

present case, all the twenty-one members were intimated of the intended meeting who some how did not come present except the two. Natural inference would be that motion stood rejected.

We do not find any merit in the contention of the learned counsel for the respondents that the meeting called to consider no confidence motion could be adjourned for lack of alleged *quorum* as we are of the definite view that no such *quorum* is envisaged by the provisions of the Act. Resultantly, we allow this writ petition and quash the order Annexure P-2. No order as to costs.

J.S.T.

Before Hon'ble V. K. Bali, J.

GURCHARAN SINGH,—*Applicant Petitioner.*

versus

M/S RAGHBIR CYCLE PVT. LTD. ETC.,—*Respondents.*

Company Application No. 46 of 1993.

in

Company Petition No. 134 of 1987

19th April, 1994.

Company (Court) Rules, 1959—Rule 9 C.P.C. Order 23, Rule 3, Section 151—Arbitration Act—Sections 8, 20 and 21—Company petitions pending—Application under Rule 9 for appointment of an Arbitrator—Such application filed by both the parties—Order appointing the arbitrator—Award rendered—Objections to award Challenging the appointment of arbitrator.

Held. that all the interested parties had agreed that the matter in difference between them by referred to Arbitration. The applications were filed in writing. It cannot, thus, be said that the order passed on the applications of all the interested parties to the company petitions, referred to above, was not under the provisions of Arbitration Act or that the Award was also outside the rules contained in the Arbitration Act.

(Para 41)

That apart, having asked appointment of Arbitrator in writing and participating before the Arbitrator without raising any kind of objection, whatsoever, would not permit objectors to contend that the order passed appointing Arbitrator and the award itself were not under the provisions of Arbitration Act. The conduct of objectors amounts to acquiescence.

(Para 42)

Principles of natural justice—Counsel putting in appearance—Whether the parties to be issued separate notices.

Held, that the counsel for the objectors was representing not only Raghbir Singh but his family members as also the Company. Once an appearance was made before the Arbitrator by the counsel, who, as mentioned above, was representing all the respondents, it was not obligatory for the Arbitrator to have issued separate notices to all individuals involved in the matter and if someone really wanted to be heard separately, it was for him to have put in appearance before the Arbitrator.

(Para)

H. L. Sibal, Sr. Advocate with L. M. Suri, Sr. Advocate and Deepak Suri, Advocate. *for the Petitioner.*

G. Ramaswamy and Y. K. Jain Sr. Advocates with Rajiv Dutta, Advocate and also J. S. Narang, Advocate with P. P. Singh, Advocate, *for the Respondents.*

JUDGMENT

V. K. Bali, J.

(1) This order shall dispose of Company Application No. 46 of 1993 in Company Petition No. 34 of 1987 and Company Application No. 47 of 1993 in Company Petition No. 79 of 1987 under Rule 9 of the Companies (Court Rules 1959 to make the award of Shri D. S. Tewatia, Arbitrator-cum-Umpire a rule of the Court. This order shall also dispose of Company Application No. 45 of 1993 in Company Petition No. 134 of 1987 raising objections under sections 30 and 31 of the Arbitration Act against the same very award. Before, however, objections raised against the award are noticed, it shall be useful to give factual matrix of the events leading to appointment of Arbitrator.

(2) Gurcharan Singh, his wife Smt. Jawant Kaur, his daughters Miss Soniya and Miss Ramajit Kaur as also his son Gurpreet Singh filed Company Petition No. 79 of 1987 under Section 155 of the Companies Act, 1956 for rectification of the register of members. This petition was filed against Raghbir Cycles Private Limited, Raghbir Singh and his sons Manjit Singh, Kanwaljit Singh, Paranjit Singh and Harjit Singh. This petition was filed way back in July 1987 and at that time Paranjit Singh and Harjit Singh were admittedly minors and were sued through their father Raghbir Singh as his natural guardian. It is, *inter alia*, pleaded that the petitioners hold the following share holding in accordance with

the books of the Company :—

1. Gurcharan Singh	600 shares. (although he is entitled to 2,100 shares in accordance with the allotment of 1,500 shares which was made on 22nd July, 1985 as evidenced by return of shares made by the Company to the Registrar of Companies.
2. Smt. Jaswant Kaur, wife of S. Gurcharan Singh.	2,375 shares.
3. Miss Soniya	2,640 shares.
4. Gurpreet Singh minor	3,250 shares.
5. Miss Ramanjit Kaur	2,685 shares.
	11,650
	of Rs. 100 each.

(3) Mother of petitioner No. 1 Smt. Chanan Devi, who was also mother of respondent No. 2, it is pleaded, held 1,500 shares. She died on 2nd November, 1984. These shares, it is pleaded, have been illegally allotted to Paranjit Singh, son of respondent No. 2, who is respondent No. 5 in the petition. Smt. Chanan Devi had two sons i.e. petitioner No. 1 and respondent No. 2 and as such both of them were equally entitled to the extent of half of these 1,500 shares. This allotment by transmission made in favour of Paranjit Singh on 15th October, 1985 was asked to be rectified. Further, the Company had allotted 1,500 shares to petitioner No. 1 on 22nd July, 1985 by a resolution of Board of Directors. A return of allotment was filed by the Company with the Registrar of Companies. It was pleaded that the petitioner was entitled to the allotment and rectification of the register to the extent of these 1,500 shares. In the year 1981, respondent No. 2, managed to show in the books of the Company, various credits as having been made by Sethi Finance Company, Sikri Finance Company and Sachdeva Finance Company. These deposits were started in the year 1981 and were increased as under :—

(1) Sethi Finance Company	—Rs. 2,61,050 which was increased to Rs. 11,15,550 on 30th June, 1983.
(2) Sikri Finance Company	—Rs. 3,23,025 which was increased to Rs. 11,98,425 on 30th June, 1983.
(3) Sachdeva Finance Company,	—Rs. 2,20,875 which was increased to Rs. 10,79,375 on 30th June, 1983.

(4) It was alleged that these are fictitious deposits. No interest whatsoever was paid by the Company to these Finance Companies. Interest was paid by bearer cheques in their names but the same were encashed from the Punjab and Sind Bank, Miller Ganj, Ludhiana by Raghbir Singh respondent No. 2, his sons Manjit Singh and Kanwaljit Singh. Some of the cheques that were issued have been detailed in paragraph No. 5 of the petition. It is pleaded that the said cheques were not account payee cheques but were bearer cheques and the Bank which had made payment of these cheques will prove the persons who had withdrawn the money. The above sums were withdrawn either by Raghbir Singh respondent No. 2 himself or his sons Manjit Singh and Kanwaljit Singh. Thereafter the amounts standing to the credit of three Finance Companies i.e. Sethi Finance Company, Sikri Finance Company and Sachdeva Company were washed off by allotting the shares to Shri Narinder Singh Sethi, proprietor of Sethi Finance Company, Shri Devinder Singh, proprietor of Sikri Finance Company and Shri Sampuran Singh, proprietor of Sachdeva Finance Company. It is pleaded that these shares were never applied for by these allottees and the same were subsequently got transferred by Raghbir Singh respondent No. 2 in the names of Kanwaljit Singh, Paranjit Singh and Harjit Singh respectively. The total number of shares allotted were 37,336 with the following break up :

Sardar Narinder Singh	12,256 shares.
Sardar Sampuran Singh	11,980 shares.
Sardar Devinder Singh	13,100 shares.
	<hr/>
	37,336 shares.

(5) The allotment was made on 4th July, 1985. It is alleged that Gurcharan Singh who was the Director of the Company never attended such a meeting authorising such allotment. The transfers were also pleaded to be in violation of the Articles of Association of the Company which have been reproduced at pages 7, 8 and 9 as under :—

“11. Subject to the restriction of these Articles shares shall be transferable but every transfer must be in writing in the prescribed form and must be left at the office accompanied by the Certificate of the shares to be transferred, and such other evidence (if any) as the Directors may require, to prove the title of the intending transferor.

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12. Except as hereinafter provided, no shares in the company shall be transferred unless and until the rights of the existing share-holders hereinafter conferred shall have been exhausted and following provisions in that behalf shall apply and take effect :—
- (a) Every member or other persons referred to in Clause II thereof who intends to transfer shares (hereinafter called the vendor) shall give notice in writing to the Board of Directors of his intention. The notice shall constitute the Board his agent for the sale of the said shares in one or more lots at the discretion of the Board to members of the Company at a price to be agreed upon by the vendor and the Board, or in case of difference at the price which the Auditor of the Company for the time being shall certify by writing under his hand to be in his opinion the fair selling value thereof as between a willing vendor and a willing purchaser.
- (b) Upon the price being fixed as aforesaid, the Board forthwith give notice to all members of the Company of the number and price of the shares to be sold and invite each of them to state in writing within fourteen days from the date of said notice whether he is willing to purchase, and if so, what maximum number of the said shares.
- (c) On the expiry of the said fourteen days, the Board shall allocate the said shares to or in favour of the member or members who shall have expressed his or their willingness to purchase as aforesaid, and (if more than one) so far as may be prorated according to the number of shares already held by them respectively, provided that no member shall be obliged to take more than the said maximum number of shares so notified by him as aforesaid. Upon such allocation being made, the vendor shall be bound on payment of the said price to transfer the shares to purchaser or purchasers, and if he or she makes default in so doing, the Board may receive the price and give a good discharge for the number of shares on behalf of the vendor and enter the name of the purchaser in the register of the members as holder by transfer of the said shares purchased by him or her.

(d) In the event of the whole of the said shares not being sold under the foregoing sub-clauses thereof, the vendor may at any time within six calendar months after the expiry of the said 14 days, transfer the shares not so sold to any person (subject to the provisions of clause 15th thereof).

(e) The provisions herein before contained shall not apply to a transfer merely for the purposes of effecting the appointment in the name of new Trustees, nor to a transfer by executor or administrators of a legatee under the will of, or, to the husband, wife or next of kin of a deceased member, nor a transfer by a Trustee to a beneficiary provided that is proved to the satisfaction of the Board that the transfer *bona fide*, falls within one of these exceptions."

(6) It is further pleaded that no notice whatsoever was given to the petitioners in compliance with Article 12(a) reproduced above nor were they asked if they were willing to get these shares which were sought to be transferred by the allottees who themselves were fictitious. Narinder Singh and Sampuran Singh are brother-in-law of respondent No. 2, the sisters of petitioner No. 1 as also respondent No. 2 being married to them. Devinder Singh is the sister's son of petitioner No. 1 and respondent No. 2. Somehow or the other fictitious documents were prepared in the names of Narinder Singh, Devinder Singh and Sampuran Singh without their knowledge and consent. It is pleaded that they were neither parties to the deposits nor to the withdrawals of interests nor to the allotment of shares nor to the transfer of shares. Affidavit of Sampuran Singh in support of aforesaid assertions was also filed with the petition. Besides, the aforesaid fictitious shares, further shares were allotted to 40 persons, 11 existing and 29 non-existing employees of the Company. Allotment was made on 1st August, 1994 and the return of allotment was made to the Registrar of Companies. Petitioner No. 1 who was Director of the Company was never issued any notice of meeting nor did he attend any such meeting. Fictitious credit entries were made to the extent of Rs. 50,000 to Rs. 52,000 per share holder according to the allotment which was sought to be made in the names of these persons. The said persons were neither in a position to pay the money nor they ever paid the money and, thus, the scheme for allotment of shares to these persons was facilitated on account of these fictitious entries in the books of accounts of the

Company. These shares again were shown to have been transferred by these 40 allottees in the names of Raghbir Singh (10060 shares) and Manjit Singh (10,055 shares). This transfer again was stated to be against the provisions contained in Articles 11 and 12 of the Articles of Association of the Company. In fact the whole of the credit entries were made by Raghbir Singh by utilising the black money which had been generated by him by either making wrong expenditure, entries in the books of accounts of the company and withdrawing the same from the offers of the Company and utilising the same for making credit entries or by underselling the goods and stocks of the Company and taking away hush money in lieu of the real price. The credit entries were made in the books of the company by utilising black money which respondent No. 2 was generating either by fictitious names in the books of the Company under the heads 'Bonus paid', 'Lease with wages', 'Coal and fuel account' and 'Labour charges' and the ultimate balance sheet did not reflect the correct state of affairs.

(7) On 30th June, 1986, 9011 shares were allotted to the following persons :—

- “1,500 shares by Raghbir Singh to self.
- 1,500 shares to Manjit Singh, his son.
- 1,700 shares to Kanwaljit Singh, his son.
- 2,700 shares to Paranjit Singh, his minor son.
- 1,700 shares to Harjit Singh, his another minor son.”

(8) The aforesaid allotment, it is pleaded was made in the meeting which was never attended by petitioner No. 1 nor was any notice issued to him. It is further pleaded that the above devices were adopted by respondent No. 2 and his sons respondents No. 3 to 6 with a view to obtain majority holding in equity capital of the company and defeating for all times to come, the right of the petitioner No. 2 who was a share holder of the Company to the extent of 50 per cent at the time of its inception. The above devices were adopted by respondent No. 2 in league and in consultation with Shri D. C. Gupta, who was the Auditor of the Company. He never looked into the fictitious entries which had been made. On the other hand, he got himself 10 shares allotted to the Punjab Management Consultants Private Limited of which he is the Managing Director. On the aforesaid facts, it was sought to be made out that 1,500 shares which had been allotted to petitioner No. 1 were unnecessarily not shown in the register of members; that the shares of

Smt. Chanan Devi had been transmitted in the name of Paranjit Singh although petitioner No. 1 was entitled to 750 shares out of the same; that the allotment of 37,336 shares to the three Finance Companies i.e. Sethi Finance Company, Sikri Finance Company and Sachdeva Finance Company was fictitiously made and consequent transfers thereafter were in violation of Articles 11 and 12 of the Articles of Association of the Company; that 20115 shares were allotted to 40 persons by utilising black money and showing fictitious names who never applied nor were they parties to the transfer which transfers were illegal in view of provisions of Articles 11 and 12 of the Articles of Association of the Company; that 9011 shares were allotted without any meeting being conducted in this behalf and 10 shares were allotted to the Punjab Management Consultants Private Limited of Shri L. C. Gupta, Auditor of the Company was the Managing Director. The prayer was, thus, to call for the records of the Company and to rectify the register of members so as to reflect the correct share-holding of the Company.

(9) The claim of the petitioners were endeavoured to be defeated by two identical written statements one filed on behalf of respondents No. 1, 2, 5 and 6 and the other by respondents No. 3 and 4. It was pleaded by way of preliminary objections that the petition was not maintainable in the present form as the same had not been supported by an affidavit as contemplated under Rule 21 of the Companies (Court) Rules, 1959. The petition was stated to be raising whole lot of disputed questions of fact which could not be gone into under Section 155 of the Companies Act, 1956. On merits, the case was also contested by pleading that the correct picture of the share allotment as per the register of members of the Company was as under :—

Share position from 1974 to date

S. Raghbir Singh		S. Gurcharan Singh	
S. Raghbir Singh	50	S. Gurcharan Singh	50
1976 B.F.	50	B.F.	50
S. Raghbir Singh	950	Smt. Jaswant Kaur	300
Smt. Hardip Kaur	300	Sh. Gurpreet Singh	400
Sh. Manjit Singh	500	Miss Sonia	300
Sh. Kanwaljit Singh	550	Miss Ramanjit	300
Sh. Harjit Singh	500		
Sh. Paranjit Singh	100		
	2950		1350

		B. F. 2950		B. F. 1350
June 1977	S, Raghbir Singh	500		
		3450		B. F. 1350
June 1978		B. F. 3450		B, F. 1350
June 1979		B. F. 3450		B. F. 1350
June 1980		B. F. 3450		B. F. 1350
June 1981		B. F. 3450		B. F. 1350
	Smt. Hardip Kaur	400	S. Gurpreet Singh	600
	S. Manjit Singh	450	Miss Sonia	350
	S. Kamaljit Singh	500	Miss Ramajit	300
	S. Harjit Singh	500		
	S. Paranjit Singh	500		
		5850		2600
June 1982		B. F. 5850		B. F. 2600
June 1983		B. F. 5850		B. F. 2600
	Smt. Hardip Kaur	800	Smt. Jaswant Kaur	1200
	S. Manjit Singh	550	S. Gurpreet Singh	500
	S. Kamaljit Singh	450	Miss Sonia	850
	S. Harjit Singh	500	Miss Ramanjit Kaur	950
	S. Paranjit Singh	850		
		9000		6050
June 1984		B. F. 9000		B. F. 6050
	S. Raghbir Singh	900	S. Gurcharan Singh	550
	S. Manjit Singh	1700	S. Gurpreet Singh	1650
	S. Kamaljit Singh	1600		
	S. Harjit Singh	1650		
	S. Paranjit Singh	1400		
		16250		8350

June 1985	B. F. 16250	B. F. 8350
		Smt. Jaswant Kaur 75
		S. Gurpreet Singh 100
		Miss Sonia 1240
		Miss Ramanjit Kaur 1185
	16250	11650
June 1986	B. F. 16250	B. F. 11650
	S. Raghbir Singh 1500	
	S. Manjit Singh 1500	
	S. Kamaljit Singh 1700	
	S. Paranjit Singh 2700	
	25350	11650
June 1987	B. F. 25350	B. F. 11650
	S. Raghbir Singh 10060	
	S. Manjit Singh 10055	
	S. Kamaljit Singh 12251	
	S. Harjit Singh 11980	
	S. Paranjit Singh 14600	
	84296	11650
15.10.1986		S. Raghbir Singh 84296
		S. Gurcharan Singh 11650
		Outsiders 40
		Total Shares 95986
		@ 100/-each
		Rs. 95,98,600/-

(10) It was, thus, pleaded that there was no annual return or any return of the shares filed by the Company on 22nd July, 1965 and therefore, the question of showing additional 1,500 shares in the

name of Gurcharan Singh did not arise. Gurcharan Singh had ceased to be the Director of the Company with effect from 24th June, 1987. The relationship of parties was admitted and it was pleaded that Smt. Chanan Devi held 1,500 shares of the Company and she died on 2nd November, 1984. The shares of late Smt. Chanan Devi were transmitted in the name of Paranjit Singh in accordance with the will executed by her. Application for transmission of 1,500 shares of Smt. Chanan Devi, after having been endorsed by the Registrar of Companies was filed with the Company alongwith the photostat copy of the will for and on behalf of Paranjit Singh which was considered by the Board of Directors in their meeting held on 15th October, 1986 in which petitioner was present himself and the transmission was approved by the Board of Directors of the Company. It was further pleaded that the Company was doing excellent business and wanted to expand business and go for the export of the product of the company in a big way and as such the Company needed finances. The company obtained finances from the firm M/s Sethi Finance Company, M/s Sikri Finance Company and Sachdeva Finance Company. All the said firms are the sole proprietorships and are in control of the brothers-in-law and nephew of petitioner No. 1 and respondent No. 2. Petitioner No. 1 was himself Director of the Company in the year 1981 and was fully aware of the investments which were made by the brother-in-laws and nephew of petitioner No. 1 and respondent No. 2. It has been agreed that the loan/deposit given by the said firms shall be given 18 per cent interest. The said firms rightly advanced money and gave deposits as they were aware of the fact that the Company was doing good business and was contemplating to extend and expand the export business as well. Petitioner No. 1 and respondent No. 2 had agreed to accept the deposit/loan from their relations as the amount would be available without going through numerous formalities as were required if the amount was to be taken from the Banks or other financial Institutions. It was denied that the said deposits are fictitious deposits and no interest was paid by the Company to the said finance Companies. The other transfer of shares as have been noticed in the petition were also pleaded to be legal, proper and in accordance with the provisions of the Companies Act and the Rules framed thereunder.

(11) The petitioners filed replication controverting contents of the written statement.

(12) Company Petition No. 134 of 1987 was filed on 3rd November, 1987 by Gurcharan Singh, his wife, two daughters and his son Gurpreet Singh against Raghbir Cycles Private Limited and

Raghbir Singh under Section 433 read with Section 439 of the Companies Act, 1956 for the winding up of the respondent-Company.

(13) Briefly the case of Gurcharan Singh petitioner and others was that Raghbir Cycles Private Limited was registered on 15th August, 1974. The initial authorised capital of the Company was Rs. 10 lacs divided into 10,000 equity shares of Rs. 100 each. At the time of incorporation, petitioner No. 1 had 50 shares and so had had respondent No. 2, and, thus, the proportion of shares was 50 per cent. each. Further allotment of shares was made totalling 95,986 shares of Rs. 100 each by increasing the authorised capital of the Company to Rs. one crore. The authorised capital was increased from Rs. 10 lacs to Rs. 30 lacs in the year 1983 and to Rs. 60 lacs in the year 1984 and to Rs. one crore in the year 1985. The petitioners held the following shares totalling 13,150 shares of Rs. 100 each :—

Gurcharan Singh	2,100 shares
Jaswant Kaur wife of Gurcharan Singh	2,375 shares
Miss Soniya	2,740 shares
Gurpreet Singh minor	3,250 shares
Miss Ramanjit Kaur	2,685 shares.

13150 of Rs. 100 each.

(14) The share holding aforesaid did not include the shares of Smt. Chanan Devi, mother of petitioner No. 1 and respondent No. 2 who, it is pleaded were equally entitled to receive half of the share holding in their names and which shares have been fictitiously transferred by respondent No. 2 in the name of Paranjit Singh through a forged will dated 10th January, 1984 alleged to have been executed by Smt. Chanan Devi. The initial share holding of the Company was divided into two groups of the share-holders of the Company, one headed by Raghbir Singh respondent No. 2 and the other by petitioner No. 1. The share holding of the group of petitioner No. 1 in the year 1983 was as under :—

Share holding of the group of petitioner No. 1.	Share-holding of group of Raghbir Singh, respondent No. 1.
1983 6050 shares	9000 shares.

(additional 1,500 shares of Smt. Chanan Devi mother of petitioner No. 1 and respondent No. 2 who was alive at that time In addition, 20 shares were being held by persons other than the two groups mentioned above.

1984 8250 shares	16250 shares,
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were converted into share holding of Narinder Singh, proprietor of Sethi Finance Company Sardar Devinder Singh, proprietor Sikri Finance Company and Sampuran Singh, proprietor of Sachdeva Finance Company. Narinder Singh, Devinder Singh and Sampuran Singh had neither the capacity to deposit the amounts as alleged and as reflected in the books of account of the company nor had they applied for the allotment of any shares to them in the equity share capital of the Company. The interest which was paid by bearer cheques was received by persons other than the drawee of the cheques and mostly by respondent No. 2 or his sons namely Manjit Singh and Kanwaljit Singh. After 30th June, 1985, these credit entries were converted into share capital of the Company in the respective names of the proprietors of the Finance Companies. The return of allotment of 37,336 shares filed with the Registrar of Companies as on 4th July, 1985 was placed on the records of the case. These shares, it is pleaded, were subsequently got transferred i.e. 12,251 shares in the name of Narinder Singh were transferred in the name of Kanwaljit Singh son of Raghbir Singh. 13,000 shares in the name of Devinder Singh were transferred in the name of Paranjit Singh son of Raghbir Singh and 11,980 shares in the name of Sampuran Singh were transferred in the name of Harjit Singh. On 1st August, 1984, 20,115 shares were alleged to have been allotted to 40 persons. The names of these 40 persons have been separately given in Annexure D. Out of these 40 persons, there were only two employees who were working in the Company whereas 38 persons were non-existing. Out of these, 20,115 shares so allotted to the share-holders were subsequently got transferred by respondent No. 2 in his own name. 10,680 shares were transferred in the name of Raghbir Singh and balance of 10,055 shares were got transferred in the name of Manjit Singh son of Raghbir Singh. No transfer deed was ever executed by the share-holders nor did the share-holders to whom the allotments of shares were made ever paid the amount said to have been paid at the time of allotment.

(17) On 30th June, 1986, another lot of 9,100 shares of Rs. 100 each were allotted by Raghbir Singh, as under :—

- “1,500 shares to Self.
- 1,500 shares to Manjit Singh, his son.
- 1,700 shares to Kanwaljit Singh, his son.
- 2,700 shares to Paranjit Singh, his minor son.
- 1,700 shares to Harjit Singh, his another son.”

It is further pleaded that no meeting of the Board of Directors was held. Petitioner No. 1 who was one of the Directors of the

Company never received any notice nor did he attend any such meeting whereby these allotments may have been sanctioned. Again on 5th March, 1984, respondent No. 2 appointed Kanwaljit Singh, one of his minor sons, a Director of the Company without holding any meeting or issuing any notice to petitioner No. 1. He also appointed his another son Manjit Singh a Director of the Company on 30th June, 1983. It is further pleaded that under law, no minor could be appointed a Director of the Company. Further, the appointment of Kanwaljit Singh as Director of the Company was neither confirmed in the annual general meeting which was held on 31st December, 1984 nor was a return in Form-32 submitted to the Registrar of the Companies after the said annual general meeting. Petitioner Ramanjit Kaur, it is pleaded, had two accounts i.e. current account and fixed deposits account. From the current account of said petitioner, a sum of Rs. 5,000 was transferred on 24th December, 1983 to Manjit Singh son of Raghbir Singh and similarly on 29th February, 1984, from her fixed deposit account a sum of Rs. 25,000 was transferred to Paranjit Singh as gift. It is pleaded that said petitioner never made any gift nor could any gift be made by a minor and the same money was utilised for facilitating the purchase of shares by Manjit Singh and Paranjit Singh sons of Raghbir Singh. Similarly, from the fixed deposit account of Miss Soniya petitioner, a sum of Rs. 25,000 was transferred to Paranjit Singh on 29th February, 1984 and a sum of Rs. 5,000 was transferred to Manjit Singh on 24th December, 1983 from current account. Miss Soniya, it is pleaded, never made any such gifts and these transfers were made with a view to show credit entries to facilitate the purchase of shares by Paranjit Singh and Manjit Singh. Various other amounts from the accounts of other petitioners were also likewise withdrawn. There is a complaint of not holding general meetings after 31st December, 1985. There is also a complaint that balance-sheet of the Company has not been passed in accordance with Section 210 of the Companies Act, 1956. Further, with a view to defeat the purposeful profitability of the Company, respondent No. 2 Raghbir Singh started another concern by the name and style of M/s Raghbir Bicycles International in the premises of the Company and that concern is run under the sole proprietorship of Mrs. Hardeep Kaur, wife of respondent No. 2. This concern, it is pleaded, is manufacturing cycle parts and utilising the machines and other assets of the respondent-Company and is diverting the profits of the Company to this concern. By this device what the company could have gained or earned is being diverted to the coffers of Smt. Hardeep Kaur. It is further pleaded that the Company receives different quotas of steel, coal, nickel etc. These quotas are of the total value of about

Rs. 10 lacs per mensem. The quotas were supplied either monthly or by intervals of two or three months but the total value of the receipts during the year is about Rs. one crore. These quotas have been allotted to the respondent-Company for the manufacture of bicycle parts and other articles but instead of utilising the same, it is pleaded, the respondent-Company is selling the same in the black market. For example, ORC sheets and rods are received in the items of 'Steel' but they cannot be disposed of as such. The device adopted by the respondent-Company is to sell the same by saying them as scrap. Such sales have been effected as scrap to the following parties and this list, it is pleaded, not only includes the disposal of scrap of steel but also nickel scrap :—

1. Sonu Steels, Ludhiana	(Steel Scrap).
2. Sanjay Sales Corporation, Ludhiana	—do—
3. Standard Castings, Ludhiana	—do—
4. S. K. Metal Works, Ludhiana	—do—
5. Saraswati Metal Works, Ludhiana	—do—
6. Modern Steel Industries, Ludhiana.	(Steel scrap).
7. Makkar Metal Industries	(Nickel Scrap).
8. Mahesh Iron Store, Ludhiana	(Steel scrap).
9. B. C. Jain and Company, Ludhiana	(Steel scrap).
10. Amar Steels, Ludhiana	(Steel scrap).
11. R. K. Steels (India)	(Steel scrap).
12. Ashoka Brothers and Company	(Steel scrap).
13. Durga Steels Ludhiana	—do—
14. Gupta Iron and Chemicals	(Nickel Scrap).
15. Kochhar Iron Traders, Ludhiana	(Steel scrap).
16. Malerkotla Steel Industries, Ludhiana	(Nickel Scrap).
17. Bicycle Wheel (India), Ludhiana	(Steel scrap).
18. New Bharat Udyog, Ludhiana	—do—
19. Om Parkash and Company, Ludhiana	(Nickel Scrap).
20. Om Sales Corporation, Ludhiana	(Steel scrap).
21. R. S. Steel Corporation, Ludhiana	(Steel scrap).
21. Ravi Industries, Ludhiana	—do—
23. R. R. Steel Industries, Ludhiana	—do—
24. R. S. Steel Traders, Ludhiana	—do—
25. Ludhiana Rolling Mills, Ludhiana	—do—
26. Antarctic Industries, Ludhiana	—do—
27. Arti Steels, Ludhiana	—do—
28. Vijay Foundry Works, Ludhiana	—do—
29. Grover Foundry Works, Ludhiana	—do—

(19) Similarly, coal quota was never received in the factory but the same was sold at the railway siding. By this, the money is pocketed by respondent No. 2 and instead of coal, rice husk was used for firing the boiler.

(20) There is no need to go into other allegations and suffice it to say that it is pleaded that the assets of the value of over Rs. 2½ crores have been found with Raghbir Singh and his two sons, which have been siphoned out from the assets of the Company by illegal and objectionable activities and have been utilised by Raghbir Singh and his two sons for their private ends by taking either fixed deposit receipts or keeping the money in the pillows and quilts which were seized by the Income-Tax Department officials. It is further pleaded that all the books of accounts which have been seized by the Department prove conclusively the allegations which have been made by the petitioners with respect to the fraudulent credit entries of three Finance Companies, the payment of commission and the withdrawals of money by Raghbir Singh and his two sons from the Bank accounts in the Punjab and Sind Bank, Miller Ganj, Ludhiana, Oriental Bank of Commerce and Punjab and Sind Bank, Guru Nanak Engineering College Branch Ludhiana.

(21) From the facts stated above, it is ultimately prayed that an order for winding up of the Company be passed and Official Liquidator be appointed to take charge of the Company.

(22) This petition, too, has been seriously opposed by the respondents as in the written statement filed by the respondents, by way of preliminary objections, it has been pleaded that the petition under Section 433 read with Section 439 of the Companies Act, 1956 is not maintainable as the petitioners have already agitated the matter by filing a petition under Section 397 and 398 of the Companies Act, 1956 on the same very grounds i.e. Company Petition No. 78 of 1987 to which a detailed reply has already been submitted. It is also pleaded that the entire story of claim viz-a-viz the shares of the petitioners have been reiterated in another petition i.e. Company Petition No. 79 of 1987 filed under Section 155 of the Companies Act 1956, seeking rectification of the members of the Company. Therefore, the two petitions with regard to one relief cannot proceed simultaneously. The petition is stated to be not disclosing any case for winding up of the Company as made out under Section 433 (f) of the Companies Act, 1956. It is pleaded that the Company is functioning smoothly and is successful in achieving the objects as contained in the Memorandum of Association of the Company. The Company has already completed the building and respondent No. 2

has already obtained No Objection Certificate from all the prescribed authorities but unfortunately the petitioners have filed a frivolous civil suit against respondent No. 2 and other Directors of the Company by mis-stating the facts before the Civil Court. The trial Court has exceeded the jurisdiction while granting *ex parte* injunction,—*vide* order dated 24th November, 1987. 1,500 shares of Rs. 100 each belonging to Smt. Chanan Devi were transferred by virtue of will executed by late Smt. Chanan Devi and it is pleaded that the said will was never questioned by any one. The will was executed on 10th January, 1994. The correct picture of the respective share holding of the share holders of the Company from its inception have been given at pages 9, 10 and 11 of the reply and the allegations of the petitioners that petitioner No. 1 and respondent No. 2 were entitled to the transmission of 1,500 shares in equal half, after the death of Smt. Chanan Devi have been refuted. The other allegations of the petitioners as have been noticed above have also been refuted in a detailed written statement which is accompanied by several documents.

(23) After these two petitions had matured for arguments and arguments in fact had been heard for about 8/9 days, the parties to this litigation filed two applications, one under Rule 9 of the Company (Court) Rules 1959 for appointment of an Umpire to decide the disputes between the parties. The same was filed on behalf of the petitioners. The other application was filed on behalf of respondents under Order 23 Rule 3 read with Section 151 of the Code of Civil procedure and Rule 9 of the Company (Court) Rules, 1959 for appointment of an Umpire to reconcile the dispute between the parties. This Court, on 28th October, 1992 passed the following order on the aforesaid applications :—

“After going through the contents of the applications and hearing learned counsel for the parties, I order that the entire dispute between the parties would be decided by Shri D. S. Tewatia, Senior Advocate, practising in the Supreme Court. Mr. D. S. Tewatia will act as an Arbitrator as also Umpire. He would hear the parties or the counsel and not the attorneys of the parties and would record whatever proceedings that he might deem necessary and decide the dispute with regard to the companies known as M/s Raghbir Cycles (P) Ltd. and Overseas Cycles Company. It will be open to the parties to place necessary evidence before the Arbitrator/Umpire to show that the other properties even though individually owned were

acquired through the funds of the Company and if that is shown to the satisfaction of the Umpire, it shall be open for him to go into the dispute with regard to the said properties as well. The decision of the Arbitrator/Umpire shall be final and binding upon the parties and shall not be called in question in any Court of law. It is made clear that it is the ambit and scope of both the petition Nos. 79 of 1987 and 134 of 1987 which shall be before the Umpire/ Arbitrator for decision.

(24) The remuneration of the Arbitrator/Umpire shall be Rs. one lac and that would be shared by Gurcharan Singh petitioner and respondent Raghbir Singh equally from their own funds and not from the funds of the Company and or the Firm. Any other expenditure that might be incurred by the Arbitrator/Umpire for visiting Calcutta or Ludhiana or for anyother purpose whatsoever shall be shared by the parties equally. It will be in the sole discretion/jurisdiction of the Umpire to pass any interim orders inclusive of restrain on the parties who are not to alienate the property or create liability. The parties through their counsel have been directed to appear before the Arbitrator/Umpire on 8th November, 1992.

(25) At this stage, the parties agree that all proceedings *inter se* (Civil and Criminal) pending anywhere in the country would remain stayed.

(27) This case will come up on 29th January, 1993 to await the decision of the Arbitrator/Umpire."

(28) Shri D. S. Tewatia, retired Chief Justice of Calcutta High Court and now Senior Advocate practising in the Supreme Court,— *vide* his letter dated 27th January, 1993 addressed to the Registrar (Judicial) of this Court sent the award as envisaged in the order of this Court dated 28th October, 1992 alongwith minutes of the proceedings. It is on receipt of this award that the applications referred to in the beginning of judgement which are being dealt with and shall be disposed of by this order were filed by the parties to this litigation. Before, however, the objections made out in the application filed by the respondent are noticed, it shall be useful to see as to how the Arbitrator proceeded in the matter. The first meeting was held by the Arbitrator on 8th November, 1992 Shri L. M. Suri, Advocate appeared for the petitioners and Shri J. S. Narang with Mr. P. S. Chhina, Advocates appeared for the respondents. The learned counsel appearing for the parties agreed before the Arbitrator to appear

before him on 21st November, 1992 for filing their respective claims. On the adjourned date i.e. 21st November, 1992, whereas the petitioners' counsel Shri L. M. Suri was present for Gurcharan Singh, petitioner, Shri J. S. Narang appeared with his client Shri Raghbir Singh. The following order was passed on the said date :—

“Mr. Suri, has placed on the record claim petition as directed on the last date of hearing. Mr. P. S. Chhina, undertakes to file the requisite claim petition of his side on 5th December, 1992 after having given a copy thereof to Mr. Suri in advance. Mr. Suri would hand over the copy of the claim petition to Mr. Chhina while receiving the copy of the claim petition from Mr. Chhina. Copies of two applications filed alongwith the claim petition one for injunction restraining transfer of the property Misc. P/1 and the other for inspection of record Misc. P/2 have however been given to Mr. Chhina today. Both the sides undertake to file reply to the respective claim petition, including the application aforesaid, on 19th December, 1992. Both sides agree to appear on the said date i.e. 19th December, 1992 before me at A-27/15 DLF Qutab Enclave Phase-I, Gurgaon at 11.30 A.M. Mr. Suri has paid/made over a draft for Rs. 50,000 and Mr. Chhina has paid/made over a draft for Rs. 25,000 and has undertaken to pay the remaining Rs. 25,000 by 19th December, 1992.”

(29) On the adjourned date i.e. 19th December, 1992, no proceedings could be carried out as the counsel for the parties had telegraphically made a joint request to grant more time to enable them to file replies to the respective claim petition and also requested that next date of hearing be fixed at Chandigarh on 29th December, 1992. Accordingly time for filing replies was extended upto 29th December, 1992 and the next date was fixed as 29th December, 1992 at Chandigarh. On 29th December, 1992, Shri L. M. Suri with Mr. Deepak Suri appeared alongwith petitioner Gurcharan Singh before the Arbitrator whereas Shri J. S. Narang with Mr. P. S. Chhina appeared for respondent Raghbir Singh. Both the parties submitted replies to the respective claim petitions. Mr. Chhina also submitted replies to the applications earlier submitted by Mr. Deepak Suri. Both the counsel requested that the matter be taken up on 30th December, 1992 at 3.00 P.M. for consideration of the applications in question. The matter was, thus, adjourned to 30th December, 1992. On the adjourned date of hearing, parties with their counsel appeared before the

Arbitrator but the matter was adjourned to 16th January, 1993 to enable them to file rejoinder to the respective replies and for consideration of the application for inspection filed on behalf of Shri Gurcharan Singh. With regard to restraint order, it was observed by the Arbitrator that order to that effect had already been passed in C.A. No. 19 of 1991 in C.P. No. 134 of 1987 on 3rd May, 1991 and that being it was ordered that the said order be reiterated. The matter was, however, taken up on 17th January, 1993 when both the parties were present with their respective counsel. The counsel submitted rejoinders to each other's respective replies to the respective claim petition of each party. The hearing was adjourned to 24th January, 1993 on which date it was ordered by the Arbitrator that only Gurcharan Singh and Raghbir Singh i.e. the concerned party would appear without their counsel to make effort at reconciliation. On the next date of hearing, Gurcharan Singh and Raghbir Singh placed documents before the Arbitrator. They made joint statement to the following effect :—

“The Arbitrator/Umpire is requested to give his award on the basis of the material already submitted before him by either party as we do not wish to adduce any evidence documentary or oral.”

(30) After recording the aforesaid statement, the Arbitrator passed the order that award shall be announced in due course. On 27th January, 1993, the proceedings reveal that the award was signed and the same alongwith two signed copies thereof and the minutes of the proceedings were sent to the High Court by courier so that the same was submitted before this Court on 29th January, 1993, the date which had been fixed for awaiting the award.

(31) In the award, the Arbitrator after noticing the two petitions bearing No. 79 of 1987 under Section 155 of the Companies Act, 1956 and No. 134 of 1987 under Section 433 read with section 439 of the Companies Act, 1956 as also application under Rule 9 of the Company (Court) Rules and application under Order 23 Rule 3 read with Section 151 C.P.C. referred to above as also order passed by this Court appointing Arbitrator as also the proceedings that have taken place before him and taking into consideration the documents furnished by each party in support of their respective claims decided as under :—

- I. The Company Petition No. 134 of 1987 is dismissed.
- II. The Overseas Cycle Company shall remain the sole proprietary concern of Shri Gurcharan Singh, Petitioner and no one would have any right/share in the said Company.

Respondent Raghbir Singh and his sons shall with immediate effect withdraw proceedings of any nature pending before any Court, Tribunal or Authority against Shri Gurcharan Singh or his family member i.e. wife, son and daughters, concerning the property or affairs of Overseas Cycle Company or concerning any claim to any share in the said Company or its property or premises owned or held on lease by it or by Shri Gurcharan Singh on its behalf.

- III. The alleged Will of Smt. Chanan Devi mother of the petitioner and the respondent allegedly executed by her on 10th January, 1984 in favour of Paranjit Singh son of Shri Raghbir Singh, respondent and witnessed by respondent attested as witnesses by said respondent Shri Raghbir Singh and a neighbour of his and which was got *ex-post facto* registered on 7th October, 1985 after the death of Smt. Chanan Devi on 2nd November, 1984 is held to be invalid in law and the beneficiary named therein shall acquire no benefit thereunder.
- IV. As per document submitted before me by Shri Raghbir Singh, Respondent, which depicted the share position of the respective family (headed by the petitioner and the respondent) from the year 1984 upto date, the two brothers to begin with held 50 shares each in M/s Raghbir Cycles Private Limited. Thereafter the parity changed and the ratio of the respective share holding of the two families fluctuated. In the year 1983 the ratio came to be Raghbir Singh and his family 60 per cent and Gurcharan Singh and his family 40 per cent. In the year 1985, Raghbir Singh and his family held 16,250 shares 58½ per cent and Gurcharan Singh and his family held 11,650 shares i.e. 41½ per cent. Upto this point the parties are *ad idem*. Further addition to the above share-holding positions is in dispute. In this regard I decide the direct that—
- (i) That out of 1,500 shares held by Smt. Chanan Devi in M/s Raghbir Cycles Private Limited, 750 shares shall belong to Shri Gurcharan Singh and shall have deemed to have belonged to him from the moment of her death.
- (ii) That 37,336 shares allegedly acquired by the three sons of Shri Raghbir Singh viz. Kanwal Jit Singh, 12,256, Paranjit Singh, 13,100 and Harjit Singh 11,980 and

20,115 shares acquired by Shri Raghbir Singh, respondent, 10,060 and son Manjit Singh 10,055 as referred to in para 9 of C.P. No. 79 of 1987 and detailed in paras 9, 13 and 14 of the Claim Petition of Shri Gurcharan Singh submitted before me, are not to be owned by them alone. Out of 57,451 shares, Shri Raghbir Singh and his sons would retain only 34,471 shares i.e. 60 per cent and the remaining 22,980 shares are deemed to have been owned by Shri Gurcharan Singh and his family all along from the same relevant date and these shares shall be treated as paid up shares. The resultant position would be that in regard to 37,336 shares mentioned above—

- (a) Kanwaljit Singh's holding shall stand reduced to 7,354 shares ;
- (b) Paranjit Singh's holding shall stand reduced to 7,860 shares ;
- (c) Harjit Singh's holding shall stand reduced to 7,188 shares ;

And in regard to 20,115 shares referred to above—

- (a) the share holding position of Shri Raghbir Singh shall stand reduced to 6,036 shares ;
 - (b) and that of Manjit Singh shall stand reduced to 6,033 shares.
- (iii) As regards 9,100 shares referred to in para 7 of the Company Petition No. 79 of 1987 and detailed in para 15 of the claim petition filed before me by Shri Gurcharan Singh, petitioner, it is decided and directed that out of said 9,100 shares, Shri Gurcharan Singh and his family shall be entitled to own 3,640 shares i.e. 40 per cent and are held to have been the owner all along from the very date, the said shares had been allotted to Shri Raghbir Singh, and/or any of his family member and these shares shall be treated as fully paid up shares. The resultant position of the share holding position in regard to these shares would be that—
- (a) Raghbir Singh's share-holding shall stand reduced to 900 shares ;

- (b) Manjit Singh's share holding shall stand reduced to 900 shares ;
 - (c) Kanwaljit Singh's share holding shall stand reduced to 1,020 shares ;
 - (d) Paranjit Singh's share holding shall stand reduced to 1,620 shares ;
 - (e) Harjeet Singh's share holding shall stand reduced to 1,020 shares.
- (iv) Shri Gurcharan Singh and his family shall be entitled to maintain a shareholding position in the M/s Raghbir Cycles Private Limited at least to the extent of 40 per cent if he is willing to purchase which means that if even after the reduction of share holding position of Shri Raghbir Singh and his family in the said Company as detailed earlier, he and his family is left with more than 60 per cent shares than the shares in excess of 60 per cent shall be offered to Shri Gurcharan Singh, petitioner to be purchased by him if he is willing to purchase. In the alternative the share capital limit can be increased to such an extent that it would enable Shri Gurcharan Singh to gain 40 per cent shareholding in the said Company. The option would be of Shri Gurcharan Singh or as the High Court directs.

The register of Members shall be rectified accordingly and shares shall be allotted/transferred accordingly.

- (v) There shall be only two Directors of M/s Raghbir Cycles Private Limited viz. Shri Gurcharan Singh and Shri Raghbir Singh or their respective nominees provided that the parity is maintained between the two families in question.
- (vi) Out of the two Cinemas owned and operated by M/s Raghbir Cycles Private Limited, Arora Palace Cinema shall be run and operated under the Direct supervision of Shri Gurcharan Singh in his capacity as the Director of the said Company.
- (vii) That the House at 319 Model Town Ludhiana is and shall be the absolute and exclusive property of Shri Gurcharan Singh, petitioner.

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- (viii) S.C.O. at 3 Bantek Street, Calcutta is the rented premises of Overseas Cycles Company and M/s Raghbir Cycles Private Limited has no right of any kind in and over the said premises.
- (ix) Flat No. 1 (1st Floor) 10 Lord Sinha Road, Calcutta, is the absolute and exclusive property of Shri Gurcharan Singh as an individual.
- (x) That M/s Raghbir Cycles Private Limited shall have no concern with the land and building at Partap Nagar, Ludhiana, which at one point of time, was owned by Smt. Chanan Devi. The said property is and shall be treated in the ownership of Paranjit Singh.
- (xi) Kothi at 2, 3, 4 and 5 Sant Fateh Singh Nagar, Ludhiana is and shall be the absolute and exclusively owned property of Shri Raghbir Singh and his sons.
- (xii) Shri Gurcharan Singh, petitioner, and his family or M/s Raghbir Cycle Private Limited, shall have no right of any kind whatsoever in the following :—
- (a) Farm at village Budhewal, Ludhiana or
 - (b) Sikri Steels (P) Limited built in property unit at Nichi Mangli Focal Point, Ludhiana.
 - (c) Sikri Exports (P) Ltd.
 - (d) Raghbir Bicycles International.
- (xiii) Factory Premises of M/s Raghbir Cycles Pvt. Ltd. and the machinery, tools and its property of any kind shall not be used/utilized in any manner by Shri Raghbir Singh and his family or Shri Gurcharan Singh and his family for running and promotion Companies and firms individually already floated and run by either family or that may be launched hereafter.
- (xiv) That Shri Gurcharan Singh shall account for the rent received of the Flat No. 9 on 7th floor (Chowranghee Chatterjee International) 33-A, Jawaharlal Nehru Road, Calcutta as the Flat in question is the property of M/s Raghbir Cycles (Pvt.) Ltd.
- (xv) That the Respondent, Shri Raghbir Singh and his family members on the one hand and the petitioner

Shri Gurcharan Singh and his family members on the other hand shall not take out any proceeding in any Court, Tribunal or Authority against each other individually or through the instrumentality of M/s Raghbir Cycles Pvt. Ltd. as Plaintiff or the petitioner regarding past claim to money or property. And all pending suits/proceedings in any Court, Tribunal or authority against either side shall be withdrawn by the concerned party with immediate effect."

Dated : January 27, 1993.

(Sd) . . . ,

(D. S. TEWATIA)
Arbitrator/Umpire'

(32) It is now time to examine the objections preferred by the respondents against the award. It is admitted position between the parties that if the objections are accepted, the two Company Petitions, would revive and shall have to be disposed of on merits, whereas if the objections are rejected, the applications filed by the petitioner for making the award as Rule of the Court shall have to be accepted, thus, resulting into making the award Rule of the Court and thereby rendering the Company Petitions to be infructuous.

(33) The objections as culled out from Company Application No. 45 of 1987 reveal that it is either the procedure in conducting the proceedings that has been styled to be against law or it is unworkability of the decision contained in the award that has been mainly canvassed for accepting the objections. During the course of hearing, not for a moment impartiality with which the Arbitrator proceeded with the matter was questioned. However, the first objection as contained in the petition is that the Arbitrator has mis-conducted in the arbitration proceedings inasmuch as he examined the parties separately at the back of each other like a conciliator and not as an Arbitrator. This procedure is not warranted in arbitration proceedings. Most of time was spent in the separate meetings and joint meeting was held only for 10 to 15 minutes. Having found that there were vast differences between the two brothers and reconciliation was not possible, the learned Arbitrator ought to have allowed them opportunity to assist him in resolving the disputes with the help of their counsel who could refer to the documents on the record and argue the case of their respective clients effectively. It is further pleaded by way of another objection that besides the two brothers,

sons of Raghbir Singh were also parties to the petition under Section 155 of the Companies Act, 1956 but they were not called for hearing at any time although it was mentioned in the order appointing Arbitrator that the parties or their counsel shall be heard and not the attorney of the parties. In the manner aforesaid, it is pleaded that sons of Raghbir Singh have been deprived of a larger part of their shareholding without hearing them or their counsel. It is further pleaded that the Arbitrator had mis-conducted himself by picking up the percentage of shareholding of the parties in the year 1983 and 1985 ignoring the latest position in 1986 and there could be no object except to favour Gurcharan Singh to bestow more shares on him and his family so that they could retain 40 per cent shareholding of the Company instead of 31 per cent held by them in the year 1986. It is further pleaded that in Company Petition No. 79 of 1987, the allotment of 9,100 shares was not challenged but the Arbitrator has cancelled the same in Clause IV (3) of his award whereby the shareholding of Raghbir Singh and his sons has been reduced to their prejudice. It is also pleaded that the award is beyond the order of reference as no where in Company Petition No. 79 of 1987 and Company Petition No. 134 of 1987, any request was made for making arrangement for the future management of the Company M/s Raghbir Cycle Private Limited whereas the Arbitrator had directed in clause (V) of his award that there shall be only two Directors of M/s Raghbir Cycle Private Limited namely Shri Gurcharan Singh and Shri Raghbir Singh or their respective nominees and that parity was maintained between the two families. In clause VI, the Arbitrator has handed over the management of Arora Palace Cinema to Gurcharan Singh in his capacity as Director of the said Company. The said two provisions in the award are contrary to the Statutory provisions of the Indian Companies Act, inasmuch as the group holding majority of shares has been placed at par with the group of shareholders holding minority of shares. It is also pleaded that a base has been laid for creating a dead lock in the Company. It was known to the Arbitrator that the two brothers Raghbir Singh and Gurcharan Singh who were made Directors were not on speaking terms and, therefore, would not sit together to decide about the affairs of the Company. It is also pleaded that there is no provision in the Companies Act according to which the business of the Company can be divided amongst the Directors for management. There has to be prepared only one annual balance sheet of the Company and all the accounts of the company are to be recorded in one set of books. The management as a whole vests in the Board of Directors and there is no provision to make it obligatory for Gurcharan Singh to render accounts to the Company of the Arora Palace Cinema whose management has been entrusted to him. If he does not render the accounts of the Cinema to the Company, no

balance sheet can be prepared as the accounts of the Company will be incomplete. It is further the case of the respondent that both the Cinema Houses are owned by the Company and are located in the same premises. There is only one way to the cinema halls. There is only one booking window for both the Cinema houses and separate management of each Cinema house is not possible. It will create operational difficulties in the running of the Cinema shows. There will always be conflict between the employees of the Company and those of Gurcharan Singh. It is thus, pleaded that the directions given in the award were unworkable and void being against the provisions of the Companies Act.

(34) The next objection of the respondent is that the Arbitrator has awarded Overseas Cycle Company to Gurcharan Singh as a sole proprietary concern against the documents on record which include judgements by the courts as also that the Arbitrator has not read and applied his mind to the entire evidence on the record. The parties while giving him authority to decide the case on the basis of the documents already on the record rightly thought that he would go through those documents with the help of counsel for the parties. That having not been done, mistakes have appeared in the award and most of the decisions are not borne by the documents on the record. The award is further objected on the ground that the Arbitrator had directed in clause VII of the award that the house at 319 Model Town, Ludhiana shall be absolute and exclusive property of Gurcharan Singh. This house belongs to the Company and was purchased through its funds. The sale deed with regard to this house is also in the name of the Company and is also on the records of the case. In the order of reference, it was stated that it would be open to the parties to place necessary evidence before the Arbitrator/Umpire to show that the other properties even though individually owned were acquired through the funds of the Company and if that is shown to the satisfaction of the Umpire, it will be open for him to go into the dispute with regard to the said properties as well. It is pleaded that it was not said in the order of reference that any property of the Company would be given to an individual. Gurcharan Singh, it is pleaded, is owner of shares of the company alongwith his family members and the Arbitrator has stated that he will continue to own 40 per cent of the shares. In spite of this, the Company's property has been given to Gurcharan Singh which is beyond the scope of Company Petitions No. 79 and 134 of 1987 and the order of reference made by this Court. The award is also asked to be rejected on the ground that one of the properties in dispute was a godown at 12 Ganesh Chander Avenue, Calcutta which was claimed by the Company as

its property on rent but it has been grabbed by Gurcharan Singh. Gurcharan Singh has admitted that the tenancy rights were of the Company Raghbir Cycle Private Limited and he was prepared to return the said premises if the Company starts its business at Calcutta. The learned Arbitrator has not given any award with regard to this item of the Company. Similarly no award has been made with regard to one SCO at 3 Bentick Street, Calcutta inspite of the fact that claim had been laid by Raghbir Cycle Private Limited and various documents had been placed on the record in support of this claim.

(35) Matter with regard to will as decided by the Arbitrator has also been objected to.

(36) The last objection is that in clauses VII, VIII and IX, the Arbitrator has created rights in immovable property in favour of Gurcharan Singh and Overseas Cycle Company. The award containing these clauses require compulsory registration under Section 17 (1) (e) of the Registration Act. The award having not been registered cannot be made rule of the Court nor can a decree be passed on the basis thereof.

(37) In the reply filed on behalf of petitioners by way of preliminary objections, it is pleaded that the Objection Petition is not competent in law as it had been agreed between the parties that the decision of the Arbitrator/Umpire shall be final and binding upon the parties and shall not be questioned in any Court of law. On merits, also the objections as made out above have been stated to be incorrect. It is pleaded that the Umpire had meetings with both the parties to their satisfaction and both of them had given in writing that they did not want to lead any other additional evidence or present any other documents. It was agreed by the parties and the counsel of both the parties on 16th January, 1993 when the case was adjourned to 6th February, 1993 that the said date had been given for reconciliation between the parties and the presence of their counsel was not necessary. It is also made out from the reply filed that the Arbitrator had not misconducted in examining the parties separately at the back of each other like a Conciliator. The scope and jurisdiction of the Arbitrator was to be an Umpire and an Arbitrator. There was no such procedure prescribed and it was incorrect that only little time was spent with the two parties by the Umpire. In fact the whole day was spent with the two parties who had presented their case respectively. It is also pleaded that none of the parties desired the help of their counsel to refer to the documents and both the parties

gave in writing that they did not want to refer to any other documents. It is further pleaded that the real dispute was between the two brothers who represented themselves, their wives and their children and at no stage during five years in the High Court did the family members of any of the brothers participate in the proceedings. In fact the sons of Raghbir Singh were specifically impleaded as parties in the petition under Section 155 of the Companies Act and they were represented by their father throughout. In fact Raghbir Singh had attended the affairs alongwith his sons but did not show any inclination for any further representation by any of the parties. In so far as the objections that the Arbitrator has misconducted himself by picking up the percentage of shareholdings of the parties in the year 1983 and 1985 ignoring the latest position of 1986, it is pleaded that the allegations of the petitioners all through were that Raghbir Singh and his sons had suddenly increased their share holdings in 1985 to the detriment of Gurcharan Singh and his family and the Umpire had tried to peg down the shares of the parties to 60 : 40 ratio. In fact the correct ratio should have been 50 : 50 as both the brothers had equal shares in the Company. It was denied that Gurcharan Singh did not challenge the allotment of 9,100 shares. His main case was that Raghbir Singh and his sons could not increase their share-holdings to the detriment of Gurcharan Singh and, therefore, the entire gambut was of allotment of shares to increase the percentage of shares of Raghbir Singh. It is denied that the award is beyond the order of reference. The arrangement for future management is part and parcel of the reference because Gurcharan Singh had filed a winding up petition and it is within the ambit and scope as also authority of the Umpire and the Court to provide for future management of the Company. The Arbitrator has rightly directed that there shall be only two Directors. The plea of Objector that it would not be possible to run the cinemas together has been refuted. It is also pleaded that there will be no difficulty in running of the Company. It has been made clear by the Umpire that the Company would be run by the Directors being both the brothers of their nominees. Therefore no part of the award is *null and void*. It is further pleaded that there is no question of preparation of two annual sheets. In fact it is well known that in large Companies, various Directors look after the work of the Company. With regard to workability of the cinema hall, it is denied that there is only one way to the cinema hall or only one set of booking windows and there is no provision of separate management of the two cinemas. It is pleaded that although there is only one plot on which two cinemas are built but there are two separate independent entities managed

by the Company separately. Separate accounts are maintained, separate returns are filed under various laws and, therefore, there cannot be any conflict between the employees of the company and Gurcharan Singh, inasmuch as there would be no employee of Gurcharan Singh. It is further pleaded that it is Gurcharan Singh who would manage the affairs of the cinema for and on behalf of the Company and all employees would be the employees of the Company. The decision of Umpire is also endeavoured to be supported by pleadings that the Umpire had considered all the pros and cons as also entire evidence produced by the parties and only then has given a correct finding regarding the various properties of the Company as well as various properties which had been constructed by the sons of Raghbir Singh and has rightly considered these properties while giving award. It is denied that the company's property has been given to Gurcharan Singh. It is also pleaded that premises as 12 Ganesh Chunder Avenues, Calcutta are not under the tenancy of Raghbir Cycles Private Limited and, therefore, the Umpire had rightly ignored the said premises. The shop at 3 Bentick Street, Calcutta also did not belong to Raghbir Cycles Private Limited and, therefore, the Umpire rightly ignored this property. It was within the scope and ambit of Courts jurisdiction to decide about the will inasmuch as all the disputes between the parties were referred to the Umpire. It is further pleaded that the rights in the properties in clause VII, VIII and IX belong to Gurcharan Singh and do not require any registration. It is also pleaded that Raghbir Singh has wrongly referred to the requirements of Section 17 (1) (e) of the Registration Act. As the award was being filed in this Court, therefore, the same would not form part of decree and would not require any registration.

(38) I have heard Mr. G. R. Ramaswamy, learned Senior Advocate appearing on behalf of Objector as also Mr. Hira Lal Sibal, the learned Senior Advocate appearing on behalf of the petitioners who want that the award may be made Rule of the Court and have carefully perused the entire records.

(39) Before, however, the specific points raised by learned counsel appearing for objectors are noticed, it shall be useful at this stage to examine basic limitations in challenging the award. It is settled law that the Court does not sit in appeal or reassess the evidence and even if there is misconduct by the Arbitrator but the same pertains to infirmity in the procedure, it is no ground to set-aside the award. The Apex Court in *Jagdish Chander Bhatia v. Lachhman Das Bhatia* (1), while relying upon its another judgement in *Food Corporation of*

India v. Joginderpal Mohinderpal and another (2), held that, "an award of an arbitrator can only be interfered with or set aside or modified within the four corners of the procedure provided by the statute. The Court must find out whether the Arbitrator has mis-conducted himself or there was any infirmity in the procedure, such as, the Arbitrator having travelled beyond the terms of the reference or there being an error apparent on the face of the award. It is not misconduct on the part of an Arbitrator to come to an erroneous conclusion on a disputed issue. In case of error apparent on the face of the award, the award can be set aside only if there is any proposition of law on which the award is based which is in conflict with law. It must be demonstrated to the Court that the reasons given by the Arbitrator are so palpably erroneous in law that they have resulted in the Arbitrator taking a view which cannot be sustained in law. To put it differently, the court does not sit in appeal and does not reassess the evidence. Even if the Court feels that had it been left to it, it would have assessed the evidence differently that would not be a valid ground for setting aside the award". The Award can be set aside on the ground that there is an error apparent on the face of it. However, the scope of the Court's jurisdiction in interfering with a non-speaking award on the ground noticed above is extremely limited. In *Champsey Bhara and Company v. Jivraj Balloo Spinning and Weaving Co. Ltd.* (3), the Judicial Committee enunciated the rule of limitation in this respect. The Supreme Court in *The Hindustan Construction Co. Ltd. v. The State of J & K* (4), while relying upon the enunciation of the judicial Committee in *Champsey Bhara's case* (supra) held that, "Even if the arbitrators had interpreted the relevant clauses of the contract in making their award on the impugned items and even if the interpretation is erroneous, the Court cannot touch the award as it is within the jurisdiction of the Arbitrators to interpret the contract. Whether the interpretation is right or wrong, the parties would be bound; only if they set out their line of interpretation in the award and that is found erroneous can the Court interfere. Apart from existence of error on the face of it, another angle from which the non-speaking award can be considered by the Court is that when there is error in excess of jurisdiction or that the error is within jurisdiction, award cannot be challenged". Only in a case of total denial of hearing, the Award can be set aside but technical rules of evidence do not apply to arbitration proceedings. A Division Bench

(2) J.T. 1989 (2) S.C. 89.

(3) L.R. 1922 50 I.A. 324.

(4) J.T. 1992 (5) S.C. 325.

of Bombay High Court in *Rashtriya Chemicals and Fertilizers Ltd. v. Mohinder Singh and Company and another* (5), held that, "It is true that an award is liable to be set aside if there is total denial of hearing, but technical rules of evidence do not apply to arbitration proceedings." A party to arbitration proceedings can not be permitted to take an objection if no such objection was taken before the Arbitrator. Acquiescence by conduct itself debars a particular party in raising the objection which was not canvassed before the Arbitrator. This was so held by Bombay High Court in *Rashtriya Chemical's case* (supra) while relying upon *N. Chellapan v. Kerala SE Board* (6), *K. N. Co-operative Society v. Union of India* (7), and *NES & T Corporation v. State of Punjab* (8). The other well known principle is that the Court can not review the Award of arbitrator and correct any mistake in adjudication unless an objection to the legality of the award is on the face of it. The award on both, fact and law, is final and there is no appeal from the verdict of the Arbitrator. In *Champsey Bhara and Company v. Jivraj Ballooo Spinning and Weaving Company Ltd.* (9), the Privy Council stated that "An error in law on the face of the award, means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgement, some legal proposition which is the basis of the award and which you can then say is erroneous." Further, it is well settled that if the award is to be set-aside on the sole ground, then the sole ground complained of must be of such nature as to amount to no hearing at all. Further, the parties cannot get out of an award upon objections which do not affect the substantial justice of the case. This was so held in *Amir Begam v. Badruddin Hussain* (10). Further, it is also settled that where the award is a fair and honest settlement of a doubtful claim based both on legal and moral grounds it should not be interfered with. It was so held in *Sitanna v. Marivada Virana* (11).

(40) The first contention of Mr. Ramaswami, learned counsel for the objectors is that order passed by me appointing Arbitrator, even though prayed for by the parties themselves in applications filed by

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- (5) 1985 Bombay 381.
 - (6) A.I.R. 1975 S.C. 230.
 - (7) A.I.R. 1973 S.C. 1338.
 - (8) A.I.R. 1963 Punjab 56.
 - (9) L.R. 1992-50 I.A. 324.
 - (10) A.I.R. 1914 P.C. 105.
 - (11) A.I.R. 1934 P.C. 105.

them on that behalf, has not emanated from any of the provisions of the Arbitration Act. The Award too, has not been given in pursuance of the provisions of Arbitration Act and, therefore, it cannot be made rule of the Court. In alternative, it is argued that if it can be made rule of the Court, the restraint on the parties as made out in the order appointing Arbitrator i.e. that the parties shall not call into question the Award of the Arbitrator in any Court, would be of no consequence and it shall be open to the parties to challenge the Award under the known modes of challenging the same under the provisions of Arbitration Act. Whereas, Mr. Sibal, learned counsel for petitioner-applicant asking for making the Award, rule of the Court, accepts the later part of the contention as noticed above and concedes that even though it has been mentioned in the order appointing an Arbitrator that the Award can not be called into question, it is still open for the parties to this litigation to raise objections, seriously contests the first contention and styles the same not only impermissible in the facts and circumstances of the case but also to be one which borders on a plea that can be well termed as dishonest. The facts and circumstances that are available, however, in my considered view, debar objectors asking for accepting objections and to reject the award on the plea that the order appointing Arbitrator and consequent award rendered by the Arbitrator were not under the provisions of the Arbitration Act. The Company petitions, referred to above, were filed way back in the year 1987 and the same had matured for arguments and the arguments almost in entirety were heard that the parties to the litigation filed two applications, one under Rule 9 of the Company (Court) Rules, 1959 for appointment of an Umpire to decide the disputes between the parties and the other under Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure and Rule 9 of the Company (Court) Rules, 1959, for appointment of an Umpire to reconcile the disputes between the parties. Application under Order 23 Rule 3 read with Section 151 of the C.P.C. and Rule 9 of the Company (Court) Rules was filed by the objectors. It is on account of two applications, referred to above, that an Arbitrator was appointed.

(41) Reference to Arbitration under the provisions of Arbitration Act is decipherable from Sections 8, 20 and 21. Section 8 deals with the situation where there is arbitration agreement which provides that the reference shall be made to one or more arbitrators to be appointed by the consent of the parties. Section 20 deals with the persons who have entered into an arbitration agreement before the institution of any suit with respect to the subject matter of the agreement or any part of it and where a difference has arisen to which the agreement

applies. Either of the parties, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court. Section 21 which is attracted to the facts of the present case, reads thus :—

“Where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgement is pronounced apply in writing to the Court for an order of reference.”

From the narration of facts that have been given in the earlier part of the judgment it is clear that all the interested parties had agreed that the matter in difference between them which pertains to two company petitions, details whereof have been given above, be referred to arbitration. The applications were filed before the pronouncement of judgement and those were in writing. It can not, thus, be said that the order passed by me on the applications of all the interested parties to company petitions, referred to above, was not under the provisions of the Arbitration Act or that the Award was also out-side the provisions contained in the Arbitration Act.

(42) That apart, having asked for appointment of Arbitrator in writing and participating before the Arbitrator without raising any kind of objection, whatsoever, would not permit objectors to contend that the order passed by this Court appointing Arbitrator and the Award itself were not under the provisions of the Arbitration Act. The conduct of objectors amounts to acquiescence. Division Bench of Bombay High Court in *Rashtriya Chemicals and Fertilizers Limited v. M/s Mohinder Singh and Company and another* (12), relying upon *N. Chellappan v. Kerals S.E. Board* (13), *K. N. Co-operative Society v. Union of India* (14) and *NES & T Corporation v. State of Punjab* (15), held that, “a party cannot sit back on an objection during the hearing before the arbitrator and raise it later after finding himself faced with an adverse award: such conduct would amount to acquiescence.” The first contention of learned counsel for objectors is, thus, repelled.

(43) The alternative contention raised by Mr. Ramaswami and as noticed above, has to be accepted not only as per the concession

(12) A.I.R. 1985 Bombay 381.

(13) A.I.R. 1975 S.C. 230.

(14) A.I.R. 1973 S.C. 1338.

(15) A.I.R. 1963 Pb. 56.

of the counsel opposite but also for the reason that merely mentioning in the order that the Award cannot be challenged, a party cannot be debarred to raise objections, if law so permits. The provisions of the Arbitration Act clearly envisage filing of objections on the grounds specified thereunder and that being the law the objectors are well within their rights to raise objections and ask for setting aside or rejecting the Award. As mentioned above, impartiality of the Arbitrator has not even been remotely questioned and all that has been mentioned in various objections is that the Arbitrator conducted the proceedings in such a manner which clearly shows legal misconduct.

(44) On merits of the case and while elaborating the legal misconduct, it is argued that the Arbitrator violated the principles of natural justice inasmuch as even though the matter was fixed for arguments for February 6, 1993 when it was adjourned for the said purpose on January 24, 1993, the Arbitrator called only S. Gurcharan Singh and S. Raghbir Singh on January 24, 1993 and without giving any notice to the Company or other parties, announced the Award on January 27, 1993, i.e. before even the date fixed for arguments. The contention appears to be attractive but when the same is examined in the light of the proceedings conducted by the Arbitrator it pales into complete insignificance. The way and manner the proceedings were taken by the Arbitrator have been given in detail above. On December 19, 1992, no proceedings could be taken as learned counsel for the parties telegraphically sought more time to file reply to respective claim petitions and also requested that the next date of hearing be fixed at Chandigarh on December 29, 1992. On the adjourned date i.e. December 29, 1992 parties submitted replies to the respective claim petitions. Counsel representing both the parties requested that the matter be taken up on December 31, 1992. The matter was thereafter adjourned to January 16, 1993, when the parties were to file rejoinders to their respective replies. The matter was thereafter taken on January 17, 1993 when the following order was passed :—

“Both the parties are present with their respective counsel.

The counsel submitted on record rejoinders to each others respective replies to the claim petitions of each party. The hearing is adjourned to 24th January, 1993 for 11.30 A.M. on which date only S. Gurcharan Singh and S. Raghbir Singh, who is the concerned party, would appear without their counsel to make efforts of reconciliation.

To come upon 24th January, 1993 at 11.30 A.M.”

(45) On the adjourned date i.e. January 24, 1993 joint statement of parties i.e. S. Gurcharan Singh and S. Raghbir Singh was recorded. It was stated by them that the Arbitrator/Umpire is requested to give award on the basis of material already submitted before him by either party as they did not wish to adduce any evidence, documentary or oral. The proceedings sheet of the Arbitrator duly sent by him alongwith the Award do not show that the case was taken on January 16, 1993. As mentioned above, it was taken only on January 17, 1993. It was on the said date that the case was adjourned to January 24, 1993 and not for February 6, 1993. As mentioned above, joint statement of parties concerned i.e. S. Gurcharan Singh and S. Raghbir Singh was recorded on January 24, 1993 and the Award was given on January 27, 1993. The contention of learned counsel thus, that Award was pronounced before the date fixed and without giving any chance to the counsel representing the parties to address arguments is devoid of any merit being against the records of the case.

(46) The second contention raised by learned counsel for the objectors that since the parties i.e. S. Gurcharan Singh and S. Raghbir Singh were heard separately and not in the presence of each other, the Award was vitiated, has no merit. However, for his aforesaid contention, learned counsel relies upon *Payyavula Vengamma v. Payyavula Mesanna* (17) and *Bakhtawar Lal v. Ram Kumar and others* (18).

(47) It is on January 17, 1993 that the Arbitrator after receiving the rejoinders to each other respective replies to the respective claim petitions adjourned the matter to January 24, 1993, on which date only S. Gurcharan Singh and S. Raghbir Singh i.e. the concerned parties were to appear without their counsel to make efforts of reconciliation. As mentioned above, on January 24, 1993, joint statement of parties i.e. S. Gurcharan Singh and S. Raghbir Singh was recorded. It appears the point, that arbitrator heard the parties at back of each other is sought to be made from the proceedings that were conducted on January 24, 1993. Nothing as such has been made out from the proceedings and the order that was recorded on January 24, 1993. However, it has been pleaded in paragraph 3(a) of objection petition that the arbitrator misconducted the arbitration proceedings as he examined the parties separately at the back of each other like a conciliator and not as an arbitrator, and this procedure was not warranted in arbitration proceedings. Most of time was spent in separate meetings and the joint meeting was held only for 10 or 15

(17) A.I.R. 1953 S.C. 21.

(18) A.I.R. 1986 All. 160.

minutes. It is further pleaded that having found that there were vast differences between the two brothers and reconciliation was not possible, the Arbitrator should have allowed them opportunity to assist him in resolving the disputes with the help of their counsel, who could refer to the documents on record and argue the case of their respective clients effectively. In reply that has been filed on behalf of petitioner. It has been pleaded that whole day was spent with the two parties who had presented their cases respectively and that none of the parties desired the help of their counsel to refer to the documents. The assertion of the objectors that the arbitrator had heard the parties at the back of each other, has been denied by saying that it was incorrect that the Arbitrator/Umpire had misconducted the proceedings like a Conciliator. From the proceedings, as referred to above, as also the pleadings of the parties, all that can perhaps be made out is that on January 24, 1993 when Arbitrator tried for reconciliation, he might have heard the parties separately as well as jointly. It is from this background that the contention of learned counsel that S. Gurcharan Singh and S. Raghbir Singh were heard separately and not in the presence of each other, has to be appreciated. The facts of *Payyavula Vengamma's case* (supra) would reveal that one 'P' died leaving behind his widow, his undivided brother, a son of his another predeceased brother and his son by his predeceased wife. The deceased had purported to make a will under which he had made certain provision for maintenance and residence of the widow. The widow filed a suit for maintenance, arrears of maintenance and residence. When the plaintiff was being examined as P.W. 1, in the suit all the parties filed a petition under S. 21 of the Arbitration Act agreeing to appoint K as the 'sole arbitrator' for settling the disputes in the suit and to abide by his decision. The petition filed by the parties did not give any special powers to the arbitrator. The plaint, the written statement and the other records were agreed to be sent to him for his decision and the arbitrator was directed to make his award after perusing the plaint and written statement which were given to him alongwith the order. The arbitrator examined the defendant in the absence of the plaintiff and also perused the will without giving an opportunity to the plaintiff to have her say in the matter. The statement which was obtained from the defendant contained several statements of fact, which did not find a place in his written statement. On the facts aforesaid, it was held that the procedure adopted by the arbitrator was obviously contrary to the principles of natural justice. The arbitrator was guilty of legal misconduct and there was sufficient material to vitiate the award. The facts of the cited case reveal that the statement given by the

plaintiff to the arbitrator did not mention anything beyond the request that he should pursue the plaint and written statement and give his award according to law and justice. The statement which was obtained from defendant, however, did not merely repeat the request but contained several statements of fact, which did not find a place in his written statement. These statements have been reproduced at page 22 which are as under :—

- (1) She felt glad with what was given to her by her husband
- (2) It is seen from the Government accounts that as per the settlement made by her husband, the lands given to her have been in her possession ;
- (3) Just like the plaintiff has her jewels in her possession, the other females in the house have their jewels in their respective possession of right therein; and
- (4) Considering the domestic circumstances, our elder brother provided maintenance for the third wife, the plaintiff just as he had provided maintenance for his second wife.”

(48) It is in the aforesaid circumstances that it was held that the statements, referred to above constituted evidence given by defendant 1 in addition to the averments contained in his written statement and it is futile for defendant 1 to contend that in obtaining the statement Ex. No. 5 from him the arbitrator merely obtained from him a narration of what was already found in his written statement.

(49) Insofar as the facts of the present case are concerned, it is proved on records of the case that on January 24, 1993, both the parties were heard jointly as well as separately. The date was fixed for endeavouring a settlement between the parties by way of conciliation. In the very nature of things, thus, the arbitrator was to hear them separately as well as jointly. It is in this manner only that he had to acquaint himself of the differences between the parties and, thus, attempt settlement, if possible. The facts of this case are, thus, entirely different and, therefore, the judgment of Supreme Court in *Payyavula Vengamma's case* (supra), strongly relied upon by learned counsel, can not come to the rescue of the objectors.

(50) The facts of *Bakhtawar Lal's case* (supra) reveal that as a matter of fact it was found that the Arbitrator had heard the appellant behind the back of respondents and that he did not inform respondent about that hearing. While considering the relevant clause of arbitration agreement it was found that the same did not entitle the arbitrator to hear one or the other party in the absence of each other. In paragraph 10 of the reported case, it has been mentioned that. “It was subsequently that the appellants changed his case by

pleading that the arbitrator did not hear the two parties in the absence of each other and wanted to establish that the arbitrator heard both of them together and jointly. Neither before the Court below nor before us any evidence from the record was shown which could establish that the two parties were heard jointly by the arbitrator. The arbitrator had filed along with the award other papers which were maintained by him. None of them is a minute of the proceedings of the arbitration. It is not established from these papers that any joint meeting had taken place. Infact in the award the arbitrator himself admitted that he had heard the parties separately and one party was heard in the absence of other." It shall be thus, seen that the facts of the aforesaid case are entirely different and, therefore, the judgement of the Supreme Court in *Bakhtawar Lal's* case (supra) would provide no help to the objectors.

(51) The next contention of Mr. Ramaswami is that in the entire proceedings that were conducted by the arbitrator no notice was given either to the Company or to other parties i.e. parties other than S. Gurcharan Singh and S. Raghbir Singh. The parties, who have been affected on various counts by the arbitration award, were, thus, not heard in the matter, violating the principles of natural justice, contends the learned counsel. In the facts and circumstances that are available before this Court even this argument of learned counsel has no merit and, thus, deserves to be rejected. From the array of parties in Company petition No. 79 of 1987, it shall be seen that Gurcharan Singh along with his wife, Smt. Jaswant Kaur, daughters Miss Soniya and Miss Ramajit Kaur and son Gurpreet Singh had filed the petition against S. Raghbir Singh, his sons, Manjit Singh, Kanwaljit Singh, Paramjit Singh and Harjit Singh. Hardip Kaur was impleaded as party before the Arbitrator. In Company Petition No. 134 of 1987 petitioners are the same but respondents are the Company and Raghbir Singh. It is throughout the case of the parties that two brothers i.e. Raghbir Singh and Gurcharan Singh are heads of two groups. Referring to the pleadings contained in the application under Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure and Rule 9 of the Companies (Court) Rules, 1959, which, it is significant to mention, was filed jointly by Gurcharan Singh and others, petitioners and M/s Raghbir Cycles (P) Ltd. and others, it shall be seen that in paragraph 2 of the application it has been pleaded that petitioner S. Gurcharan Singh and respondent S. Raghbir Singh are the heads of their families in respect of share holding with M/s Raghbir Cycles Pvt. Ltd. and both the brothers i.e. S. Gurcharan Singh and Raghbir Singh might be able to reconcile their disputes *vis-a-vis* M/s Raghbir Cycles Pvt. Ltd. and Overseas

Cycles Company. In paragraph 3 it has been further mentioned that both the brothers are agreeable that an Umpire might be nominated by this Court and that the decision given by the Umpire upon reconciliation shall be binding upon both the brothers *including the members of their family*. (Emphasis supplied) Coming now to the application filed under Rule 9 of the Company (Court) Rules, it shall be seen from the pleadings that it is mentioned that petitioner-Gurcharan Singh and brother of Raghbir Singh-respondent and both of them had floated a company initially as partners which was subsequently converted into a Private Limited Company with almost equal shares. It is also mentioned in paragraph 3 that there were numerous other disputes between the two brothers and their families regarding the properties built from the earnings of M/s Raghbir Cycles (P) Ltd. which were pending in various courts at Ludhiana, in this Court and in the Supreme Court. Paragraph 4 further mentions that the parties agree that the entire disputes between the families of both the brothers concerning M/s Raghbir Cycles (P) Ltd. and their other concerns and properties may be referred to an Umpire so that the same may be decided once for ever. In paragraph 5 it has been mentioned that the decision given by the Umpire would be acceptable to both the brothers and their families and they would be bound by the same in all respects. Insofar as this application is concerned, the same was also filed jointly and it does contain the name of counsel for the respondents, Shri J. S. Narang, Advocate, although it has not been signed by the said learned counsel. It shall, thus, be seen that it is the two brothers who along with their families were holding various shares and it is the dispute between them which was to be referred to the Umpire/Arbitrator whose decision was to be binding upon them and their family members. That apart, this Court, while appointing the Arbitrator, directed the parties to appear before the Arbitrator on a particular date. Admittedly, the counsel for the objectors was representing not only Raghbir Singh but his family members as also the Company. Once an appearance was made before the Arbitrator by the counsel, who, as mentioned above, was representing all the respondents, it was not obligatory for the Arbitrator to have issued separate notices to all individuals involved in the matter and if someone really wanted to be heard separately, it was for him or her to have put in appearance before the Arbitrator.

(52) Mr. Ramaswami has raised serious objection to clause (vii) of paragraph (iv) of the Award which runs thus :—

“That the house at 319 Model Town, Ludhiana is and shall be the absolute and exclusive property of Shri Gurcharan Singh petitioner.”

The precise objection of the learned counsel is that the house in question is a company property and, thus, could not be given to Gurcharan Singh by the Arbitrator as the parties while asking for arbitration had not agreed that the property of the Company be divided or distributed nor the same was permissible in view of the order passed by this Court,—*vide* which Arbitrator was appointed. It is further the contention of learned counsel that two company petitions, one of which was for rectification of register and the other for winding up of the Company, could not even remotely have in its ambit and scope ordering transfer of a house to an individual which belongs to the Company. By referring to Section 443 of the Companies Act, learned counsel contends that the power of the Court hearing a winding up petition is to either dismiss it, with or without cost; or adjourn the hearing conditionally or unconditionally; or make any interim orders that it thinks fit; or make an order for winding up the Company with or without costs or any other orders that it thinks fit. That being the only power with which the Court is vested, the Arbitrator could not do that which even Court had no jurisdiction to do. It is in the same strain that objections have been raised to clause (iii) of paragraph 6 of the Award which is with regard to Will executed by Smt. Chanan Devi in favour of Paranjit Singh son of Raghubir Singh, which clause reads thus :-

“The alleged Will of Smt. Chanan Devi mother of the petitioner and the respondent allegedly executed by her on 10th January, 1984 in favour of Paranjit Singh s/o Shri Raghbir Singh respondent and witnessed by respondent attested as witnesses by the said respondent Shri Raghbir Singh and a neighbour of his and which was got *post facto* registered on 7th October, 1985 after the death of Smt. Chanan Devi on 2nd November, 1984 is held to be invalid in law and the beneficiary named therein shall acquire no benefit thereunder.”

(53) Besides, of course, raising the same objection, as has been noticed above, in regard to sub-para (vii), it is further the contention of the learned counsel that the Will could be declared invalid only by an appropriate Court and the Arbitrator had no jurisdiction to deal with the matter, thus, rendering the Award to be wholly illegal and without jurisdiction. Raising the same kind of objection, has been noticed above, it is stated that there could not be shuffling of shares as has been done by the Arbitrator because this was not the scope of either the Company Petition which was for rectification of register

or the one which was filed under Section 155 of the Companies Act for winding up of the Company. In one petition, the prayer was for rectification of the register whereas in the other it was for deletion of shares or for transfer of shares of Chanan Devi in the name of petitioner. This objection is with regard to clauses (i), (ii), (iii) and (iv) of paragraph (iv) of the Award rendered by the Arbitrator. The same is the objection of the learned counsel with regard to removal of the Director without any process and it is argued that if this course could not be adopted by this Court while dealing with the company petitions, referred to above, the same could not be done by the Arbitrator.

(54) Mr. Sibal, learned Senior Advocate, appearing on behalf of petitioners, has, however, joined issues with the learned counsel for the objectors on all the points noticed above. I am not impressed with either of the points noticed above and all these objections, as noticed above, deserve to be repelled. The applications filed by the parties asking for appointment of an Arbitrator and the contents thereof have already been noticed above. The order that emanated from the two applications has also been reproduced. A conjoint reading of the pleadings as also the orders passed by this Court would clearly manifest that all kinds of disputes were referred to the Arbitrator and the order passed on that count was most comprehensive with regard to all matters, be it increase of shares by one party in clandestine manner or the Will executed by Smt. Chanan Devi, the parties to this litigation were having disputes, both, civil and criminal, pending in various Courts in the country and it is for that precise reason that it was specifically mentioned in the order appointing Arbitrator that the entire disputes between the parties shall be decided by Shri D. S. Tewatia, Sr. Advocate, who will act as an Arbitrator as also Umpire. It was further ordered that in view of the agreement arrived at between the parties the proceedings in all the disputes *inter-se* (Civil and Criminal) pending any where in the Country shall remain stayed. That apart, the allegations in the two Company petitions, as have been noticed in the earlier part of the judgement, clearly demonstrate that there were serious allegations against the objectors with regard to the shares owned by Smt. Chanan Devi which had devolved upon the beneficiary under the Will. Obviously, there was dispute with regard to increase in share holdings of the objectors and serious allegations of siphoning the assets of the Company with a view to raise the share holding of objectors were raised in the pleadings. There were also allegations coming forth that by diverting the assets of the Company the objectors had purchased properties in their individual names. The specific allegation in Company Petition No. 79 of 1987 filed under Section 155 of the Companies Act, 1956 for

rectification of the register of members is that Smt. Chanan Devi, who was mother of petitioner No. 1 and respondent No. 2, held 1,500 shares. She died on November 2, 1984. These shares, it was further pleaded had been illegally allotted to Paranjit Singh son of respondent No. 2 and that two sons of Smt. Chanan Devi, petitioner No. 1 and respondent No. 2, were equally entitled to the extent of half of these shares. There were further allegations with regard to respondent No. 2 managing to show in the books of the Company various credits as having been made by Sethi Finance Company, Sikri Finance Company and Sachdeva Finance Company. It was alleged that these were fictitious deposits. No interest whatsoever was paid by the Company to these Finance Companies. Interest was paid by bearer cheques in their names but the same was encashed from the Punjab and Sind Bank, Miller Ganj, Ludhiana, by Raghbir Singh respondent No. 2, his sons, Manjit Singh and Kanwaljit Singh. It was also pleaded that these shares were never applied for by the allottees and the same were subsequently got transferred by Raghbir Singh-respondent No. 2 in the names of Kanwaljit Singh, Paranjit Singh and Harjit Singh. It is further the case of petitioners that shares were allotted to 40 persons, 11 existing and 29 non-existing employees of the Company.

(55) Even though there could not be a prayer in the two Company Petitions, referred to above, for either transfer of the house in favour of one of the parties to the litigation or to declare the Will executed by Smt. Chanan Devi to be invalid or other things, as have been noticed above, but it cannot be said by any meaningful arguments that there was no dispute between the parties on the said matters. When the parties to the litigation had agreed voluntarily to refer the *entire disputes* (emphasis supplied) to the Arbitrator, then it is not the scope of the Company Petitions which is relevant but it is the scope of reference which is more pertinent. It was the dispute with regard to the Companies known as M/s Raghbir Cycle Private Ltd. and Overseas Cycles Limited, which was to be decided by the Arbitrator. It was specifically mentioned in the order appointing Arbitrator that it would be open to the parties to place necessary evidence before the Arbitrator/Umpire to show that the other properties even though individually owned were acquired through the funds of the Company and it was open to the Arbitrator to go into the dispute with regard to the said properties. Mention in the orders that ambit and scope of both the petitions i.e. Company Petition Nos. 79 and 137 of 1987 would be before the Umpire/Arbitrator for decision, did not mean that it is only the prayers contained in the said petitions which could be gone into and denied or accepted by the Arbitrator. That

was to be done, if at all, by this Court while dealing with these petitions and insofar as the Arbitrator is concerned, he was to reconcile the disputes between the parties, as is clearly envisaged in the applications culminating into order of reference as also the order itself.

(56) There is another significant way of looking at the matter. The scope of one of the Company Petitions was to liquidate the Company as such. As mentioned earlier, the said petition had matured and in fact arguments almost in its entirety were heard. If the plea of petitioners was to succeed, the Company would have been liquidated. It is relevant to mention that it is at that stage when the arguments were heard that applications under Rule 9 of the Company (Court) Rules, 1959 for appointment of an Umpire and the other under Order 23 Rule 3 read with Section 151 C.P.C. and Rule 9 of the Company (Court) Rules, 1959 were filed. The parties to the litigation were conscious of the fact that there could be an order liquidating the Company. It is in that back ground that the parties came to this Court in the applications, referred to above, asking for reconciliation through Arbitrator, who was to decide the dispute with regard to two companies known as Raghbir Cycles (P) Ltd. and Overseas Cycles Ltd. This reconciliation was necessary for the purpose of working the Company and not for finishing it. The Arbitrator in that light decided the matter and arranged the things in a way that the Company continues to exist. This Court, in addition to rejecting the arguments, as noticed above, is constrained to observe that in all probability the objectors came up with the applications sensing an adverse decision against them, perhaps, with a view to gain time and then to raise all kinds of frivolous objections. The Court has no choice in the matter but for to reject all the objections as noticed above. It may also be mentioned here that there are four houses with the respondents and specific allegations of the petitioners are that the same were purchased out of the funds of the Company.

(57) Mr. Ramaswami, learned counsel has also touched some minor points, like, non-workability of the Company in view of some of the clauses of the Award and, in particular, with regard to Arora Palace which is a Cinema Hall and reference of which has been made in clause (vi) of paragraph (iv). The same reads thus :—

“Out of the two Cinemas owned and operated by M/s Raghbir Cycles Pvt. Ltd. Arora Palace Cinema shall be run and operated under the direct supervision of Shri Gurcharan Singh in his capacity as the Director of the said Company.”

The argument is that there is one Generator set and one A.C. Plant for the two Cinemas owned by the Company, known as Arora Palace and Mini Arora Palace. There is only one entry point, one booking window and inasmuch as the Arora Palace Cinema is to be run and operated now under the direct supervision of Shri Gurcharan Singh, it would cause problem in working of two Cinemas. The non-workability of the cinemas on the counts noticed above has been denied in the pleadings. This Court is not able to understand as to how there will be any difficulty in running two cinemas only because Gurcharan Singh in his capacity as Director of Arora Palace, has been given right to operate the said Company under his supervision. His supervision can not possibly mean that he would order running of generator or the A.C. plant for one Cinema only and not the other or that he would ban entry for one cinema and not for the other.

(58) Non-mentioning of the properties and distribution and management thereof which are at Calcutta, S.C.O. 3, Bentck Street and Overseas Cycles Ltd. in the Award, appears to this Court of no significance whatsoever and the contention of the learned counsel that the Award has to be remitted to the Arbitrator for that reason carries no conviction with this Court. That apart, it has been specifically mentioned in the Award that S.C.O. 3, at Bentck Street, Calcutta is rented property of Overseas Cycles Company and M/s Raghbir Cycles Pvt. Ltd. has no right of any kind in and over the said premises. It is also mentioned in clause (ix) of the Award that Flat No. 1 (First Floor), 10 Lord Sinha Road, Calcutta, is the absolute and exclusive property of Shri Gurcharan Singh as an individual.

(59) Mr. Narang, learned counsel appearing for the objectors in rebuttal has touched a new point by contending that clause (v) of the Award rendered by the Arbitrator would create a dead-lock in the Company. Mr. Narang also contends that Smt. Hardeep Kaur is the sole proprietor of M/s Raghbir Bicycles International and there was no dispute of any kind but the Arbitrator has still mentioned the same in clause (xii) of paragraph (iv) of the Award. He has also repeated the points that were taken thread-bare by Mr. Ramaswami and have been noted above in the earlier part of the judgment which need no further consideration. However, insofar as new points, as noticed above, are concerned, it is not understandable as to how in view of clause (v) of para (iv) of the Award, there would be a dead-lock. All that has been mentioned in the para in question is that there shall be two Directors of M/s Raghbir Cycles (P) Ltd. namely, Gurcharan Singh and Raghbir Singh or their respective nominees

provided that parity is maintained between the two families in question. Why cannot a Company carry on and transact business with two Directors or their respective nominees, is wholly un-understandable. All that appears is that the Arbitrator in view of the disputes between the parties thought that two brothers representing their families were infact the real persons who floated the Company and there should be parity in their families insofar Directors are concerned. It is not disputed between the parties as well that the pioneers of these Companies are the two brothers. Insofar as clause (xii) of the Award which mentions Raghbir Bicycles International as well, is concerned, suffice it to say that it is mentioned that Gurcharan Singh and his family members or M/s Raghbir Cycles (P) Ltd. shall have no right of any kind whatsoever in the said company. This rather supports the case of objectors and, thus, in no way detracts from the validity of the Award. These are the only points on which arguments were addressed. Inasmuch as no arguments were addressed on the other points mentioned in the objection petition, reproduced in the earlier part of the judgement, no comments on the said objections are necessary.

(60) Finding no merit in the objections, I reject the same. Resultantly, Award rendered by the Arbitrator dated January 27, 1993, is made the rule of the Court. Let decree be drawn in accordance with the Award. The objections are rejected with costs quantified at Rs. 5,000.

S.C.K.

Before Hon'ble S. P. Kurdukar, C.J. & H. S. Bedi, J.

DR. DALBIR SINGH BAKSHI,—Appellant.

versus

DR. HIMAT SINGH ANEJA AND ANOTHER,—Respondents.

L.P.A. 895 of 1993

May 9, 1994

P.C.M.S. (Class I) Rules, 1972 as amended in 1979—Rules 9(2) (3) and 9-A—Service rendered as deputationist—Employee reverting to parent department—Benefit of service rendered on deputation—grant of—Employee whether has a right to claim particular posting—Posting mala fide—Court may cancel such order.