieved by making such an exception. It is significant in this connection to mention that article 7 refers to sale to third parties which in the context of the language employed refers only to parties other than existing shareholders. Similarly, the term "transfer" appearing in article 8 appears to us to be a term wide enough to include a transfer by way of sale also. In other words, article 8 would apply even to a situation where the transfer is being made by way of a sale by one member of the company in favour of another member, his spouse or children. In any such situation, the right of pre-emption as envisaged by article 7 would not be applicable for the sale is being made either to an

existing member or his legal heir or children. 29. We, therefore, find no merit in the submission made by Mr. Raghavan, on the merits of the interpretation placed by him upon articles 7 and 9 (supra). 30. In the result and keeping in view the totality of the circumstances set out hereinabove, we see no reason to interfere with the judgment impugned, dismissing the petition under section 155 of the Companies Act. In our opinion the learned company judge was perfectly justified in holding that the appellants-petitioners before him had not made out any case for grant of relief under the provision mentioned above. We, however, leave all other questions urged before us including the question whether section 108(1A) of the Companies Act, is mandatory in character, open; for we feel that in the light of the view taken by us, it is unnecessary to pronounce upon the said questions. The appeal, therefore, fails, and is accordingly dismissed leaving the parties to bear their own costs.