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

Judgment Reserved on: 28.05.2018

% ***Judgment Pronounced on***: 16.11.2018

\+ IA No. 1854/2018 in CS(OS) 51/2018

DINESH GUPTA AND OTHERS ..... Plaintiffs

Through Mr.Kapil Sibal, Mr.Rajeev Nayar, Mr.Sandeep Sethi and Mr.Dayan Krishnan, Sr.Advs. with Mr.Rishi Agrawala, Ms.Niyati Kohli, Mr.Pranjit Bhattacharya, Mr.Raghav Pandey, Mr.Saurabh Kirpal, Mr.Vishnu Tallapragada, Mr.Karan Luthra and Ms.Aakanksha Kaul, Advocates

versus

RAJESH GUPTA & OTHERS ..... Defendants

Through Mr.P. V. Kapoor, Sr.Advocate with Mr.Sanjay Gupta, Mr.Ateev Mathur, Ms.Jagriti Ahuja and Mr.Amol Sharma, Advocates for D-1 to D-3

Mr.Vipul Ganda, Ms.Dipika Ganda, Ms.Shreya Jain, Ms.Aastha Trivedi and Ms.Chandreyee Maitra, Advocates for defendant Nos. 15, 17 to 22, 24, 25, 27 and 36

AND

\+ IA No. 3238/2018 in CS(OS) 100/2018

DINESH GUPTA AND OTHERS ..... Plaintiffs

Through Mr.Kapil Sibal, Mr.Rajeev Nayar, Mr.Sandeep Sethi and Mr.Dayan Krishnan, Sr.Advs. with Mr.Rishi Agrawala, Ms.Niyati Kohli, Mr.Pranjit Bhattacharya and Mr.Raghav Pandey, Mr.Saurabh Kirpal, Mr.Vishnu Tallapragada,

Mr.Karan Luthra and Ms.Aakanksha Kaul, Advocates

versus

ANAND GUPTA AND OTHERS ..... Defendants

Through Mr.Vipul Ganda, Ms.Dipika Ganda, Ms.Shreya Jain, Ms.Aastha Trivedi and Ms.Chandreyee Maitra, Advocates for defendant Nos. 1 to 5

AND

\+ IA No. 3241/2018 in CS(OS) 101/2018

DINESH GUPTA AND OTHERS ..... Plaintiffs

Through Mr.Kapil Sibal, Mr.Rajeev Nayar, Mr.Sandeep Sethi and Mr.Dayan Krishnan, Sr.Advs. with Mr.Rishi Agrawala, Ms.Niyati Kohli, Mr.Pranjit Bhattacharya, Mr.Raghav Pandey, Mr.Saurabh Kirpal, Mr.Vishnu Tallapragada, Mr.Karan Luthra and Ms.Aakanksha Kaul, Advocates

versus

BECHU SINGH AND ANOTHER ..... Defendants

Through Mr.Prashant Mehta and Mr.Gaurav Malik, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. These three suits arise out of a family settlement dated 02.12.2017 and 09.12.2017 between the plaintiff Shri Dinesh Gupta and his brother Shri Rajesh Gupta. CS(OS) 51/2018 is filed by the plaintiff seeking a decree of permanent injunction to restrain the defendants, their associates, shareholders etc. from acting in contravention of the family settlement dated 2.12.2017 and 09.12.2017. A decree of declaration is also sought to declare that the notices dated 19.1.2018, 24.1.2018, 25.1.2018 and 29.1.2018 issued

by the defendants under Section 100 of the Companies Act, 2013 in respect of the plaintiffs No.4,9,14 and 15 are null and void and unenforceable being in contravention of the Family Settlement. A decree of mandatory injunction is also sought directing appointment of KPMG or any other similar agency to effectuate the Family Settlement and disgorge the shares/interests of each group from the other. Other reliefs are also sought.

2. When the above matter came up for hearing on 7.2.2018 this court had in IA No. 1854/2018 restrained the defendants from giving effect to the aforenoted notices dated 19.1.2018, 24.1.2018. 25.1.2018 and 29.1.2018.

3. Subsequently, the plaintiff filed the second suit CS (OS) 100/2018 titled *Dinesh Gupta and Others vs. Anand Gupta and Others*. Shri Anand Gupta is the elder brother of the parties, namely, Shri Dinesh Gupta and Shri Rajesh Gupta. He is not a signatory to the family settlement. However, it is pleaded by the plaintiff i.e. Shri Dinesh Gupta, that all objections, rights and obligations of the Anand Gupta Group stood satisfied and settled prior to the execution of the family settlement obviating the necessity of including the Anand Gupta Group in the family settlement. It is stated that it was Sh.Anand Gupta, who being the eldest brother, to bring about an amicable resolution to the dispute between Dinesh Gupta Group and Rajesh Gupta Group, had persuaded the parties to enter into the said settlement. It has been further pleaded that Sh.Anand Gupta was on the side of Sh.Dinesh Gupta, the plaintiff when the said family settlement was executed, but has now switched sides and has gone on the side of Sh.Rajesh Gupta. This suit is filed stating that despite interim orders passed by this court on 07.02.2018 in CS(OS) 51/2018, the defendants herein, i.e. defendant No. 2 Mr. Sahchit Gupta (s/o Sh.Anand Gupta) sent a notice dated 16.02.2018 under Section

100(2) of the Companies Act, 2013 with regard to plaintiff No.12-Renu Promoters Pvt. Ltd. It is also pleaded that Sh.Anand Gupta had issued notice dated 22.2.2018 challenging the gift of mutual funds in favour of the plaintiffs which have been made by Anand Gupta Group prior to execution of the family settlement. Defendants have also addressed notice dated 23.02.2018 challenging the voluntary transfer of shares made by Anand Gupta Group in favour of the plaintiffs. Hence, the suit was filed seeking to restrain the defendant, namely, the Anand Gupta Group from acting in contravention of the family settlement dated 2.12.2017 and 9.12.2017. Decree of declaration was also sought that notice dated 16.2.2018 issued in respect of plaintiff No.12 is null and void. A decree of declaration declaring the letter dated 12.2.2018, 22.2.2018 and 23.2.2018 as null and void was also sought. Other connected reliefs are also sought. Alongwith suit CS(OS) 100/2018, IA No.3238/2018 was filed under Order 39 Rules 1 and 2 CPC. Notice was issued in the said application on 14.03.2018.

4. A third suit CS(OS)101/2018 was instituted by the plaintiff, i.e. Sh.Dinesh Gupta against Mr.Bechu Singh who is an associate working with the members of the Gupta family. This suit was filed seeking apart from other reliefs a decree of permanent injunction restraining defendant No.2, its associates, agents, employees etc or anyone acting on its behalf from enforcing or utilizing the shareholders rights in plaintiff No.4 company, i.e. M/s R.N. Technobuild Pvt. Ltd. to breach the family settlement including right, title or interest of the plaintiff Nos.1, 2, and 3 in plaintiff No.4. A decree of declaration is also sought declaring notice dated 16.2.2018 issued by defendant No.2 Bechu Singh HUF under Section 100 (2) of the Companies Act, 2013 in respect of plaintiff No.4 as null and void and

unenforceable being in contravention of family settlement. Other connected reliefs are also sought. Alongwith suit CS(OS) 101/2018, IA No.3241/2018 was filed under Order 39 Rules 1 and 2 CPC. Notice was issued in the said application on 14.03.2018.

5. The case of the plaintiff, i.e. Sh. Dinesh Gupta is that around 1992 Sh. Rajesh Gupta and the plaintiff i.e. Sh. Dinesh Gupta started participating in the family business of their late father Mr. R.K.Gupta. The family also ventured into real estate which flourished. It is stated that over a period of time disputes arose between the two groups after August, 2017. A broad settlement was entered into on 6.8.2017 amongst the parties and Mr.Rajesh Gupta resigned as a Director from one of the companies being M/s. Nishit Infratech Private Limited on 10.8.2017. Various persons of the respective groups resigned from the directorship of respective companies and entities which fell to the share of the other group. Respective groups also transferred certain shares in the group companies to the other group which shows that the process of settlement was on. Finally, due to intervention of the family a deed of settlement was executed on 2.12.2017 and 9.12.2017. It is stated that steps were also being taken thereafter by respective parties to effectuate the family settlement dated 2.12.2017 and 9.12.2017. Ms.Renu Gupta, i.e. defendant No.3 (in CS(OS) 51/2018) wife of Shri Rajesh Gupta transferred 7,71,000 shares of M/s. Nishit Capinvest Pvt. Ltd. to M/s.BDR Builders and Developers Private Limited the main company of the group which was to come to the plaintiffs. This was done against payment of Rs.3.03 crores already made. Attempts were further made to effectuate fully the terms of the settlement. However, there were diversions from the terms of the family settlement by defendant-Rajesh Gupta. It is stated that Sh.Rajesh Gupta has

taken various steps which are contradictory to the terms and conditions of the family settlement. Complexities in effectuating the family settlement arose because of intertwining of rights and obligations amongst the parties in various companies and entities. It is stated that the plaintiff had suggested disgorgement of rights and obligations amongst the parties as per the family settlement through a common agency. The defendant on 9.1.2018 agreed to appoint a common agency of Chartered Accountants for the said purpose. It is the case of the plaintiff that they have no intention to interfere with the various entities which came to the share of Rajesh Gupta Group. Yet Sh. Rajesh Gupta and his group are trying to claim control of entities which have come to the share of the plaintiffs. It is further pleaded that Sh. Rajesh Gupta is seeking to usurp movable and immovable properties owned and controlled by entities which are going to come to the plaintiff's group. It is, hence, pleaded that notices have been sent by Sh.Rajesh Gupta for removal of Sh. Dinesh Gupta the plaintiff, Mr. Shreyansh Gupta (s/o Sh. Dinesh Gupta) as the Directors of BDR Builders and Developers Pvt. Ltd.. Other such notices have also been sent seeking an AGM to be called for removal of some of the other Directors. Hence, it is pleaded that the intention of the defendants, is to usurp the movable and immovable properties owned and controlled by entities/companies which are coming to the share of the plaintiff under the family settlement. Hence, the present suits were filed.

6. Defendants No.1 to 3 in CS(OS) 51/2018 have filed a written statement and have taken the following preliminary objections to the present suit:-

(i) The suit is simplicitor for injunction and declaration without seeking specific performance of the family settlement and is hence barred under the Specific Relief Act.

(ii) The suit for declaration and injunction simplicitor is not maintainable without asking for consequential reliefs.

(iii) The suit is barred under section 430 of the Companies Act, 2013 as the plaintiffs have sought declaration in respect of notices sent for mismanagement and oppression under section 100(2) of the Companies Act, 2013.

(iv) It is an admitted fact that the plaintiff and Sh.Rajesh Gupta had entered into the family settlement. It is pointed out that Dinesh Gupta Group comprises of Dinesh Gupta, his wife, sons and HUF and the Rajesh Gupta Group also similarly comprises his family. Apart from this, there are various other shareholders beyond the groups in various companies which are subject matter of the family settlement. The said persons are not signatories to the family settlement. Hence, even impleading of such persons as parties to the present suit is misplaced. Hence the present suit would not lie.

(v) It is further pleaded that the plaintiffs have deliberately concealed from this court various breaches that they have committed to the terms of the family settlement. It is stated that one of the breaches relates to mutual funds of principal value of Rs.16.50 crores alongwith all its accretions which were to vest in Rajesh Gupta Group. In breach of the terms of the family settlement, this amount has not been paid to Sh. Rajesh Gupta. It is further stated that a Resolution of the Board of the companies vested in the plaintiff group to empower

Sh. Rajesh Gupta to contest actionable claims amounting to more than Rs.150 crores have not been provided as required under the family settlement. Various other such pleas have been elaborated in the written statement. Based on the above, it is pleaded that the said suit is liable to be dismissed and interim order vacated.

Similar pleas have been raised in the other two suits.

7. I have heard the submissions of learned senior counsels for the parties on IA 1854/2018 in CS(OS)51/2018, IA No.3238/2018 in CS(OS) 100/2018 & IA No.3241/2018 in CS(OS) 101/2018.

8. Learned senior counsel for the plaintiffs has submitted as follows:-

(i) It has been vehemently argued that the parties are bound by the terms of the family settlement dated 2.12.2017 and 9.12.2017. All the members of the family have acted based on the family settlement. Persons in respective groups have resigned from the Directorship of the companies which are to go to the other group. Further the respective groups have also transferred certain shares in the group of companies which shows progress in the inter se settlement.

(ii) It is further pleaded that the notices issued by the defendant under section 100 of the Companies Act are in violation of the family settlement. It is pleaded that this court should give highest credence to the family settlement keeping in view the judgments of the Supreme Court in ***Kale & Ors. vs. Deputy Director of Consolidation & Ors., (1976) 3 SCC 119*** and ***S.Shanmugam Pilai & Ors. vs. K.Shanmugam Pillai & Ors., (1973) 2 SCC 312***.

(iii) That the steps taken by the defendants are in direct contravention of the settled legal position and seek to resile form the family settlement.

Hence, it is pleaded that the interim order dated 07.02.2018 be confirmed for all three suits.

9. Learned senior counsel appearing for the Rajesh Gupta Group has pleaded as follows:-

(i) It is pleaded that there is no power in a Civil Court to grant an injunction to injunct the majority shareholders from calling an extraordinary general meeting. Reliance is placed on the judgment of the Supreme Court in ***Life Insurance Corporation of India vs. Escorts Ltd. and Others, AIR 1986 SC 1370.*** Hence, it is pleaded that this court cannot pass the said injunction as done on 07.02.2018.

(ii) In the facts of this case keeping in view the provisions of the Specific Relief Act the suit as framed is not maintainable. A suit for declaration without consequential relief would not lie.

(iii) It is further pleaded that the plaintiffs is only seeking to save court fee and has not sought the relief of specific performance of the family settlement. Hence, it is pleaded that the suit as framed is not maintainable. Reliance is placed on the judgment of the Supreme Court in ***Venkataraja and Ors. vs Vidyane Doureradjaperumal (D) Thr. L.Rs. and Ors. 2014 (14) SCC 502.***

(iv) It is also pleaded that as per the terms of the family settlement complete modalities have not yet been finalized. Unless modalities are finalized the settlement would be an incomplete agreement. The parties cannot said to be in *ad idem.* Hence, the family settlement cannot be relied upon. Reliance is placed on the judgment of the Madras High Court in ***M.Gnansambandam vs. M.Raja Appar, 2009 (2) CTC 819.***

(v) It is further pleaded that it is the plaintiffs who are guilty of breaching the family settlement. A sum of Rs.6.60 crores is payable towards balance sale consideration for transfer of shares of M/s. Nishit Capinvest Pvt. Ltd to Sh.Rajesh Gupta which the plaintiff has deliberately withheld. Similarly, a sum of Rs.22.43 crores is payable to Sh.Rajesh Gupta on account of redemption of Mutual Funds which has as per the plaint also not been paid to Sh.Rajesh Gupta. Further resolution of the companies vested in Dinesh Gupta Group to empower Mr.Rajesh Gupta to contest actionable claims which are amounting to more than Rs.150 crores have not been provided. It is further pleaded that the plaintiffs have got control of plaintiff No.4 and have sold property being E-353, Greater Kailash, Part II, New Delhi at a price which is less by about Rs.6 crores than what was agreed upon. Hence, it is pleaded that in equity the plaintiff cannot be granted any interim order

10. Learned counsel appearing for the Bechu Singh Group has relied upon section 6 of the Companies Act, 2013 to submit that a family settlement amongst certain set of shareholders cannot bind the company or other shareholders.

It is vehemently pleaded that the Bechu Singh Group is not a signatory or party to the family settlement. In fact it is pleaded that Sh. Bechu Singh is not even part of the family and hence, cannot be bound by the family settlement.

11. Learned counsel appearing for the Anand Gupta Group has also reiterated the submissions as stated above.

12. I may now deal with the submissions/objections which have been raised by the learned senior counsel appearing for the defendants for grant of interim orders in favour of the plaintiffs.

I. THIS COURT HAS NO JURISDICTION TO PASS AN INTERIM ORDER IN VIEW OF THE BAR UNDER SECTION 430 OF THE COMPANIES ACT, 2013.

13. The first submission that was vehemently urged before this court was that this court does not have jurisdiction to adjudicate the present suit. Reliance was placed upon section 430 of the Companies Act, 2013. The plea was that, as the notices have been sent for mismanagement and oppression under section 100(2) of the Companies Act, 2013 this court does not have jurisdiction to adjudicate the present suit.

14. Reference may be had to Section 430 of the Companies Act, 2013. The said section 430 of the Companies Act, 2013 reads as follows:

> "Section 430: Civil Court not to have jurisdiction
> 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 and 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."

As per the said provision, in matters for which the tribunal or appellate tribunal has power to adjudicate the case, no suit or proceedings would lie.

15. The learned senior counsel for the defendants have also relied upon the judgment of the Supreme Court in the case of ***LIC of India v. Escorts Ltd.,*** (supra) to support his plea that a civil court cannot injunct a share holder to call an AGM. The learned senior counsel for the plaintiffs in support of his contentions submits that this court has jurisdiction to try the matter. He has relied upon a recent judgment of the Division Bench of this

Court in the case of ***Jai Kumar Arya & Ors. v. Chhaya Devi & Anr., 2017 SCC OnLine Delhi 11436***.

16. A perusal of one of the notices dated 19.01.2018 sent by some of the defendants under section 100(2) of the Companies Act, 2013 would show that the same states as follows:-

> …….
> "It has been found that the present Board of Directors comprising of Mr. Dinesh Gupta and Mr. Shreyansh Gupta have been, inter alia, engaging themselves in the acts of omission and commission prejudicial to the interest of the Company, particularly in prosecuting and defending its various litigations pending in different forums. Mr. Dinesh Gupta and Mr. Shreyansh Gupta are, therefore, not fit to continue and are liable to be removed as Directors of the Company in terms of Section 169 of the Companies Act, 2013. In order to protect the interest of the Company, the Board of Directors is required to be reconstituted immediately.
>
> We, being the members of your Company, holding more than 1/10th of the paid up share capital of the Company, as on date, hereby require you to call an Extra-Ordinary General Meeting of the Company as early as possible but not later than 21 days from the date of this requisition, to consider and approve the following resolution(s) as Ordinary Resolution(s):
>
> 1. "RESOLVED THAT in pursuance of Section 152(2) of the Companies Act, 2013, Mr.Rajesh Gupta be and is hereby appointed as Director of the Company.
>
> "RESOLVED FURTHER THAT Ms. Uma Sharma, the present Company Secretary or any of the Directors or the Company Secretary at the relevant time, be and are hereby directed and authorised singly and severally to file the requisite Form DlR-12 with the office of the Registrar of Companies in respect of the aforesaid appointment and to do all such other acts, deeds

and things as may be considered necessary or incidental thereto."

2. "RESOLVED THAT in pursuance to Section 152(2) of the Companies Act, 2013, Mr. Shashank Gupta be and is hereby appointed as director of the Company.

"RESOLVED FURTHER THAT Ms. Uma Sharma, the present Company Secretary or any of the Directors or the Company Secretary at the relevant time, be and are hereby directed and authorised singly and severally to file the requisite Form DlR-12 with the office of the Registrar of Companies in respect of the aforesaid appointment and to do all such other acts, deeds and things as may be considered necessary or incidental thereto."

3. "RESOLVED THAT in pursuance of Section 169 of the Companies Act, 2013, Mr.Dinesh Gupta be and is hereby removed as the Director of the Company with immediate effect.

"RESOLVED FURTHER THAT Ms. Uma Sharma, the present Company Secretary or any of the Directors or the Company Secretary at the relevant time, be and are hereby directed and authorised singly and severally to file the requisite Form DlR-12 with the office of the Registrar of Companies in respect of the aforesaid appointment and to do all such other acts, deeds and things as may be considered necessary or incidental thereto."

4. "RESOLVED THAT in pursuance of Section 169 of the Companies Act, 2013, Mr.Shreyansh Gupta be and is hereby removed as the Director of the Company with immediate effect.

"RESOLVED FURTHER THAT Ms. Uma Sharma, the present Company Secretary or any of the Directors or the Company Secretary at the relevant time, be and are hereby directed and authorised singly and severally to file the requisite Form DlR-12 with the office of the Registrar of Companies in respect of the aforesaid appointment and to do all such other acts, deeds and things as may be considered necessary or incidental thereto.

……."

17. Hence, the resolution seeks to appoint Sh. Rajesh Gupta and Sh. Shashank Gupta as directors of the company and seek to remove Sh. Dinesh Gupta and Sh. Shreyansh Gupta as the directors of the company with immediate effect. Certain powers are also sought to be given to Sh. Rajesh Gupta and Sh. Shashank Gupta. The plea of the plaintiffs here is not that the defendants who have requisitioned the said meeting do not have power under the Companies Act, 2013 to call for such a meeting. The plea is that the said meeting is being called contrary to the terms and conditions of the Family Settlements dated 02.12.2017 and 09.12.2017. The defendants cannot be allowed to act contrary to the Family Settlement. The company in question is, namely, M/s BDR Builders and Developers Pvt. Ltd. A perusal of the Family Settlement dated 02.12.2017 shows that the said company, M/s BDR Builders and Developers Pvt. Ltd. goes to the share of Sh.Dinesh Gupta (plaintiff) being part of Annexure-B to the Family Settlement. The defendants have not been able to show any provision of the Companies Act, 2013 under which the aforesaid relief could have been obtained by the plaintiffs from NCLT.

18. Reference may now be had to the judgment of the Division Bench of this court in ***Jai Kumar Arya vs. Chhaya Devi & Anr.(supra)***. That was a case in which the plaintiff had stated that six out of the nine Directors had issued a notice dated 8.8.2017 for convening a meeting of the Board on 26.8.2017. The items in the agenda included as to whether notice be issued to convene an extra ordinary general meeting pursuant to Special Notice dated 8.7.2017 received from a member of the company proposing to

remove a Director of the company. The learned Single Judge passed an interim order holding that permitting the defendants to convene any Board meeting or an AGM and passing the resolution as proposed would cause irreparable loss and injury to the plaintiff who would then be removed from the Board of Directors of the company and restrained the defendants from acting upon the notice dated 8.8.2017 and resolutions passed in the consequential meeting dated 26.8.2017. In this background the Division Bench held as follows:-

> "118. We are constrained, therefore, to observe that it is not possible to accept Mr. Chandhiok's submission that the reliefs claimed by the plaintiffs in CS (OS) 285/2017 fall, statutorily, within the purview of jurisdiction of the NCLT.
>
> 119. There is, in fact, no provision, in the Act, whereunder the claim contained in CS (OS) 285/2017, as made by the plaintiffs - irrespective of the merit or demerit thereof - could have been preferred before the NCLT. No case of exclusion of the jurisdiction of the Civil Court, under Section 430 of the Act or, consequently, under section 9 of the CPC can, therefore, be said to have been made out.
>
> 120. As it happens, we are not alone in the view we are taking.
>
> 121. K.Shivshankar Bhat, J., as a learned Single Judge of the Karnataka High Court, was, in Prakash Roadlines Ltd. v. Vijaya Kumar Narang, (1995) 83 Comp Cas 569, concerned with a claim, legally similar to that of the present plaintiffs, to remove certain directors from the company and appoint a director in their place. As in the present case, it was sought to be contended that the claim was not maintainable before the High Court, as it lay within the purview of jurisdiction of the Tribunal, under Section 397 of the Companies Act, 1956 (the predecessor provision to Section 241 of the present Act, and in parimateria therewith). Bhat, J., opined thus:

> "It is also necessary to note that under section 397, it is not only the oppression that given a cause of action but also the applicant or the applicants shall have to show that that the facts would justify the making of a winding up order on the ground that it is just and equitable that the company should be wound up. In other words it is necessary to show that the facts are such that normally the company could be sought to be wound up under the "just and equitable" clause but such winding up would unfairly prejudice the members. Therefore, I am of the view that section 397 is not an effective forum to grant any relief of an individual member under all circumstances. Similar is the situation under section 398 also. Being a constituent of the company a shareholder has several individual rights and those rights could be enforced by invoking the civil jurisdiction of the courts. Further, the Act nowhere specifically excludes the jurisdiction of the civil courts."
> (Emphasis supplied)

122. Panipat Woollen and General Mills Co. v. R.L. Kaushik, 1969 (39) Comp Cas 249 (P&H) is another case in point. The memorandum and articles of Association of the petitioner-Company before the High Court, in that case, provided for retirement of one third of the directors of the company every year. The directors so slated to retire would be those who had held office for the longest period since the last election. The controversy, before the High Court, pertained to the annual general meeting of the company, scheduled to be held on 30th December 1967. The respondent RL Kaushik contended that his name was proposed to be included, in the said meeting, as one of the directors scheduled to retire the rotation, even though, in his submission, he was not so due for retirement. Mr. Kaushik, therefore, filed a suit in the Court of the Subordinate Judge, for a declaration that he was the Director of the company and that the election, held on 30th December 1967 was illegal, ultra vires and void. Consequential relief, by way of permanent injunction restraining the defendants from interfering with the

management of the company, or for allowing Mr. Kaushik to act as director, was also sought. An application for interim relief, under Order XXXIX of the CPC, was also filed therewith. The company (who was the revision petitioner before the High Court) raised a preliminary objection to the effect that the jurisdiction of the civil court, to adjudicate on the matter, stood ousted by Section 9 of the CPC read with Sections 398 and 402 of the Act. These provisions, it may be noted here, were somewhat parallel to Section 241 and 242 (2) of the present Act. Consequent on a detailed discussion, the learned judge held that the civil court had jurisdiction to try the suit. Significantly, in the course of such discussion, reliance was placed on the following aphorism, from the judgment of a Division Bench of the Calcutta High Court in Sarat Chandra Chakravarti v. Tarak Chandra Chatterjee, AIR 1924 Cal 282:
"An injunction may be granted on the application of a director restraining the plaintiffs co-directors from wrongful excluding him from acting as a director; there is nothing excluding the jurisdiction of the court from entertaining such a suit."

123. Notice was also taken of another decision, in Sati Nath Mukherjee v. Suresh Chandra Roy, (1941) 11 Com Cas 203, wherein it was held that "a suit for declaration that the plaintiff is a director and for the protection of his rights qua director is competent".

124. Ravinder Kumar Jain v. Punjab Registered (Iron and Steel) Stockholders Association Ltd., (1978) 48 Com Cas 401 (P & H) was concerned with a situation in which a petition was moved, before the High Court, under Section 166 of the erstwhile Companies Act, 1956, for declaration of a meeting of the Company, held on 28th September 1977, to be illegal and void. Following, inter-alia, the decision in Panipat Woollen and General Mills Co. (supra), it was held that the petition was competent. Similarly, a suit for declaration that the Annual General Meeting of the Company was illegal, was held to be competent, by the Kerala High Court, in R. Prakasam v. Sree Narayana Dharma Paripalana Yogam, (1980) 50 Comp Cas 611

(Ker), which went to the extent of holding that the Company Court could not grant relief in such matters.

125. The inevitable outcome of the above discussion is that the invocation, by Mr. Chandhiok, of Section 430 the Act, to non-suit the plaintiffs, is misplaced. Per sequitur, CS (OS) 285/2017 has to be held to be competent."

19. The Division Bench after having gone through a catena of judgments came to the conclusion that in a suit like the present one this court will have jurisdiction and there is no bar in filing a suit before this court. Accordingly, there is no merit in the said plea of the learned senior counsel for the defendants that the present suit is barred by the Companies Act.

20. Reference may also be had to the judgment of the Supreme Court in the case of ***LIC of India v. Escorts Ltd. (supra)*** which was relied upon by the defendants. That was a case in which an attempt was made to invest in the shares of Escorts Ltd. an Indian company by thirteen Overseas Companies. Majority of the shares in the overseas companies were owned by Caparo Group Ltd. The Board of Directors of Escorts Ltd. passed a resolution refusing to register transfer of shares. A writ petition was filed that challenged the validity of certain RBI circulars/press notes which dealt with a portfolio investment scheme by NRI, governed under Foreign Exchange Regulation Act, 1973. The said scheme allowed overseas companies, owned by Non-residents of Indian nationality / origin to own shares to enable them to invest in the shares of an Indian company.

21. The Supreme Court held as follows:

"100. Thus, we see that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in

> accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting nor are the reasons for the resolutions subject to judicial review. It is true that under Section 173(2) of the Companies Act, then shall be annexed to the notice of the meeting a statement setting out all material facts concerning each item of business to be transacted at the meeting including, in particular, the nature of the concern or the interest, if any, therein, of every director, the managing agent if any, the secretaries and treasurers, if any, and the manager, if any. This is a duty cast on the management to disclose, in an explanatory note, all material facts relating to the resolution coming up before the general meeting to enable the shareholders to form a judgment on the business before then,. It does not require the shareholders calling a meeting to disclose the reasons for the resolutions which they propose to move at the meeting. The Life Insurance Corporation of India, as a shareholder of Escorts Limited, has the same right as every shareholder to call an extraordinary general meeting of the company for the purpose of moving a resolution to remove some Directors and appoint others in their place. The Life Insurance Corporation of India cannot be restrained from doing so nor is it bound to disclose its reasons for moving the resolutions."

22. It was strongly urged relying on the above judgment that it is settled law that a share holder has the right to call an Extraordinary General Meeting (*in short the 'EGM'*) under the provisions of the Companies Act and he could not be restrained from calling such a meeting. It is pleaded that no interim order can be passed by this court in favour of the plaintiff pursuant to the notices calling for EGM by the defendants.

23. In my opinion, the above judgment does not help the defendants in any manner. That judgment was not rendered in relation to any family settlement. The Hon'ble Supreme Court was dealing with a case where third

party or outsider was trying to purchase the shares of an Indian Company Escorts Pvt. Ltd. The facts in the present case are materially different. The plaintiffs seek by filing the present suit and injunction application to prevent the defendants from acting contrary to the terms and conditions of the family settlement. The family settlement has always been accorded a high sanctity by the courts in India. The said judgment does not help the case of the defendants.

II. THE FAMILY SETTLEMENT DOES NOT BIND THE MEMBERS WHO HAVE NOT SIGNED THE SAME, NAMELY, SHRI ANAND GUPTA/SHRI BECHU SINGH ETC.

24. I may next deal with the submission of the defendants that other than Sh. Rajesh Gupta and Sh. Dinesh Gupta, no other family members have signed the Family Settlement. That apart, it has been strenuously pleaded that the subject matter of the Family Settlement includes companies which comprise of large number of individual share holders other than family members of Sh. Rajesh Gupta and Sh. Dinesh Gupta. Some of individuals are the defendants in the other two suits, namely Sh. Anand Gupta and Sh. Bechu Singh, etc. In addition, none of the corporate entities are a signatory to the Family Settlement. Hence, it had been pleaded that none of these entities are bound by the Family Settlement. Further without their participation the settlement cannot be implemented as full control of the companies cannot vest in a particular group.

25. The plaintiffs have countered the said submissions stating that all the parties have taken steps to implement the Family Settlement. Reference was made to the various steps taken by the individuals, including tendering of

resignation from some of the companies as directors and transferring of shares in the companies which belong to different groups.

26. Reference may be had to the judgment of the Supreme Court in the case of ***Narendra Kante v. Anuradha Kante & Ors***., ***(2010) 2 SCC 77***. The court held as follows:

> "24**.** From the submissions made on behalf of the respective parties and the materials on record, we have to see whether the courts below, including the High Court, were justified in refusing the appellant's prayer for grant of interim orders pending the hearing of the suit. Though the deed of family settlement has been heavily relied upon by the courts below and the respondents herein, it will have to be considered whether reliance could have been placed on the same since the same was not registered, though it sought to apportion the shares of the respective co-sharers. It has also to be seen whether the document could at all be relied upon since all the co-sharers were not signatories thereto.
>
> ……..
>
> 26. As far as the second question is concerned, a Deed of Family Settlement seeking to partition joint family properties cannot be relied upon unless signed by all the co-sharers. In the instant case, admittedly, the Respondent No. 8, Sau. Pratibha, was not a signatory to the Deed of Settlement dated 8th February, 1967, although, she is the daughter of Bapu Saheb Kante by his first wife.
>
> 27. As was held in the case of M.N. Aryamurthy (supra), under the Hindu Law if a Family Arrangement is not accepted unanimously, it fails to become a binding precedent on the co-sharers. Both Mr. Vivek Tankha and Mr. Anoop G. Chaudhary, learned Senior Advocates, brought this point to our notice to indicate that all the co-sharers had not consented to the Deed of Family Settlement which could not, therefore, be relied upon. The argument would have had force had it not been for the fact that acting upon the said Settlement, the appellants had also executed sale deeds in respect of the suit property. Having done

so, it would not be open to the appellants to now contend that the Deed of Family Settlement was invalid."

27. Reference may also be had to the judgment of the Division Bench of this Court in ***Satya Pal Gupta vs. Sudhir Kumar Gupta, 2016 SCC Online Delhi 2502*** where Division Bench of this court noted as follows:-

> 31. The question then is, whether, for a valid settlement, to avoid future disputes, it is a precondition that all members of a family have to enter into a settlement. This Court does not see any condition, or barrier in the form a necessity to involve all members of a family. If the disputes are *inter se* as between two members, there is no bar to the designation of their settlement as a family arrangement or settlement. It has the objective of orderliness in the title of each member of the family and crucially, ensures peace and harmony amongst all of them. In *S. Shanmugam Pillai*v. *K. Shanmugam Pillai* (1973) 2 SCC 312: AIR 1972 SC 2069, the Supreme court pertinently held as follows:
>
> > "To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in Ram Charan Das v. Girijanandini Devi [1965] 3, S.C.R. 841, the word "family" in the context of a family arrangement is not to 'be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a-family arrangements' See Ramcharan Das's case (supra)."
>
> 32. Thus, even a wider body of persons, and not merely the coparcenary in a given family or a Hindu Undivided Family can be part of a family settlement. Inasmuch as the object of such arrangements is to end potential or existing conflicts, the court finds it irrational that despite the absence of a conflict between

> the two disputing members (of a family) for a valid and binding settlement, all have to be necessarily made parties. If the law is that those not considered family members can enter into binding "family" arrangements, it cannot be that all members of a family have to be party to a settlement as a precondition for its binding nature. This argument is, accordingly rejected.

28. Reference may also be had to the judgment of the Supreme Court in the case of ***M.S.Madhusoodhanan & Anr. v. Kerala Kaumudi (P) Ltd. & Ors., (2004) 9 SCC 204***. The court held as follows:

> "137. We have already said that except for Clauses 1, 2, 3 and 11, all the other clauses of the Karar related to the division of the several concerns among the four brothers. In deciding whether the agreement should be implemented, the Appellate Court overlooked the basic fact that each of brothers had been given the majority shareholding of 52 percent in the companies specified against their names in the Karar. Since the other three brothers had taken the full benefit of the Karar, they were bound to comply with all its terms. It was not open to them to accept that portion of the Karar which was in their favour and jettison the rest. And the Karar which is in the nature of a family settlement seeking to settle disputes between brothers, having been already acted upon at least to the extent that the four brothers were each given the majority shareholding in the different companies as mentioned in the Karar, should not be lightly interfered with. (See K.K. Modi v. K.N. Modi and Ors.)

The above cases show that where other family members have pursuant to the Family Settlement which was not executed by them taken steps in conformity with the Family Settlement, the said non-signatories would also remain bound by the terms and conditions of the Family Settlement, inasmuch as they are bound by their action indicating their acceptance of the

Family Settlement. They obviously cannot be permitted to resile from a settlement which by their conduct they have accepted.

29. In the present case, a perusal of the plaint in CS (OS) 51/2018 would show that the plaintiffs have raised the plea that pursuant to the rough settlement arrived at, the parties to the suit have taken various steps including resignation from the Board of Directors of various companies and also transfer of shareholdings of various companies. These steps were taken to ensure that management of various companies is handed over to that group to whose share the said company was to go to under the settlement. Subsequent to these transfers, the Family Settlement has taken place on 02.12.2017 and 09.12.2017. It has been reiterated that transfer of shares and resignation of the directors was in consonance with the terms of the Family Settlement.

30. The defendants have in written statement denied the said averments of the plaintiffs. It is denied that the said transactions have taken place pursuant to any understanding with the plaintiffs.

31. In my opinion, in the facts of this case, the written statement filed by defendant Nos.1 to 3 in CS(OS) 51/2018 is evasive. In fact, no logical explanation is given in the written statement as to why such resignations/transfer of shares took place if there was no settlement. *Prime facie*, it appears that such large numbers of resignations and transfer of shares would be pursuant to the proposed Family Settlement. Hence, merely because some of the members of the family have not actually signed the family settlement may not necessarily lead to a conclusion that they are not bound by the terms of the family settlement. The conduct of the other members of the family prima facie seems to show that they were aware of

the family settlement and were acting based on the said family settlement. No doubt the said issue would have to be gone into in much further detail after parties had led their evidence. However, for the purpose of adjudication of the present applications, in my opinion, the plaintiffs have made out a prima facie case that the other members of the family are also bound by the terms of the family settlement. Hence, there is no merit in the present plea of the defendants.

III. THE TERMS OF THE FAMILY SETTLEMENT ARE INCOHERENT AND INCAPABLE OF BEING IMPLEMENTED AS THE PARTIES ARE NOT AT *AD IDEM*.

32. Another plea strongly raised by the learned senior counsel for the defendants was that the parties were not *ad idem* as to the terms of the Settlement. The terms are incoherent, vague and incapable of being implemented.

33. In this context, reference may be had to the judgment of the Supreme Court in the case of ***Kale & Ors. v. Deputy Director of Consolidation & Ors.,(supra)***. In context of Family Settlement, the Supreme Court held as follows:

> "9. Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if

honestly made. In this connection, Kerr in his valuable treatise "Kerr on Fraud" at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

> The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.
>
> The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs But even those persons who may have some " sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed forever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the Courts find

that the family arrangement suffers from a legal lacuna or a formal defect the Rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.

10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide

> family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

34. It is clear from the perusal of the above judgment and various other judgments including judgment of the Supreme Court in the case of ***K.K. Modi v. K.N. Modi and Ors., (1998) 3 SCC 573***, that the courts have given family arrangements a higher pedestal than the normal contracts. While the contracts of the regular variety are generally commercial in nature, family arrangement would not normally have a commercial undercurrent. The object of both are different and hence the rigorous of law of contract may not apply to family arrangements. The courts have always leaned in favour of enforcing the family arrangement with a view to preserve family unity and honour of the family. Merely because there are two views possible on interpretation of the clauses of the Family Settlement or there are other grey areas in the terms of the Family Settlement would not be a ground to strike down the settlement.

35. I may note that pursuant to the hearing in court on 03.04.2018, the learned counsel for defendant Nos.1 to 3 in CS(OS) 51/2018 had on 04.04.2018 sent a communication to the learned counsel for the plaintiffs. In the said communication, the learned counsel had listed out various compliances required to be made by the plaintiffs pursuant to the Family Settlement. The said communication states seven such compliances which have to be done by the plaintiffs pursuant to the Family Settlement. In response to the said communication, the learned counsel for the plaintiffs sent a letter on 07.04.2018 stating that some of the transactions stated by the defendants were disputed or accepted partially. For some of the transactions,

the learned counsel for the plaintiffs has said that the plaintiff was willing to do the stated acts subject to the condition that shares in respect of the companies falling to the share of Dinesh Gupta Group be transferred by Rajesh Gupta Group to the Dinesh Gupta Group.

36. *Prima facie*, from the above communications exchanged between learned counsel for the parties, it appears that the terms and conditions of the Family Settlement are capable of being performed and the Family Settlement cannot be said to be suffering from the vagueness or uncertainty. There may be some grey areas in the Settlement but these could be resolved in the course of adjudication. The defendants themselves have spelt out the steps the plaintiffs have to take to implement the Family Settlement. There is no merit in the said plea.

IV. WHETHER THE RELIEF SOUGHT IS BARRED UNDER THE SPECIFIC RELIEF ACT.

37. The next plea which I may deal with relates to the objections of the defendants that the plaintiffs are seeking to save court fees and have not sought the relief of specific performance of the Family Settlement. It is pleaded that the suit as framed is not maintainable. Reliance is placed on the judgment of the Supreme Court in the case of ***Venkataraja & Ors. v. Vidyane Doureradjaperumal (Dead) Thr. Legal Representatives & Ors.***(supra).

38. It has been further pleaded that by seeking only the relief of injunction and not of specific performance, the plaintiffs seek to avoid to perform their part of obligations and seek to deprive the defendants of their legitimate statutory rights. It has also been argued that the plaintiffs are themselves in breach of the terms of the Family Settlement. Reliance has been placed on

para 31 of the plaint where the plaintiffs themselves have admitted that they owe Rajesh Gupta Group a sum of Rs.11.28 crores. Number of other such submissions have been made pointing out that the plaintiffs are in breach of the terms of the Family Settlement and hence cannot accuse the defendants of not adhering to the terms of the family Settlement.

39. Sections 34 and 41 of the Specific Relief Act, read as follows:

> "34. Discretion of court as to declaration of status or right.:- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.
>
> Explanation.--A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not inexistence, and for whom, if in existence, he would be a trustee.
>
> ……..
>
> 41. Injunction when refused:- An injunction cannot be granted—
>
> (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
>
> (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
>
> (c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
(e) to prevent the breach of a contract the performance of which would not be specifically enforced;
(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
(g) to prevent a continuing breach in which the plaintiff has acquiesced;
(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
[(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.]
(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
(j) when the plaintiff has a no personal interest in the matter."

Hence, it would follow from the above that no court shall grant a decree of declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Similarly, no injunction can be granted to a plaintiff when an equally efficacious relief can be sought by any other usual mode.

40. In ***Venkataraja & Ors. v. Vidyane Doureradjaperumal (Dead) Thr. Legal Representatives & Ors.*****(supra)**, the Supreme Court held as follows:

"23. The very purpose of the proviso to Section 34 of the Act 1963, is to avoid the multiplicity of the proceedings, and also the loss of revenue of court fees. When the Specific Relief Act, 1877 was in force, the 9th Report of the Law Commission of India, 1958, had suggested certain amendments in the proviso, according to which, the Plaintiff could seek declaratory relief without seeking any consequential relief, if he sought permission of the court to make his subsequent claim in another

suit/proceedings. However, such an amendment was not accepted. There is no provision analogous to such suggestion in the Act 1963.

24. A mere declaratory decree remains non-executable in most cases generally. However, there is no prohibition upon a party from seeking an amendment in the plaint to include the unsought relief, provided that it is saved by limitation. However, it is obligatory on the part of the Defendants to raise the issue at the earliest. (Vide: Parkash Chand Khurana etc. v. Harnam Singh and Ors. AIR 1973 SC 2065; and State of M.P. v. Mangilal Sharma).

25. In Muni Lal v. The Oriental Fire and General Insurance Co. Ltd. and Anr., AIR 1996 SC 642, this Court dealt with declaratory decree, and observed that"

> "4…. mere declaration without consequential relief does not provide the needed relief in the suit; it would be for the Plaintiff to seek both reliefs. The omission thereof mandates the court to refuse the grant of declaratory relief."

26. In Shakuntla Devi v. Kamla and Ors., (2005) 5 SCC 390, this Court while dealing with the issue held:

> "21.... a declaratory decree simpliciter does not attain finality if it has to be used for obtaining any future decree like possession. In such cases, if suit for possession based on an earlier declaratory decree is filed, it is open to the Defendant to establish that the declaratory decree on which the suit is based is not a lawful decree.""

41. I may look at some of the other judgments in this regard. In ***Anathula Sudhakar vs. P.Buchi Reddy (D) By LRs. & Ors., (2008) 4 SCC 594*** the Supreme Court held as follows:-

> "21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:
>
> (*a*) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and

possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(*b*) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(*c*) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar* [*Annaimuthu Thevar* v. *Alagammal*, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(*d*) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be

> driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

42. Similarly, in ***Muni Lal vs. Oriental Fire & General Insurance Co. Ltd. & Anr., (1996) 1 SCC 90***, the Supreme Court noted as follows:-

> "4. The question, therefore, is whether the appellant had properly framed the suit and whether the claim is barred by limitation. It is true, as rightly pointed out by Shri Rakesh Khanna that Section 28 of the Contract Act prohibits prescription of shorter limitation than the one prescribed in the Limitation Act. An agreement which provides that a suit should be brought for the breach of any terms of the agreement within a time shorter than the period of limitation prescribed by law is void to that extent. The reason being that such an agreement is absolutely to restrict the parties from enforcing their rights after the expiration of the stipulated period, although it may be within the period of general limitation. But acceptance of that contention does not per force solve the controversy in this appeal. Section 34 of the Specific Relief Act provides that any person entitled to a legal character, or to any right as to any property may, institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make such declaration and the plaintiff need not ask for such relief. However, proviso to the said section puts the controversy beyond pale of doubt that "*no courts shall make any such declaration where the plaintiff, being able to ask for other relief than a mere declaration of title, omits to do so*". In other words, mere declaration without consequential relief does not provide the needed relief in the suit; it would be for the plaintiff to seek both the reliefs. The omission thereof mandates the court to refuse to grant the declaratory relief. In this appeal, the appellant has merely asked for a declaration that he is

entitled to the payment for the loss of the truck in terms of the contract but not consequential relief of payment of the quantified amount, as rightly pointed out by the courts below……"

43. Similarly, the Division Bench of this court in ***Vinay Rai vs. Anil Rai, MANU/DE/2101/2010*** held as follows:-

"4. Nevertheless, since arguments had already advanced appreciably on behalf of the Respondent/plaintiff before it was brought to light that the prohibition of Section 41(h) of SR Act would bar a suit claiming a mandatory and permanent injunction, we think it expedient to decide the Preliminary Objection. The argument of Mr. Singh is that, assuming an enforceable contract had been entered into between the parties, the said provision proscribes an injunction being granted where an equally efficacious remedy, viz. Specific Performance in the case in hand, can be sought for by the plaintiff. There cannot be any cavil that the Court is continuously obligated to separate the chaff from the grain, that is, to bring a vexatious or legally ill-founded suit to its earliest conclusion; and that frivolous litigation, which would inexorably lead to a sterile end, must be nipped in the bud. We need not dilate upon this duty beyond merely mentioning T. Arivandandam v. T.V. Satyapal MANU/SC/0034/1977: (1977) 4 SCC 467. However, it is equally well-established, and for the pragmatic reasons, that a piecemeal consideration of a lis is not envisaged or encouraged in law."

44. The legal position that clearly follows is that a suit for mere declaration without consequential relief where the plaintiff can seek other relief would mandate the court to refuse to grant relief of declaration. Somewhat similar is the case where relief of injunction is sought where an equally efficacious relief can be obtained, relief of injunction would be declined.

45. A perusal of the plaint in CS(OS) 51/2018 would show that the plaintiffs have sought a decree of permanent injunction to restrain the

defendants from contravening the Family Settlement, decree of declaration is sought declaring the notices in question issued under section 100 of the Companies Act as null and void. A mandatory injunction is sought for appointment of KPMG to disgorge the interest/share of each group. Mandatory injunction is also sought against the defendants to instruct various financial institutions to reopen the mutual fund coming to the shares of the plaintiffs etc.

46. The plaintiff in the suit pending between two main parties, namely, Sh. Dinesh Gupta and Sh. Rajesh Gupta being CS(OS) 51/2018 seeks following reliefs:

i) A decree of permanent injunction restraining the defendants, their associates, shareholders, agents, employees, servants, representatives and /or anyone acting on their behalf or connected with them from in any manner (directly or indirectly) acting in contravention with the Family Settlement dated 02.12.2017 and 09.12.2017 in respect of any rights, title and interest of the Plaintiff Nos. 1, 2, 3 in the Plaintiff Nos. 4 to 19 and proforma Defendants No. 38 to 44 including any right to the possess, control and manage such entities and similarly pass a decree of permanent injunction restraining the Plaintiffs from interfering in the rights, title and interest of the Defendant No.1 to 3 arising out of such Family Settlement dated 02.12.2017 and 09.12.2017.

ii) A decree of declaration declaring that the notices dated 19.01.2018, 24.01.2018, 25.01.2018 and 29.01.2018 issued by the Defendants jointly or severally under Section 100 of the Companies Act, 2013 in respect of the Plaintiff No. 4, 9,14 and 15 are null and void,

inoperative and unenforceable being in contravention to the Family Settlement dated 02.12.2017 and 09.12.2017.

iii) A decree of mandatory injunction directing appointment of KPMG or any other similar agency on a joint basis by Rajesh Gupta & Associates and Dinesh Gupta & Associates (upon the payment of charges to be shared by both the groups) to effectuate the Family Settlement dated 02.12.2017 and 09.12.2017 and disgorge the shares/interests of each group from the other.

iv) Pass a decree of mandatory injunction directing the Defendant Nos.1 to 3 along with their servants, associates and agents to instruct all banks, financial institutions and mutual fund houses to reopen the Mutual Fund coming to the share of the Plaintiffs including those bearing Folio Nos. 9051496351, 9051498822, 9051500892, 9051489878 of Edelweiss Mutual Fund, Folio No.4602943/91 of Kotak Mutual Fund and Folio Nos.403166914243 and 403173224241 of Reliance Mutual Fund forthwith.

The other two suits seek somewhat similar relief.

47. As far as first relief, namely, decree of permanent injunction restraining the defendants from violating or acting in contravention of the Family Settlement is concerned, the plaintiffs had an alternative remedy of seeking specific performance of the Family Settlement or other such relief to implement the family settlement. He has chosen not to do the same. No doubt, one of the reliefs sought by the plaintiff in CS(OS)51/2018 is a direction to appoint KPMG or any other similar agency to effectuate the family settlement and disgorge shares of interest of each group. However,

prima facie, it appears that appointment of such a body and its report can at best be advisory in nature and would not bind the parties.

48. The other reliefs which is sought by the plaintiff relates to declaration regarding notices sent under section 100 of the Companies Act, 2013. An interim injunction restraining the share holder of various companies from exercising their rights as share holders in perpetutory cannot be granted unless effect is given to the Family Settlement and the same is implemented. As noted above, there is no attempt to try and implement the terms and conditions of the family settlement. In fact, the steps to be taken by the respective parties to implement the family settlement are completely missing from the averments in the plaint.

49. Further, perusal of the pleadings and the communications between the learned counsel for the parties dated 04.04.2018 and 07.04.2018 would show that apart from the other steps the plaintiff has not issued the board resolution in favour of Sh.Rajesh Gupta for the purpose of pursuing litigation with respect to the immoveable properties which are vested in the Rajesh Gupta Group. Similarly, an irrevocable specific resolution of the companies vested in the Dinesh Gupta Group were to be given in favour of Rajesh Gupta Group to contest/pursue the cases of actionable claims of various companies which are falling to the shares of Dinesh Gupta Group though the actionable claim pertains to the share of Rajesh Gupta Group. No such resolution has been given by the plaintiff. The stand of the plaintiff in the said communication is that he is ready to pass the resolutions, on the conditions that with respect to the various companies falling to the share of Dinesh Gupta Group the shares be transferred by Rajesh Gupta Group. That apart the plaint admits that a sum of Rs.11.28 crores(as per Rajesh Gupta

Group this is Rs.22,43,72,624) is payable to the Rajesh Gupta Group on account of redemption of debenture held by BDR Builders & Developers Pvt. Ltd. It seems that the main parties i.e. Mr.Dinesh Gupta and Mr.Rajesh Gupta accept the Family Settlement but on account of lack of trust are not implementing the terms. The question that now arises is that in the light of my findings above regarding the objections of the defendant that the plaintiff has failed to seek consequential reliefs and has not sought specific performance of the family settlement should this court now vacate the interim order passed on 7.2.2018?

50. I may look at the family settlement dated 9.12.2017 which reads as follows:-

> "SETTLEMENT BFTWFEN RAJESH GUPTA & ASSOCIATES AND DINESH GUPTA & ASSOCIATES
>
> This settlement is made at New Delhi on 9th day of December, 2017
>
> The terms of the settlement are as under:-
> 1. The list of BDR Group companies / entities which shall vest in Dinesh Gupta &Associates is annexed herewith as Annexure-A.
> 2. The list of BDR Group companies / entities which shall vest in Rajesh Gupta &Associates is annexed herewith as Annexure-B.
> 3. The list of properties which shall be transferred to Dinesh Gupta by the companies vested in Rajesh Gupta and by Rajesh Gupta and Associates is annexed herewith as Annexure-C.
> 4 The list of properties which shall be transferred to Rajesh Gupta by the companies vested in Dinesh Gupta and by Dinesh Gupta and Associates is annexed herewith as Annexure-D.
> 5. The list of actionable claims (only if received) which shall vest in Dinesh Gupta & shall be transferred to Dinesh Gupta by

the companies vested in Rajesh Gupta and by Rajesh Gupta and Associates is Annexed herewith as Annexure-E.

6. The list of actionable claims (only if received) which shall vest in Rajesh Gupta & shall be transferred to Rajesh Gupta by the companies vested in Dinesh Gupta and by Dinesh Gupta and Associates is Annexed herewith as Annexure-F.

7. The list of liabilities (only if paid) which shall be borne by Dinesh Gupta though shown as outstanding in the companies vested in Rajesh Gupta and in Rajesh Gupta and Associates is Annexed herewith as Annexure-G.

8. The above said settlement is binding on the parties, on companies /entities vested in the parties as well as family members and associates of the parties. None of the parties shall challenge the terms of the settlement in any court, authority etc.

9. The cross holdings shall be mutually transferred between the parties on the basis of vesting of companies as detailed above and in a manner and at valuations which will lead to the entire capital distributed 50:50 between both groups detailed as above A and B.

10. The parties agree that the tax will be borne respectively by the respective parties as per Annexure-A &B. however, taxes pertaining to claims as per annexure E&F as list as per annexure H shall be borne by the respective beneficiary.

11. The parties shall cooperate with each other to implement the terms of this settlement.

12. That more than 100 Crores worth of actionable claims were held in excess by Dinesh Group which is to be reimbursed to Rajesh Group if received, Specific irrevocable resolutions of companies will be given to recover the actionable claims by Dinesh Group."

It is the case of both the parties that this settlement does not itself transfer the right, title or interest in the shares/properties in favour of the respective groups. Steps would have to be taken by the parties to effectuate and implement the aforesaid settlement.

51. I may here note the judgment of the Supreme Court in the case of ***K.K.Modi vs. K.N.Modi and Others, (supra)*** where the Supreme Court noted as follows:-

> "52. Group A also contends that there is no merit in the challenge to the decision of the Chairman of IFCI which has been made binding under the Memorandum of Understanding. The entire Memorandum of Understanding including clause 9 has to be looked upon as a family settlement between various members of the Modi family. Under the Memorandum of Understanding, all pending disputes in respect of the rights of various members of the Modi family forming part of either Group A or Group B have been finally settled and adjusted. Where it has become necessary to split any of the existing companies, this has also been provided for in the Memorandum of Understanding. It is a complete settlement, providing how assets are to be valued, how they are to be divided, how a scheme for dividing some of the specified companies has to be prepared and who has to do this work. In order to obviate any dispute, the parties have agreed that the entire working out of this agreement will be subject to such directions as the Chairman, IFCI may give pertaining to the implementation of the Memorandum of Understanding. He is also empowered to give clarifications and decide any differences relating to the implementation of the Memorandum of Understanding. Such a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed. The respondents may make appropriate submissions in this connection before the High Court. We are

sure that they will be considered as and when the High Court is required to do so whether in interlocutory proceedings or at the final hearing."

52. Hence, the settled legal position is that a family settlement which settles disputes within the family should not be lightly interfered with especially if the settlement has already been acted upon by some members of the family. It is also settled that such settlements have to be treated differently from ordinary contracts and should not be lightly disturbed. In the present case the settlement has been partially implemented as noted above. If I were to vacate the interim order passed by the court on 7.2.2018 on the aforenoted grounds relating to the omissions of the plaintiff and also relating to failure to seek alternative efficacious remedy it would jeopardize the family settlement and complicate matters more. The family may further get embroiled in a complicated dispute which may get difficult to resolve. Presently, the suit is at the initial stage. Pleadings have just been completed. In my opinion, an opportunity should be granted to the plaintiffs to take steps to seek reliefs which will also have the effect of implementing the terms and conditions of the family settlement. Such a step would help resolve the conflict between the family and also help in implementing the terms and conditions of the family settlement. I order accordingly**.**

53. Accordingly, in the interest of family amity and unity and to uphold the family settlement, I confirm the interim order passed by this court dated 7.2.2018 in CS (OS) 51/2018. Similarly, in IA No. 3238/2018 in CS(OS) 100/2018, I pass an interim order restraining the defendants from giving effect to the notice dated 16.02.2018 issued under Section 100 of the Companies Act. An interim order is also passed against the defendants

restraining them from giving effect to the notice/communication dated 12.02.2018, 22.02.2018 and 23.02.2018. As far as IA No. 3241/2018 in CS(OS) 101/2018 is concerned, an interim order is passed restraining defendant No. 2 from giving effect to the notice dated 16.02.2018 issued under Section 100 of the Companies Act.

54. However, the above interim order shall continue to operate during pendency of the accompanying suit provided the plaintiff does the following acts within six weeks from today:-

(i) He will pay to Mr.Rajesh Gupta a sum of Rs.11.28 crores plus Rs.5.28 crores which he is seeking to withhold on his own interpretation of the family settlement. This amount would be in lieu of the redemption of mutual funds held by BDR Developers and Builders Private Limited. This would also be subject to further orders that may be passed by the court.

(ii) The plaintiff will ensure resolution of the Board of Directors of the companies vested in Dinesh Gupta Group be given in favour of Mr.Rajesh Gupta to contest/pursue the case of actionable claims pertaining to the said companies/actionable claims have been given to the Rajesh Gupta Group. This is subject to further orders the court may pass.

(iii) Plaintiff will also pass resolution of the Board of Directors in favour of Rajesh Gupta of Companies which have fallen to his share for the purpose of pursuing litigation with respect to immovable properties which are vested in the Rajesh Gupta Group. This is subject to further orders that the court may pass.

(iv) Mr.Rajesh Gupta will place on record accounts of any amounts which are recovered by him in the course of adjudication of proceedings regarding actionable claims/immovable properties.

(v) All the companies which are listed in the family settlement will ensure that the quarterly statement of accounts are regularly provided to the two main parties, namely, Mr.Dinesh Gupta and Mr.Rajesh Gupta respectively.

55. The applications, namely, IA Nos.1854/2018, 3238/2018 and 3241/2018 stand disposed of as above.

IA No.3565/2018 in CS(OS) 51/2018

56. This application is filed under Order 39 Rule 4 CPC by defendants Nos.: 17, 19 to 22, 24 and 27 for vacation of ex-parte injunction passed by this court on 07.02.2018.

57. In terms of the aforesaid order this application stand dismissed.

(JAYANT NATH)
JUDGE

NOVEMBER 16, 2018/n/v/rb