Padrauna Raj Krishan Sugar Works Ltd. ... vs Kunwar Laxmi Pratap Narain Singh And ... on 24 July, 1953

Equivalent citations: AIR1954ALL74, AIR 1954 ALLAHABAD 74

JUDGMENT

Chaturvedi, J.

1. This is a plaintiffs' appeal against an order of the learned Civil Judge of Deoria confirming a previous order of his predecessor dated 31-5-1952. By this order the learned Civil Judge had allowed an application for the grant of a temporary injunction in favour of the plaintiffs, as prayed for by them. The plaintiffs had prayed for the issue of an ad interim injunction restraining the defendants from acting on the basis of the resolutions said to have been passed at a meeting of the shareholders of the company on 24-4-1952; and from taking any steps in pursuance of or in furtherance to those resolutions, until the decision of the suit. The resolutions referred to were ten in number, but it is not necessary to reproduce them here.

2. Plaintiff 1 is Padrauna Raj Krishna Sugar Works Ltd., and plaintiff 2 is Kr. Rudra Pratap Narain Singh, the Managing Director of plaintiff 1. Defendants 1 to 10 are the Directors or the shareholders of the said company. Padrauna Raj Krishna Sugar Works Ltd. is a public limited liability company which was incorporated in the year 1921. The first Managing Director of the Company was Rai Bahadur Warain Singh, father of plaintiff 2 and defendants 1 to 3, and he continued as the Managing Director till the date of his death, namely, 13-6-1941.

After his death, the eldest son, plaintiff 2, was appointed as the Managing Director of the company for a period of 20 years on a remuneration of Rs. 1000/- per mensem, and a commission of 7 per cent. on the net profits of the company. The appointment of plaintiff 2 as the Managing Director for a period of 20 years is mentioned in Article 104 of the Articles of Association, and there was also an agreement on 2-9-1941 between the company and plaintiff 2, one of the terms of which was that plaintiff 2 was appointed as the Managing Director for a period of 20 years on the remuneration mentioned above. It was further provided that he could not be removed from the office excepting by an extraordinary resolution passed at an extraordinary general meeting of the company to be convened for the express purpose, of which meeting three months' notice should be given to each shareholder. At that meeting at least half the members of the company for the time being entitled to vote should, be present in person or by proxy, and not less than 3/4th of the paid up share capital should be represented.

3. We might mention here that the entire paid up capital of the company amounts to a sum of Rs. 14,36,500/- divided into 2873 shares of the value of Rs. 500 each, Plaintiff 2 continued to act as the Managing Director for a period of about ten years, and no complaint appears to have been made

against the manner in which he was conducting the management.

4. It appears that in the year 1950 disputes arose between plaintiff 2 and his three brothers, and a suit for partition of the family property was filed about that time. The proceedings which led up to the present litigation started on 25-1-1952, according to the case set up by the defendants. It is said that on that date the shareholders, holding more than one-tenth of the share capital, sent a notice to plaintiff 2 calling upon him to summon an extraordinary general meeting of the shareholders of the company to consider the resolution of his dismissal and the other resolutions. It is said the Managing Director ignored the requisition; and the requisitionists a month later, sent out notice to the shareholders on 27-2-1952 calling a general meeting for 24-4-1952 to consider the said resolutions. The meeting of the shareholders was said to have actually taken place on 24-4-1952 at the residence of Kr. Lakshmi .Partap Narain Singh, defendant 1, and ten resolutions were passed at' that meeting.

These resolutions are detailed in Sen. A attached to the plaint. A copy of these resolutions is said to have been sent to the Registrar, Joint Stock Companies, Lucknow, under a registered cover on 6-5-1952. On 17-5-1952 copies of the resolutions were sent to plaintiff 2 with a request that he should obey the directions contained in the said resolutions. On 27-5-1952 a copy of the resolutions was sent to the Central Bank of India, which was acting as the banker of this company, intimating to it that plaintiff 2 was no more authorised to operate on the bank accounts of the company. Immediately on receipt of this notice, the bank informed plaintiff 2 of the fact, and the present suit was filed by the plaintiffs on 31-5-1952.

5. The important allegations contained in the plaint are that plaintiff 2 was duly appointed as the Managing Director for a period of 20 years of 1941, and besides an agreement entered into between the company and plaintiff 2, the fact was mentioned in Article 104 of the Articles of Association of the company. It is then said that disputes had arisen between plaintiff 2 and defendants 1 to 3, who are all brothers, and a suit was actually pending between them in the Court of the Civil Judge of Gorakhpur. Defendants 1 to 3, therefore, wanted to injure plaintiff 2; and with the aforesaid object in view they drew up the re-solutions detailed in Schedule A attached to the plaint, and wrongly gave out that notices were issued to the share-holders, and that the meeting was held on 24-4-1952.

As a matter of fact, no notice for calling a meeting was given to plaintiff 2. No notices were issued to the shareholders for convening the meeting on 24-4-1952, and no resolutions were passed at any such meeting on the said date. The whole thing was a fabrication from beginning to end. It was then said that, assuming that the resolutions were passed, the resolutions were illegal, 'ultra vires' and void. It was alleged that plaintiff 2 was appointed a Managing Director for a period of 20 years, and he could not lawfully be removed before the expiry of that term in such a summary fashion, nor even by a regular and valid meeting of the shareholders of the company without complying with the necessary conditions required by law, the Articles and the agreement aforesaid.

The allegations of misfeasance and misappropriation were vehemently denied, and it is alleged that the company had been in a very flourishing condition under the management of plaintiff 2, and in the year 1950-51 it made a profit of about six lacs of rupees. In the end the plaintiffs prayed that it

might be declared that the extraordinary special meeting of the plaintiff company alleged to have been held on 24-4-1952 was fictitious, illegal & 'ultra vires'; and that the resolutions detailed in Schedule A of the plaint, purporting to have been passed at that meeting, were fictitious, illegal and 'ultra vires' and also ineffectual.

6. The second prayer was that the defendants be restrained by a perpetual injunction from giving effect to the resolutions mentioned in Schedule A, and from interfering in any manner with the management of the affairs of the plaintiff company by plaintiff 2 on the basis of the alleged resolutions of 24-4-1952. An application for the issue of a temporary injunction in terms of the second prayer of the plaint was also moved the same day before the learned Civil Judge. The learned Civil Judge passed an order directing an interim injunction to issue as prayed for, and the application was to be heard finally after hearing all the defendants. This hearing subsequently took place, and after a long and protracted hearing extending over months, the order under appeal was passed on 17-12-1952 making the interim order absolute.

7. An appeal was previously filed by the defendants against the interim order of injunction dated 31-5-1952, but that appeal was subsequently withdrawn, and the present appeal against the final order was filed on 13-1-1953.

8. The defendants in their written statement denied all the main allegations contained in the plaint, and they asserted that a notice was duly sent to plaintiff 2 on 25-1-1952 for summoning a general meeting, and, on the plaintiffs' failure to summon it, the requisitionists themselves summoned the meeting for 24-4-1952, and sent proper notices to all the shareholders on 27-2-1952. The meeting was properly held on 24-4-1952 in which more than, half the present shareholders of the company were present, and more than 3/4th of share capital was represented. The resolutions were duly passed and were in due course communicated to the Registrar, Joint Stock Companies, to plaintiff 2 and to the bankers of the company.

It was further pleaded that the suit was not maintainable and plaintiff 2 had wrongly impleaded the company as plaintiff 1; as a matter of fact, the interests of the company are adverse to those of plaintiff 2. It was also pleaded that the plaintiffs were not entitled to the injunction prayed for, inasmuch as the granting of the injunction would amount to forcing the personal services of plaintiff 2, who was an employee, on the employer, namely, the company. A prayer like this could, not be granted in view of the provisions of Sections 21 and 56, Specific Relief Act. The defendants also filed objections to the plaintiffs' application praying for the issue of a temporary injunction on practically the same grounds as were contained in their written statements. It was further contended that plaintiff 2 had no prima facie case nor would an order issuing an injunction be just and proper in all the circumstances of the case.

9. Before the learned Civil Judge the question whether the meeting was actually held and the notices duly issued was strenuously contested, but he had not given any finding on the point as to whether a meeting was actually held on 24-4-1952 or not. He has considered the connected question as to whether the resolutions alleged to have been passed at this meeting could validly be passed or were beyond the power of the shareholders assembled at the meeting. On this point the learned Civil

Judge held that resolutions 1 and 2 passed at this meeting were illegal and 'ultra vires'. On the point as to whether the issue of the injunction would be tantamount to forcing an employee on an unwilling employer, the learned Civil Judge held that this was not a case of that nature. On the other hand, it was a case where a prayer was made for preventing a breach of contract. He held that the plaintiffs had made out a prima facie case, and the balance of convenience lay in directing the injunction to issue as prayed for. He accordingly issued the injunction.

10. The learned counsel for the appellants has strenuously urged the same three points as were urged by him in the Court below, namely, (1) that no prima facie case had been made out by the plaintiffs, (2) that the injunction could not be issued in this case, as prayed for, because that would amount to forcing the personal services of an employee on an unwilling employer, which is prohibited by the provisions of Sections 21 and 56, Specific Relief Act; it was also urged in this connection that the company should not have been made a plaintiff in the case, and plaintiff 2 has not acted 'bona fide' in making the company as one of the plaintiffs, and (3) that it was not just and proper to issue the injunction prayed for in all the circumstances of the present case.

11. In dealing with the above points, we shall try to be as brief as possible and shall be deciding only the points absolutely necessary for the decision of the above appeal, because the suit is still pending in the Court below, and decisions that we arrive at may prejudice one or the other of the parties in the trial of the suit. We may also make it clear that the decisions arrived at by us in this judgment are merely tentative and based on the evidence and the facts, as they stand on the record of the case at the present time. No evidence has yet been recorded in the suit itself, and it will be open to the learned Civil Judge to arrive at his own conclusions on questions of fact and law, when all the evidence that the parties have to produce has been brought on the record. It is quite possible that the circumstances, which appear to be very suspicious at the present moment, may have some good explanation and the evidence produced in future may be of such a nature as to explain me improbabilities in the defence case which so far have not been explained.

12. We shall now deal with the points in the order in which they have been mentioned above. Under me first point, namely, whether the plaintiffs have made out a prima facie case, we have found it necessary to enter into the question as to whether a meeting was actually held on 24-4-1952 as alleged by the defendants or not. The learned Civil Judge has not given any decision on the point, but, in our view, this is the most important point in the case and a decision has to be arrived at in order to decide the above appeal. In order to prove the holding of the meeting, the defendants have filed a certificate of posting issued from Khadda post office concerning a notice to plaintiff 2 on 25-1-1952 asking for the summoning of a meeting. They have also filed a number of postal certificates of the same post office showing the posting of a number of notices to the shareholders of the company on 27-2-1952.

These postal certificates were filed within time; but the minute book, which contains these ten resolutions said to have been passed on 24-4-1952, was not filed till after the present appeal had been filed in this Court. 27-4-1953 was the date fixed for settling the issues in the Court below, and on that date an application was made on behalf of the defendants praying for time to file certain documents which were not available or had been misplaced. Some of the documents, for which time

was prayed for, were this minute book, the proxy papers, and a receipt of the registered letter sent to the Registrar, Joint Stock Companies.

13. Out of the postal certificates filed, one bears the seal dated 25-1-1952, and the rest bear seals dated 27-2-1952. The notice sent on 25th January was a notice to the Managing Director for calling an extraordinary general meeting of the company, and the notices purporting to have been sent on 27th February were notices to the, shareholders of the extraordinary general meeting of the company. In the postal certificates concerning these notices one serious mistake has been committed, which throws a great deal of doubt about the fact whether the first notice to the Managing Director was sent on a date different from that on which notices to the shareholders were sent. In giving the description of the notice, the first postal certificate bears the following endorsement :

> "Notice of an extraordinary general meeting of the Padrauna Raj Krishna Sugar Works Ltd., Padrauna, by requisitionist."

The endorsement on the postal certificates concerning the notices of the meeting sent to the shareholders is as follows :

> "Notice of requisition for calling an extraordinary general meeting of the Padrauna Raj Krishna Sugar Works Ltd., Padrauna."

It is obvious and the fact has not been disputed that the endorsement made on the first postal certificate should have been written on the certificates of posting of notices issued to the shareholders on 27-2-1952, and the endorsement on the postal certificates sent to the shareholders should have been that which finds its place on the first certificate of posting purporting -to be dated the 25-1-1952. It is conceded on behalf of the appellants that there has been a mistake in putting down the gist of the contents of the notice in all the certificates of posting.

We agree that it is a mistake, and nobody suggests that it is anything but a mistake. But the question arises whether such a mistake was possible if the notices were sent, as alleged, after an interval of more than a month. A mistake like this very strongly points to the conclusion that really all the certificates of posting were written on the same date, and the endorsement, which was meant to have been written on the certificate of posting concerning the notice to the Managing Director for calling a meeting, has been written on the, certificates of posting obtained for the notices sent to all the shareholders, and vice versa. This mistake raises a serious doubt as to whether any notices were sent at all either to the Managing Director for calling an extraordinary general meeting, or to the shareholders giving them information of the date of the meeting to be held.

It is well known that it is not at all difficult to obtain a postal seal of a prior date on a certificate of posting; and the mistake committed, in the present case, appears to be due to the fact that all these certificates of posting were written on the same date, and on one the seal of 25th January was obtained and on the rest the seals of 27th February. This means that no notices for holding the meeting were issued at all and false evidence had been tried to be procured that these notices to the

shareholders and to the Managing Director were sent on different dates. It may be that some good explanation for this mistake may be coming forth; but so far there is none on the record. The learned counsel, appearing for the defendants in the Court below, tried to give an explanation, but we could take no notice of that unless the learned counsel had appeared in the witness-box and faced the cross-examination.

14. The next circumstance which creates a doubt about the issuing of these notices is the fact that the notices purport to have been posted at the sub-post office at Khadda, where some of the defendants reside and are really managing the sugar mill situated at Khadda. The notices were sent in connection with a meeting to be held at Padrauna which concerned the sugar mill at Padrauna, and one would have expected these notices to have been posted at Padrauna specially because defendant 1, at whose house the meeting is ultimately said to have taken place, also resides at Padrauna. There should, therefore, have been no difficulty in posting the notices at Padrauna post office, if the matter was above board and it was not the scheme of the defendants to keep plaintiff 2 wholly ignorant of these proceedings.

15. Then there is the fact that the defendants could easily have suspected that plaintiff 2 would not call a meeting, the object of which was to dismiss plaintiff 2 himself; and one would have expected the defendants, in such circumstances, to have sent a registered letter to plaintiff 2, and not to have satisfied themselves by just obtaining a certificate of posting. Subsequent to this, it is admitted that no meeting was ever called; but the notices of the meeting, said to have been summoned by the requisitionists, were again not sent under registered covers, and the device of obtaining certificates of posting was resorted to for purposes of proving the sending of these notices also.

16. As regards the alleged proxies too, the learned Advocate-General, for the plaintiffs, pointed out a number of suspicious circumstances. These proxies were handed over to the learned Advocate-General for the plaintiffs by the learned counsel for defendants in our presence during hearing of the appeal. But subsequently they were not filed till 8-5-1953 at least, and we do not know whether they have been filed as yet or not. The meeting was said to have been held on 24-4-1952, but the only step, taken in pursuance of the resolutions passed at that meeting till the 6th of May, was to send a copy of the resolutions to the Registrar, Joint Stock Companies, on that date. The plaintiffs would have no knowledge of the sending of this copy to the Registrar.

After this there was again a lapse of 11 days and then a copy of the resolutions was actually sent to plaintiff 2. In view of the serious apprehensions entertained by the defendants, it is somewhat curious that they did not intimate to plaintiff 2 the fact of his dismissal for more than three weeks after the passing of the resolutions.

17. There were several other points also mentioned by the learned Advocate-General for the plaintiffs in his argument, but we do not consider it necessary to go into all the points that were raised, because the facts mentioned above are, in our opinion, sufficient to make out a prima facie case in favour of the plaintiffs. We are satisfied that the plaintiffs have succeeded in showing that probably no meeting of the shareholders of the company has been held on 24-4-1952, nor were any notices issued to the share-holders of the holding of any such meeting. It is true that the resolutions

are to be found now in a register, and they purport to be signed by 27 share-holders either in person or by proxy. The entire number of the shareholders was 53. Out of these six had died, so 11 clearly represented the majority of the shareholders. We have also calculated the shares owned by these share-holders, and there can be no doubt that the shareholders, who have signed the minutes, owned 1952 shares out of the total of 2873 shares. They thus represented the majority of shares also.

The suggestion of the learned Advocate-General was that the signatures of the shareholders appeared to have been obtained at different times by making unwarranted representations, and the appearance of the signatures of the majority of the shareholders on the minute book does not really prove that a meeting actually took place. In view of the facts that we have given, we think the suggestion has some force. Our finding on this point, therefore, comes to this that no meeting of the shareholders at all took place on 24-4-1952, nor were any notices for the alleged meeting ever issued.

18. This brings us to the second point argued by the learned counsel. It is well established that no injunction can be issued, which has the effect of forcing the personal services of an employee upon an unwilling employer. As a matter of fact, this proposition of law was not contested by the learned Advocate-General appearing for the plaintiffs. The learned counsel for the defendants further argued that, even if the resolutions were illegal or even 'ultra vires' even then the same principle would apply and no injunction could be issued. He went to the length of arguing that even if no meeting was held, but it appears to the Court that the majority of the shareholders do not want an employee, the Court would not be justified in issuing an injunction, the result of which would be to force the employee upon them. His case is that an injunction is not a proper relief, and the proper relief in all such cases is a decree for damages. We find ourselves unable to agree with the last proposition advanced by the learned counsel.

In a case where no meeting of the company has at all been held, it would not be possible to decree any damages against the company, because the company has not purported to act at all. The company is an incorporated body and it can only act in the manner laid down by the statute. If five or six of the shareholders sit down and write out a number of resolutions and after that obtain the signatures of a number of other shareholders also, so that the total number of the shareholders signing them, constitutes the majority, it cannot be said to be an act of the company at all unless this procedure is sanctioned by the Articles of association of the company, it is the individual act or acts of the different shareholders, but not the act of the company. In such a case, the employee would not be entitled to obtain any decree for damages against the company, because the company, as such, has not committed any act, and it certainly cannot be held liable for the individual act of the different shareholders.

It would be quite a different thing if the shareholders or the Directors in a properly constituted meeting pass an illegal resolution, or even a resolution which they had no power to pass, because then the company, as such, has purported to act, though the act may be an illegal or an 'ultra vires' one. In such a case, the wronged party or the employee wouid have a right to recover damages from the company. But no such damages can be recovered where no meeting has been held and the shareholders, sitting at different places, have appended their signatures to a document which

purports to contain the particulars of certain resolutions passed at an alleged meeting,

19. No case has been cited by the learned counsel for the defendants, in which a relief for injunction was refused, even though the finding was that no meeting of the shareholders or the Directors was actually held. As stated above, the company or the employer in such a case would not be liable for the payment of any damages, and the only relief which the employees can have, under such circumstances, is a relief for injunction. A mere relief for a declaration would not help the employee, and it is very doubtful if a suit for a mere declaration would at all be maintainable because of the provisions of Section 42, Specific Relief Act.

20. As we have already stated, the learned counsel has not cited any case on the point just mentioned by us, but we propose to discuss briefly the cases cited by him.

21. The first case cited by the learned counsel is reported in -- 'Mair v. Himalaya Tea Co.', (1865) LR 1 Eq 411 (A). This was a case in which Sir W. Pagewood, V. C., observed:

> "Even assuming, in favour of the plaintiff, the construction given by him to the articles that he was to be irremovable, except by the authority of a general meeting, or that his acceptance of shares was conditional on his being retained as agent, the Court cannot act in his favour, as the duties of an agent are in the nature of personal service, and as such incapable of being enforced in equity."

In this case the plaintiff's case was that he was irremovable because of the Articles of Association, except by the authority of a general meeting. But a resolution was passed by the Directors which the plaintiff complained against. The plaintiff had actually tendered his resignation on certain conditions; but the Directors of the company treated him as having resigned, though the conditions had not been fulfilled, and the management of the business of the company vested in the Directors. The act of the Directors, therefore, amounted to an act of the company itself, and the case is clearly distinguishable from the present case.

22. In the next case cited by the learned counsel reported in -- 'Nuserwanji Merwanjee v. Gordon', 6 Bom 266 (B), the plaintiffs complained against a resolution dated 8-8-1881 appointing Messrs. H. C., & L. as solicitors of the company in place of the plaintiffs. The plaintiffs said that the said resolution was 'ultra vires' and prayed for an injunction to restrain the defendants from giving effect to the said resolution. It is not necessary for us in this case to decide whether an injunction should be granted or not in a case where the resolution passed by the company is 'ultra vires,' though this case certainly supports the contention of the learned counsel for the defendants on the point. In the present case there had been no resolution and no meeting and, therefore, it is clearly distinguishable from the case reported in '6 Bom 266 (B)'.

In this Bombay case the plaint was sought to be amended by alleging a cause of action by two of the plaintiffs as shareholders, but this amendment was disallowed because the case was initially a case as between the contracting parties. In the present case also, the case appears to be a case not based on the rights of plaintiff 2 as a shareholder, but simply in his capacity as a Managing Director. So the

Bombay case and the present case are similar on this point; and the only distinction is, as we have already indicated above, that in the Bombay case it could be said that the company had acted, whereas the same could not be said in the present case.

23. In -- 'N. C. Sircar & Sons v. Baraboni Coal Concern Ltd.', 16 Cal WN 289 (C), it has been held that a limited liability company cannot be restrained by injunction from dispensing with the services of the Managing Agents, though the Managing Agents could be removed only in the specified manner after a specified period. The remedy of the Managing Agents, in such a case, lies in a suit for damages for wrongful dismissal. In this Calcutta case the plaintiffs were the Managing Agents of the defendant company and they prayed, among other reliefs, for a declaration that it was not competent to the company to dispense with the services of the plaintiff firm as Managing Agents by any resolution, passed at any meeting, held in pursuance of a notice, which had been issued for calling a meeting. They also prayed for an injunction to restrain the defendant company from passing, at the meeting to be held in pursuance of the notice, any resolution purporting to dispense with the services of the plaintiff firm as Managing Agents of the defendant company.

In this case, it appears that a notice for calling a general meeting of the company was 3uly issued, and the plaintiff brought a suit before the meeting could be held. One of the reliefs was to restrain the defendant company from holding any meeting in pursuance of the resolution, because the said resolution would be against the Articles of Association of the company. The Court refused to grant the injunction on the ground that as the plaintiffs could not enforce the positive contract of service, they clearly could not obtain an injunction to restrain the company from dispensing with their services, except in a given manner or until after a stated period. The learned Judge observed that it was not known if the resolution would be passed, and if it was not passed, the plaintiffs would have no cause of action; and if it was passed, the plaintiffs would have a remedy probably in a suit for damages.

The injunction that was sought in this case, also was an injunction to restrain the defendant company from dispensing with the services of the Managing Agents, who were treated as employees. In this case also it was the act of the company against which an injunction was sought, and the decision would be covered by the general rule that the services of an employee would not be forced on an unwilling employer.

24. The case reported in -- 'Ram Kumar v. Sholapur Spinning & Weaving Co. Ltd', A. I. R. 1934 Bom 427 (D), was a case where the plaintiff had claimed a declaration that certain resolutions, passed by the Directors dismissing the company's agents, were in contravention of the memorandum and the Articles of association of the company, and were, therefore, not binding on the members, and secondly for an injunction to restrain the defendants from acting upon the resolutions. It was held that the Court did not generally interfere with the internal management of the affairs of the company, and, if the majority of the shareholders considered that particular contract of employment should be terminated, the Court would not as a rule consider the matter at the instance of a minority of shareholders.

To get over these difficulties, it was contended on behalf of the plaintiff that the dismissal of these agents was 'ultra vires' the company, and the learned Judges said that, if the act were really 'ultra vires', then the case would be an exception to the general rule that the Court could not interfere with the management of a company. The learned Judges were of the view that the act was not 'ultra vires'. This was also a case where resolutions were duly passed and the complaint was not against the individual acts of the shareholders.

25. In -- 'Gulab Singh v. Punjab Zamindara Bank Ltd.,' A. I. R. 1942 Lah 47 (E), it was held that an injunction would not issue in the case of contracts which could not be specifically enforced, or where breach of the contract could be adequately compensated in damages. It was further held that the principles applicable to the issue of an injunction at the instance of a dismissed servant ought also apply in the case of a dismissed agent, that is the Managing Director, of a company. It would be contrary to public policy to impose upon an unwilling principal an agent whom he did not wish to employ, especially when the agent could bring an action for damages.

The case is an authority for the proposition that a Managing Director also stands in the position of an agent or an employee, and no injunction can be issued in his favour, the effect of which would be to force his services upon the company which really did not want to employ him any more. In this case also, there was a resolution of the company itself at a meeting duly held, and if the plaintiff was illegally dismissed, he could sue for damages. No question in this case was raised about the resolution being 'ultra vires'.

26. The last case cited by the learned counsel lor the defendants is reported in -- 'Mothey Krishna Rao v. Grandhi Anjaneyulu', A. I. R. 1954 Mad 113 (F). In this case the plaintiff was appointed as secretary and treasurer of the company by an amendment of the Articles of Association. Subsequently the Directors of the Company, by a resolution, first suspended the plaintiff, and then removed him from the post of secretary. The suit was merely for a declaration and the learned Judges held that the suit for a mere declaration was not maintainable because of the provisions of Section 42, Specific Relief Act.

Subsequently, the amendment of the plaint was allowed, and a prayer for injunction was also permitted to be added. But this prayer for injunction was refused on the ground that the grant of the injunction would amount to enforcing a contract of personal services. In this case also, there can be no doubt that the company had acted, and there was a resolution of the company, and the case only lays down the general rule that an employee could not be forced on an unwilling employer.

27. The case relied upon by the learned Advocate General for the plaintiffs is reported in --'Ram Kissendas Dhanuka v. Satya Charan Law', A. I. R. 1960 PC 81 (G). In this case, their Lordships of the Privy Council have drawn a distinction between a case, where the suit is by the employee, and the case where the suit is by the minority of the shareholders, & they have held that the principles, which apply to the suit by the employee, are not applicable to cases where the suit is by the minority and the minority wants to enforce the terms of the Articles of Association of a company. In the present case, the suit is not, in the capacity of a shareholder, by plaintiff 2, but merely as a Managing Director; and, in our opinion, the position of a Managing Director is the same as that of an ordinary

agent of a company. This case is clearly distinguishable.

28. These are all the relevant cases cited before us, and, in our opinion, none of them applies to the facts of the present case, inasmuch as, in the present case, our opinion is that no notices for convening a meeting were issued, and no meeting appears to have been actually held, as directed by the Companies Act. On the question whether an injunction can be issued, where the resolution is 'ultra vires' the company or the Directors, there appears to be some difference of opinion, but we express no opinion on this point, as the question does not arise in the present case. We have only held that, if no meeting has actually been held, then it will be open to the Court to give a relief of injunction to the employee restraining the defendants from acting on alleged resolutions which were never passed, (though not restraining them from, passing any resolutions in future), because in such a case the company or the employer has not acted at all, nor will it be liable for any damages.

29. We, therefore, agree with the decision of the Court below that plaintiff 2 is prima facie entitled to an injunction, though our reasons for the decision are somewhat different.

30. Then, there is the question as to whether this is a proper case in which an injunction should be issued. The position is that the company has been managed for the last ten years by plaintiff 2, and it appears that he has managed it quite successfully. If we refuse the injunction, there will be a scramble for possession. By mere refusal of the injunction to the plaintiff, possession will not pass to the defendants; and plaintiff 2 also will not be able to run the factory because the bank will not permit him to operate on the accounts. The condition of the mill, therefore, will become very uncertain and both the parties are likely to suffer, if the injunction was refused.

The learned counsel for the defendants has urged that there are serious allegations 2 against plaintiff 2 and, in case he is allowed to continue as a Managing Director of the company, the loss to the defendants may be irreparable because he would be in a position to falsify the accounts. We cannot presume that any such contingency will arise, nor does the past conduct of plaintiff 2 justify any such apprehension.

31. On the further point as to whether the company has been wrongly arrayed as a plaintiff and should have been added as a defendant, we propose to express no opinion at this stage, it is not necessary to decide that question in this appeal.

32. The last point urged before us was that it was not necessary to give an injunction with respect to all the ten resolutions said to have been passed on 24-4-1952. We have gone through these resolutions and, in our opinion, the injunction issued by the Court below should be confined to the resolutions Nos. 2, 3, 4, 5, 6, 7 and 8. It is not necessary to issue any injunction with respect to the resolutions Nos. 1, 9 and 10.

33. The result, therefore, is that the appeal is partly allowed and the injunction issued by the Court below with respect to the resolutions Nos. 1, 9 and 10 is vacated, but the injunction issued with respect to the resolutions Nos. 2, 3, 4, 5, 6, 7 and 8 is upheld.

34. As plaintiff 2 has substantially won, he shall be entitled to his costs from, the defendants.