about by the act of the tenant. No tenant is permitted to do this under the law. No authority has been cited before me which shows that any material alteration to the building is not covered by clause (iii), sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act. The cases cited at the bar are only those where there was only an inconsequential alteration and that too not to the main building; and for instance in one case, a communicating door was opened between two rooms. In the present case, on the facts, as they stand out from the evidence, it is absolutely clear that the alterations are of a far-reaching nature and have completely altered the nature of the building. I am, therefore, clearly of the view that the Rent Controller was right in holding that the present case was covered by clause (iii), sub-section (2) of section 13; and the Appellate Authority has completely gone wrong in reversing its decision.

(4) Mr. N. C. Jain, learned counsel for the respondent, raised the contention that a notice under section 106 of the Transfer of Property Act was not issued. No such objection was taken at the trial. It may very well have been that there was such a notice. But as the matter was not raised and not tried, the learned counsel cannot be permitted to raise this plea at the revisional stage.

(5) For the reasons recorded above, I allow this petition; quash the order of the Appellate Authority and restore that of the Rent Controller. The petitioner will have his costs in this Court.

K. S.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

THE PANIPAT WOOLLEN AND GENERAL MILLS COMPANY LTD., AND ANOTHER—*Petitioners*

versus

R. L. KAUSHIK AND OTHERS,—*Respondents*

Civil Revision No. 545 of 1968

September 16, 1968

Indian Companies Act (I of 1956)—Ss. 10 and 398—Code of Civil Procedure (Act V of 1908)—S. 9—Plaintiff filing suit claiming decree for declaration that he is the director of a company—Cognizance of such suit by Civil Courts—Whether expressly or impliedly barred.

Held, that where a plaintiff files a suit claiming a decree for a declaration that he is a director of a company and that the election held on a particular date by the general meeting of the share-holders of the company is illegal and void, he is not wanting any order for the regulation of the conduct of the company's affairs in future, to be passed by a Company Court. The relief as claimed in the plaint cannot be granted by the Company Court. Even assuming that the plaintiff can make an application under section 398 of Indian Companies Act to the Company Court for getting the relief that he has prayed for in the plaint, this section does not bar the jurisdiction of Civil Courts for granting the same relief. Hence the cognizance of such a suit by the Civil Courts is neither expressly nor impliedly barred. (Paras 4 and 6)

Petition under section 115, *Civil Procedure Code for revision of the order of Mrs. Shant Bhupinder Singh, Sub-Judge, IIIrd Class, Kharar, dated the* 13*th May,* 1968, *disallowing ad-interim injunction during the pendency of the suit and dismissing the application.*

D. R. NANDA, ADVOCATE, for the Petitioners.

C. B. KAUSHIK AND R. S. MITTAL, ADVOCATES, for the Respondents.

JUDGMENT.

PANDIT, J.—The Panipat Woollen and General Mills Company Limited (hereinafter called the Company), defendant No. 1, is a public limited company, duly incorporated under the Indian Companies Act, with its registered office at Kharar. According to the allegations in the plaint filed by R. L. Kaushik, article 51 of the Memorandum and Articles of Association of the Company provided that at the annual general meeting, one-third of the directors of the company would retire from the office every year. The directors who had to retire were those who had been in office for the longest period since their last election. The retiring directors were, however, eligible for re-election. The company held its annual general meeting on 30th September, 1965 and one of the items on the agenda was to elect the directors in place of Roop Chand, R. L. Kaushik and Dalip Singh Arya who retired by rotation and were also eligible for re-election. The plaintiff sought re-election at the said general meeting and was re-elected as a director of the company. The annual general meeting of the company for the year 1966-67 was scheduled to be held on 30th December, 1967. Item No. 3 of the agenda was to elect the directors in place of Shiv Kumar

Gupta, Jogi Dass Jain and R. L. Kaushik, who retired by rotation, but were eligible for re-election. The affairs of the company, according to the plaintiff, were not properly managed and he used to criticise the company for that. This was not liked by Shiv Kumar Gupta, one of the Directors. Accordingly, he manipulated and included the name of the plaintiff amongst the directors who were to retire by rotation. In fact, his name was maliciously included amongst the directors who were liable to retire by rotation. He was re-elected in the annual general meeting held on 30th September, 1965 and was not one of the oldest directors, and was, consequently, not liable for retirement by rotation. The plaintiff had, thus, been excluded from holding office of the director of the company. In place of the plaintiff, Mohan Singh, defendant No. 1, was the oldest director who was liable for retirement by rotation. The name of the plaintiff had been wrongly included in his place. The affairs of the company, according to the plaintiff, were progressively worsening on account of mismanagement and lot of other illegal acts and thus the plaintiff and other share-holders of the company were liable to suffer immensely. The plaintiff, was, therefore, entitled to protect his own interests and those of the other share-holders. On these allegations, he filed a suit in January, 1968 in the court of the Subordinate Judge, Kharar, for a declaration to the effect that he was the director of the company entitled to all the privileges as to emoluments, attendance at the meetings and participation in the management of the affairs of the company, that the election held on 30th December, 1967 by the general meeting of the share-holders was illegal, *ultra vires* and void and that the election of Shiv Kumar Gupta, defendant No. 6, as a director of the company, was against law. As a consequential relief, a permanent injunction was also sought restraining the defendants from interfering with the management of the company unless the board of directors was properly constituted, or in the alternative a mandatory injunction be granted directing the defendants to allow the plaintiff to act as a director and participate in the meetings of the board of directors. Along with the plaint, an application was also filed by the plaintiff under order 39, rule 1, read with section 151, Code of Civil Procedure, praying that an interim injunction be issued directing the defendants not to hold the meeting of the newly constituted board of directors and allow the plaintiff to continue attending and participating in the meeting of the said board.

(2) The suit was resisted by the company and defendant No. 6. Apart from the merits of the case, a preliminary objection was also taken by the contesting defendants that the civil court had no jurisdiction to try the suit. The suit, according to them, related to the election of directors of the company made in the annual general meeting of the share-holders on 30th December, 1967. The court having jurisdiction under the Companies Act, 1956 (hereinafter called the Act) was this court within whose jurisdiction the registered office of the company was situate and, consequently, the suit was not maintainable in the civil court in view of the specific provisions contained in section 10 of the Act. The jurisdiction under the Act, according to the defendants, was vested in this court, except to the extent where the powers had been delegated to the district courts under section 10(2) of the Act. The Central Government, by notification dated 29th May, 1959, had delegated certain powers to the district courts. No delegation was made in the matter relating to the election of the directors. Under the Act, the jurisdiction to try matters relating to the Act was vested in this court.

(3) The learned Judge, *vide* her order date 13th May, 1968, came to the conclusion that the plaintiff was seeking a declaration that he was entitled to remain the director of the company and under section 34 of the Specific Relief Act, there was provision for giving such a declaration. It was only the civil court that could decide matters regarding title to any legal character or right to any property. The Act did not provide for any such remedy. The plaintiff was not seeking any relief under sections 10(ii), 203, 285 and 398 of the Act. On these findings, it was held that the trial Judge had jurisdiction to try the suit. As regards the application for a temporary injunction, the learned Judge was of the view that no objection was raised by the plaintiff when he was served with a notice on 8th of December, 1967 for the annual general meeting to be held on 30th December, 1967. After the meeting also, he did not immediately file any suit. The balance of convenience was also, according to the learned Judge, in favour of the defendants. She, therefore, found that no case had been made out for the grant of a temporary injunction during the pendency of the suit. That application was, therefore, dismissed. The present revision petition has been filed by the Company and Shiv Kumar Gupta, defendant No. 6, against the order of the Court below, holding that it had jurisdiction to try the suit.

(4) The sole question for decision is whether the present case is triable by a civil court. According to section 9 of the Code of Civil Procedure, 1908, the civil courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance was either expressly or impliedly barred. Is the cognizance of this suit either expressly or impliedly barred by any Act? If the petitioners are unable to show that, the Subordinate Judge at Kharar would have the jurisdiction to try the suit. Learned counsel for the petitioners, however, submitted that the cognizance of this suit was barred under the provisions of the Companies Act, 1956. In that connection, he referred to the provisions of sections 2(11) (a) and 10 and the notification issued in the official gazette by the Central Government under section 10(2) of the Act.

(5) Section 2(11) (a) defines the word "the Court" and it means with respect to any matter relating to a company (other than any offence against the Act), the Court having jurisdiction under the Act with respect to that matter relating to that company, as provided in section 10. Section 10 deals with the jurisdiction of Courts and says—

"(1) The Court having jurisdiction under this Act shall be—

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situated, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to the High Court in pursuance of sub-section (2) ; and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred—

(a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 to 409, both inclusive,

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.

* * * *"

The notification issued under section 10(2) of the Act states that the Central Government has empowered all the District Courts in India, except the District Courts in the State of Jammu and Kashmir, to exercise the jurisdiction conferred upon the Court by the various sections of the Act specified in the said notification. These provisions and the notification only point out that the matters relating to a Company and mentioned in the Act will either be tried by the High Court or in certain cases by the District Courts. These provisions, however, do not show that the jurisdiction of the civil courts had been expressly barred. When asked as to which section of the Act expressly barred the jurisdiction of the Civil Courts in trying the present case, the counsel referred to the provisions of sections 398 and 402(a) of the Act which run thus :—

"398(1) Any members of a company who complain—

(a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company ; or

(b) that a material change (not being a change brought about by, or in the interest of, any creditors including debenture holders, or any class of share-holders of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors or of its managing agent, or secretaries and treasurers, or manager or in the constitution or control of the firm or body corporate acting as its managing agent, or secretaries and treasurers, or in the ownership of the company's share or, if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that affairs of the company will be conducted in a manner prejudicial to public interest

or in a manner prejudicial to the interests of the company;

may apply to the Court for an order under this section, provided such member have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1) the Court is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Court may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit."

"402. *Powers of Court on application under section* 397 *or* 398.—Without prejudice to the generality of the powers of the Court under section 397 or 398, any order under either section may provide for—

(a) the regulation of the conduct of the company's affairs in future;

* * * * *

upon such terms and conditions as may, in the opinion of the Court, be just and equitable in all the circumstances of the case."

He contended that in paragraph 10 of the plaint, the plaintiff had stated that since the affairs of the company were progressively worsening on account of the mismanagement of the Company and a lot of other illegal acts on account of which he and other shareholders of the Company were liable to immensely suffer, therefore, he was entitled to protect his own interests and those of other shareholders and the election of defendants 2 and 6 as directors, in the meeting held on 30th December, 1967, was illegal and the said Board of Directors was not entitled to act and manage the affairs of the Company. Counsel argued that the allegations made in paragraph 10 would show that the plaintiff could make an application under section 398 and get a relief from the Company Court under section 402 of the Act.

(6) In the first place, this argument loses sight of the actual relief claimed by the plaintiff in the plaint. As already mentioned above, the plaintiff was claiming a decree for a declaration that he was the director of the company and that the election held on 30th December, 1967, by the general meeting of the share-holders was illegal and void. A consequential relief was also claimed for a permanent injunction restraining the defendants from interfering with the management of the Company unless the board of directors was properly constituted. In the alternative a mandatory injunction directing the defendants to allow the plaintiff to act as the director of the company, was asked for. Thus, it would be seen that the plaintiff was not wanting any order for the regulation of the conduct of the company's affairs in future, to be passed by the Company Court. As a matter of fact, learned counsel could not even point out that such a relief as claimed in the plaint, could at all be granted by the Company Court. If that be so, the civil court, and no other court, would have the jurisdiction to try the present suit. Secondly, what was stated in paragraph 10 of the plaint was only an allegation made by the plaintiff. But he had not asked for any relief pertaining to that allegation. By this allegation, the plaintiff had merely expressed his fear that in case, he was not allowed to continue as a director and the other persons elected in the meeting held on 30th December, 1967, were permitted to meddle with the affairs of the company, the interests of the share-holders, besides his own, would be in jeopardy. Thirdly, section 399 of the Act mentions the qualifications of the members of the company who would have the right to apply under section 398. The plaintiff might or might not satisfy those requirements and, thus, be able to file the application under section 398 or not. In the fourth place, even assuming for the sake of argument that the plaintiff could make an application under section 398, to the Company Court for getting the relief that he had prayed for in the plaint, this section did not bar the jurisdiction of the civil court for granting the same relief.

(7) A question might still arise that even if there was no section in the Act expressly barring the jurisdiction of the civil courts to try a suit of the present nature, could it be said that the jurisdiction of the civil courts was impliedly barred by the provisions of the Companies Act? Only one decisoin, namely, *Nava Samaj Ltd., Nagpur and others* v. *Civil Judge, Class I, Rajnandgaon and others* (1), was cited by the learned counsel for the petitioners in order to

(1) A.I.R. 1966 M.P. 286.

show that the jurisdiction of the civil courts was impliedly barred to try a case covered by the provisions of the Companies Act.

(8) In the first place, as I have already mentioned above, learned counsel could not show that the present case was covered by the provisions of the Companies Act. In the second place, even assuming that the Company Court could grant the relief asked for in the plaint, only one of the learned Judges constituting the Bench in Nava Samaj Ltd., Nagpur and others case was of the view that the Company court had the exclusive jurisdiction to take cognisance of the matters covered by the Companies Act. The other learned Judge, however, took a contrary view. Dixit, C.J., in that authority observed :—

> "The plain effect of the above provisions is that the power and jurisdiction to deal with such matters as are covered by the Act itself has been given to the Courts specified in section 10(1) with respect to any matter relating to a company, other than an offence against the Act.....The Courts nominated under the Act have exclusive jurisdiction to take cognisance of the matters covered by the Companies Act.....".

The other learned Judge, Pandey, J., however, held :—

> "But, with great respect, I have not been able to persuade myself to share the opinion of my Lord that section 10 of the Companies Act, 1956, by its own force and effect, excludes by necessary implication jurisdiction of other Courts in regard to matters provided by that Act or that, in connection with the exclusion of jurisdiction of other Courts, the line of enquiry should be, not whether there is any provision besides section 10 of the Act giving the Company Court exclusive jurisdiction in company matters but whether there is any "otherwise" provision in the Act excluding the jurisdiction of the Company Court in matters falling under the Act."

There is, however, a decision of this Court given by D. Falshaw, C.J., in *Muni Lal Peshawaria and others* v. *Balwant Rai Kumar and others* (2), where the learned Judge observed thus :—

> "There is in fact no doubt that the reliefs which are sought in the present suit could properly have been applied for and obtained from this Court under the provisions of the Companies Act, but the question is whether this is the only remedy open to the plaintiffs, and it must be stated at once that, unlike some statutes the Companies Act does not contain any express provision barring the jurisdiction of the ordinary civil Courts in matters covered by the provisions of the Act. There is also no doubt that the ordinary civil Courts can and do decide the rights of parties on many matters arising out of the provisions of the Act. There is also no doubt that the ordinary civil Courts can and do decide the rights of parties on many matters arising out of the provisions of the Act. There is no doubt about the general principle, which is that the jurisdiction of the ordinary Courts is only barred where this is expressed in a statute or necessarily implied, and while there are no doubt instances of cases, being tried by the ordinary civil Courts for the determination of rights or obligations created by the provisions of the Act, there is not, so far as I am aware, any precedent for matters relating to the winding up of a company, even a voluntary winding up, being decided by the ordinary Courts. In my opinion there is a good deal to be said for the argument of the learned counsel for the petitioners that even in a case of a voluntary winding up it is necessarily implied that proceedings by share-holders against liquidators in respect of the conduct of winding up proceedings are intended to be dealt with by the Court under the Act, i.e., the High Court particularly in case where allegations of misfeasance and non-feasance are being made against the liquidators, as in the present case.

Section 235 of the Act of 1913 confers on the Court the power to assess and award damages against delinquent company officers or liquidators, and one of the prayers in the present suit is that

(2) A.I.R. 1965 Pb. 24.

the contesting defendants should be debited with damages for acts of misfeasance and non-feasance. This is a very special provision which I think can only be exercised by the Court under the Act and not by an ordinary civil Court. The position is summed up in the well-known dictum of Willes J., in Wolverhampton New Waterworks Co., *v. Hawkesford* (3), at 356 as under:—

> "There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law : there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely but provides no particular form of remedy there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute, which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class."

Here, the liquidators are creations of the Companies Act and their liability along with officers of the company for damages for misfeasance or non-feasance is created by section 235 of the Act of 1913, and I consider that any shareholder who claims this remedy must go to the Court under the Act in order to obtain it."

According to the observations of Falshaw, C.J., and the dictum of Willes, J., in Wolverhampton New Waterworks Co. case, the jurisdiction of the civil court to try the present suit was not barred.

(9) Reference may also be made to three other decisions in *Sarat Chandra Chakravarti and Atul Chandra Moitra* v. *Tarak Chandra Chatterjee and others* (4), *Sati Nath Mukherjee* v. *Suresh*

(3) (1859) 6 S.B.N.S.

(4) A.I.R. 1924 Cal. 982.

Chandra Roy and others (5) and *Dr. Satya Charan Law and others* v. *Rameshwar Prosad Bajoria and others,* (6), which would show that the civil courts were trying cases of the present nature as also those covered by the provisions of the Companies Act. No objection was raised to their jurisdiction. In Sarat Chandra Chakravarti's case, a Division Bench of the Calcutta High Court held :—

> "An injunction may be granted on the application of a Director restraining the plaintiff's co-directors from wrongfully excluding him from acting as a Director; there is nothing excluding the jurisdiction of the Court from entertaining such a suit.....'

In Sati Nath Mukherjee's case, it was observed—

> ".....But a suit for declaration that the plaintiff is a Director and for the protection of his rights *qua* director is competent."

The Federal Court in Dr. Satya Charan Law and others' case held—

> "Ordinarily, the directors of a company are the only persons who can conduct litigation in the name of the company, but when they are themselves the wrong-doers against the company and have acted *mala fide* or beyond their powers, and their personal interest is in conflict with their duty in such a way that they cannot or will not take steps to seek redress for the wrong done to the company, the majority of the share-holders must in such a case be entitled to take steps to redress the wrong. If there is no provision in the articles of association to meet the contingency, the majority of the share-holders can sue in the name of the company."

In view of what I have said above, I hold that the decision of the trial court that it had jurisdiction to try the present suit was correct. The revision petition, therefore, fails and is dismissed, but with no order as to costs. Parties have been directed to appear before the trial Court on 3rd October, 1968 for further proceedings in the case.

K. S. K.

(5) A.I.R. 1941 Cal. 136:

(6) A.I.R. 1950 F.C. 133.