IN THE COURT OF THE PRINCIPAL MUNSIFF, ERNAKULAM

Present :- Sri. S.Sudheeshkumar, B.Sc, LL.B, Principal Munsiff.

Monday, the 31st day of July, 2017/9th Sravana, 1939

<u>O.S. No. 580/2015</u>

<u>Plaintiff:-</u>

Mohan Paul, aged 43 years, S/o late Dr. T.M. Paul, Thyvelikkakath, Vettakkal, Cherthala, represented by his Power of Attorney Holder Jose Michael T.J., aged 58 years, S/o late T.M. John, Thykkottathil House, Kannamaly Village, Kochi Taluk, Ernakulam District.

By Adv. T.K. Shajahan

<u>Defendants:-</u>

1. M/s. City Hospital Pvt. Ltd., M.G. Road, Ernakulam, Kochi – 682 035, represented by its Managing Director Dr. Zia Mydin, S/o Mydeenkunju Mohammed, 41/960, Pullepady Road, Cochin – 682 018.
2. A. Basheerudheen, S/o Abdul Rehman, Chairman, M/s. City Hospital Pvt. Ltd., Residing at 2, Deonar Farm Road, Zenith Park, Chembur, Mumbai – 400 088.
3. Dr. Zia Mydin, Managing Director, M/s. City Hospital Pvt. Ltd., S/o Mydeenkunju Mohammed, 41/960, Pullepady Road, Cochin – 682 018.
4. Dr. Sanam Basheer, Director, M/s. City Hospital Pvt. Ltd., D/o Basheerudheen, 41/960, Pulleppady Road, Cochin – 682 018.
5. Amina Mohammed Ali, Director, M/s. City Hospital Pvt. Ltd., Residing at 2, Deonar Farm Road, Zenith Park, Chembur, Mumbai – 400 088.
6. S. Mohammed Ali, Director, M/s. City Hospital Pvt. Ltd., Municipal, Punalur Estate Bunglow, Punalur, Pin – 691 305.

7. K.E., Velayudhankutty, aged 68 years, S/o Narayana Panicker, 'Devaki', Desom, Alwaye, Ernakulam District, Pin – 682 524.

By Adv. Tom K Thomas

This suit having come up before me for hearing on 11.07.2017 and the Court on 31.07.2017 delivered the following :-

O.S. No. 580/2015

JUDGMENT

Suit is for mandatory and permanent prohibitory injunction.

2. **Plaint allegations can be summarized as follows:-** Plaintiff is a joint share holder of first defendant Company in the name and style as 'City Hospital', M.G.Road Ernakulam. The same is incorporated under Companies Act 1971, and having registered office at M.G.Road, Ernakulam. The hospital is having an extent of 78.053 cents of land comprised in Survey No.611 of Ernakulam Village. Authorized Capital of defendant company is Rs.15 lakhs divided in to 1000 equity shares of Rs.1000/- each and 500 preference shares of Rs.1000/- each. All Equity shares have been issued and fully paid up. Only 28 preference shares have been issued. Plaintiff is a joint share holder of 45 numbers of equity shares along with his father Dr.T.M. Paul as per Share Certificate No.101 and 104 dated 8.5.1989 and same was transferred

by Dr.Puthenmadam K.Balachandran. Presently, plaintiff holds more than 10% of holding of City Hospital Pvt.Ltd, by way of purchase and transfer including 25 Preference shares. Plaintiff's father late Dr.T.M.Paul holds 158 equity shares and 3 Preference Shares. His mother Late Mrs.Rubina holds 94 Equity Shares. As sole legal heirs of his parents, total number of shares held by plaintiff is 255 shares of Rs.1000/- each. In addition to that, plaintiff holds 25 preferential shares which was purchased and transferred from Dr. Susheel Cleetus. At present, total number of shares held by plaintiff and his parents are 280 shares, out of issued and subscribed 1028 shares. The same was allotted during the year 1971 to 1974. Even though first defendant company started in the year 1971, till date no dividend was given to its shareholders. The reason for non-issuance of company's dividend is cited as 'business was not running in profit'. There was conflict between two groups of Directors resulted in filing of series of litigations between them. One group headed by Sri.V.D.Sebastain and, plaintiff's father was in another group. The hospital was under Receivership Administration for a long period as per order of Hon'ble High Court of Kerala in CRP 447/1999. From 2.8.2002 onwards, as per direction of Hon'ble High Court of Kerala in CRP 447/1999, hospital was managed by Board of

Directors, who are elected in extra ordinary general body meeting held on 4.5.2002 under the Chairmanship of Sri.V.D.Sebastain. Thereafter Director Board Members including Chairman V.D.Sebastain, Mathew Varghese, M.P. George etc., wanted to assign and sell the company property to defendants in present suit, so that, surplus left could be divided among its shareholders. Taking into consideration of lie and nature, and value of property situate in M.G.Road, Ernakulam, shareholders themselves made an oral agreement that property could be sold to a prospective purchaser. Even though members of Board of Directors managed to arrange various purchasers, but value offered by them was very low when compared to market price. So sale could not materialize. Meantime, second defendant offered a price for the property, but it was not amenable to shareholders. Thereafter, Board members including Mathew Varghese and V.D.Sebastain insisted shareholders to sell their shares to Second defendant at a price quoted by him, ie,. 1.25 lakhs per share. The price offered was lessor than existing market value of land. Hence shareholders did not agree with sale of property to second defendant. They claimed that after settling all liabilities, each share holder has to get Rs.5 lakhs per share. Board members including V.D.Sebastain, Mathew Varghese etc., in connivance with second defendant, insisted majority shareholders to sell their shares to second defendant. This move was a preplanned act to accumulate majority shares in favour of second defendant and his associates. For the said illegal purpose, company resolutions were passed for handing over entire management to defendants 2 to 6 by playing fraud and manipulation. In violation of provisions of Companies Act, defendants 2 to 6 manipulated company records and passed resolutions which deprived minority share holders's right over company. Therefore, some shareholders filed OS 754/2011 before Munsiff Court, Ernakulam, to declare all proceedings and resolutions passed in Board of Director's Meeting dated 27/4/2011 and 15/6/2011 as illegal and void and not binding on first defendant company, and to declare that defendants 2 to 6 are not shareholders or additional directors of first defendant company either on 15.6.2011 or thereafter and their participation in subsequent meeting was illegal and void. The aggrieved shareholders including Dr.N.Viswanathan Nair, M.V.Kunjachan, Dr.M.Aravinda Babu etc. filed CP No.82/2012 before Company Law Board, Chennai, alleging oppression of minorities, mismanagement of company affairs, etc.. and to set aside transfer of 510 shares alleged to have approved in Board Meeting held on

15/6/2011 as invalid and illegal, as the same being ultra virus. But playing tactics by second defendant upon petitioners, they withdrew their petition as second defendant purchased their shares at a price of Rs.1.25 lakhs per share. During the transfer of shares itself, plaintiff requested the Board to transfer shares purchased and transferred in his name and record same in Shareholders Register and thereby to rectify share register. Due to strained relationship of the then Managing Director V.D.Sebastain with plaintiff's father Dr.T.M.Paul, they refused to consider his request. Hence plaintiff filed CP 9/2012 to tranfer shares purchased and transferred in his name and recitify share register up to date. He also filed CP 2/2015 before Company Law Board, Chennai with a prayer to transmission of joint shares in the name of plaintiff held along with his late father and thereby rectify Share Register also. Defendants informed that plaintiff's request was rejected on the ground that shares held by plaintiff's father is attached in a CBI Case. Plaintiff's mother is no more and shares are still in her name in the Share Register of first defendant company. Total number of shares in name of plaintiff and his parents is 280 out of issued and subscribed shares of 1028. After the death of his parents, he is the sole legal heir of shares and his status as ' joint share holder' changed to 'shareholder' of the company. Death of his father was intimated to defendants vide notice dated 13.10.2014. Now plaintiff came to know that company has issued intimation to some shareholders stating that company is offering 60,000/- Equity shares of Rs.1000/- each at a premium of Rs. Nil ie., for Rs.1000/- itself. The existing share holders are offered equivalent shares on the basis of paid up value of shares held by them in the company. Even though defendants had knowledge about address of power of Attorney and his counsel, plaintiff was precluded from the information regarding issuance of further shares. On getting information about illegal resolution passed by defendants, power of attorney of plaintiff inspected public records kept with Registrar of Companies. He obtained a copy of the Resolution dated 26.3.2015 from Registrar, and it is seen that as per Cl.(b), the offering letter shall be dispatched through registered post or speed post or through electronic mode to all existing share holders at least three days before opening of the issue indicating the number of shares held by each member and number of shares to which each member is entitled. Opening statement of Chairman in the extract of resolution passed in the meeting of Board of Directors of first defendant company dated 26.3.2015 that the present authorized share capital of the company is

Rs.100,000,000(ie., 99500 Equity Shares of Rs.1000/-each and 500 preference shares of Rs.1000/- each). This statement is absolutely false and fraudulent. Since inception of the company itself, it has only 1500 shares. Raising of Authorized share capital by equity shares to 99500 from 1000 is unknown to existing share holders and the said act was committed only to deceive its share holders including plaintiff. The original Share Register is also missing from company and authorized persons including Chairman could not give explanation with respect to disappearance of the register. The intention of the defendants is to dilute value of each existing shares proportionately and this will affect plaintiff's and his late parent's percentage of ownership, degree of power and profit entitlement. By raising of Authorized share capital by equity shares to 99500 from 1000 diluted value of each existing shares proportionately and this will prevent plaintiff to exercise his pre-emptive rights as per the Memorandum and Articles of Association of the company. Plaintiff's and his late parent's total 280 shares will become minicule when compared to alleged raised capital of 99500 shares. Prima facie, these attempts are to defraud the legal system and minority share holders. Second defendant is fully aware that plaintiff is in abroad and raising of such shares will dilute the value of shares with plaintiff and plaintiff will not come with a claim, since he is not informed about the resolution passed and issuance of further shares. Major share in the company was acquired by defendants 2 to 6 in a dubious manner without recording correct share value and fabricated share register. Newly raised shares are not issued in a proportionate manner as compared to the current value of assets of company including land value, which situate in heart of the city at M.G.Road, Ernakulam. It will fetch minimum of Rs.65 crores. Raising of subsequent shares resulted in the decrease in value of plaintiff's holdings. The current Director Board resolution dated 26.3.2015 is illegal because, second defendant arbitrarily decided value of present Authorized Share Capital of company as Rs.100,000,000. In the said resolution Chairman stated that ***'there may be possibility that some of the rights are not subscribed and may be renounced by the existing shareholders'*** is a calculated move from defendant's side and it is intended to reduce plaintiff's 25% shareholdings to a negligible amount as compared to total share value. This is absolutely a procedural violation of Sec.62(1) (a) of Companies Act and Articles of Association. As per the resolution dated 26.32015, second defendant decided to issue further 60000 equity shares of Rs.1000/- each to existing share holders without sending any communication to plaintiff.

As legal heir of his parents and as a purchaser, he is shareholder of company. Resolution dated 26-3-2015 to issue further 60000 shares of Rs.1000/- each to existing share holders without sending any communication to plaintiff as share holder of company is illegal and fraudulent. The intention of defendants is to deceive plaintiff by devaluing shares on his behalf. Therefore, resolution dated 26-3-2105 is voidable and illegal as it infringes minority shareholder's rights by diluting value of shares. Hence plaintiff pressed for a decree to declare meeting of Board of Directors dated 26-3-2015 as illegal and void, to pass a permanent prohibitory injunction against defendants 2-7 from taking any steps for implementation of resolution dated 26-3-2015 and to pass a decree of mandatory injunction to appoint a registered valuator to value the capital of company and current share holding value as per share and other consequential relieves.

3. Defendants 1,2,4,6,and 7 filed written statement. But defendants No.3 and 5 were set exparte on 1.10.2016. Sixth defendant was set exparte on 30.6.2016. No application filed to set aside exparte order against D3,D5 and D6. But filed written statement in the name of sixth defendant also. The averments in the written statement can be summarized as follows:- Suit is not maintainable either under law or on facts. Court has no jurisdiction to try the suit as subject matter of suit

comes within the ambit of Sec.397,398 and 399 of Companies Act. For getting effective remedy, plaintiff has to approach proper forum constituted under Companies Act. As plaintiff is stranger to suit, he has no locus standi to try the same. His legal character is only as a legal heir and not as a shareholder of first defendant company. The plaint averment that plaintiff is joint share holder of first defendant company is denied by defendants. Plaint claim cannot be admitted, as shares of his parents - late Dr.T.M.Paul and mother Late Mrs.Rubina were transferred not in accordance with sec.108 of Companies Act. Request for transfer was made without enclosing the originals of purported transfer deeds and share certificate. Therefore, request for transfer of shares refused by first defendant company. Application filed by plaintiff before Company Law Board, Chennai Bench with No. C.P.No. 9/2012 for transfer of shares in his name, which he acquired by way of assignment and purchase. Smt.Thankam Paul- sister of plaintiff transferred her 74 equity shares in favour of plaintiff and purchased of 25 preferential shares from Dr.Susheel Cleetus. Both share transfers were dismissed by Company Law Board on a finding that Smt.Thankam Paul is not a registered share holder of company and she has no legal rights to transfer share in favour of plaintiff or any other person. Hence plaintiff has no locus standi to file a petition u/s.111 and 111A of Companies Act. In the matter of transfer of shares, plaintiff has not complied with procedural formalities prescribed under Articles of Association of the company for transfer of shares. The Company Law Board has relied on the dictum laid down by Hon'ble High Court in C.P.32/2000 filed by Thankam Paul that mere by producing a Succession Certificate, she cannot be directly placed on the position of original share holder or member unless the shares got registered in her name or to submit necessary application to the Board with requisite proof. First defendant company has not received any application seeking transmission of shares held by Smt.Rubina Paul. Plaintiff himself is responsible for non-getting the shares transferred in his name. The plaint averment that there was a general agreement between share holders that property could be sold to prospective purchaser is denied by defendants. Defendants admit the averment that defendants 2 to 7 purchased certain shares of company as per stipulation envisaged under Companies Act and Articles of Association of company. Defendants denied plaint averment that they committed fraud and manipulation in records and passed resolutions which deprived minority's right over company ownership. All these decisions were taken only in accordance with strict mandates of Companies Act and Articles of Association. CP 82/2012 filed before Company Law

Board was withdrawn by petitioners after they convinced that transfer of shares in favour of defendants 2 to 7 are legal and valid. C.P.No.9/2012 and CP No.2/2015 were stands dismissed by Company Law Board. Plaintiff's claim about his holding of 45 shares, which he accrued as legal heir is not correct. The said claim was rejected by Company Law Board and, in the present suit the fact of dismissal was suppressed by plaintiff. Resolution passed by virtue of Sec.62 of Companies Act which empowers company to augment its resources in connection with the expansion of company and for additional working capital. Based on offer letter dated 10/4/2015 and application submitted by existing share holders, Issuance of 40080 issue rights to various share holders were completed on 7/5/2015. Defendants contended that reply notice sent to plaintiff very well mentioned about rights subscription and if plaintiff is eligible, he can apply for rights issue of shares. Being aware of his legal status and ineligibility, plaintiff did not make any subscription of shares right. Passing of resolution and raising of additional authroized share capital were done in a legal and valid manner by complying all provisions of Companies Act. Without taking valid steps to getting the shares of late parents transferred to his name, plaintiff is filing applications one after another before Company Law Board and various authorities. Defendants 2 to 7 acquired shares in a legal manner and in accordance with provisions of Companies Act. Without a valid transfer, plaintiff cannot claim any right with respect to the affairs of first defendant company. No personal right of plaintiff is infringed by defendants's action. The cause of action alleged is not true and the suit is liable to be dismissed. Hence defendants pressed for dismissal of lis.

4. Heard both sides. Following issues settled in this case are:-

1) Is suit hit by provisions of Companies Act?

2) Whether plaintiff is a share holder of first defendant Company?

3) Is plaintiff entitled to get decree declaring that meeting held on 26/3/2015 and all proceedings and resolutions passed are void?

4) Is plaintiff entitled to get decree of injunction as prayed ?

5) Is plaintiff entitled to get decree of mandatory injunction as prayed?

6) What is the order as to costs?

No oral evidence adduced on the side of both parties. On the side of plaintiff Ext. A1 to A9 were marked. On the side of defendants Ext. B1 to B6 were marked.

5. <u>Issues No.1 to 6</u> :- For convenience these issues can be considered together. Counsel for defendants vehementally contended that suit will come within the ambit of Sec.397, 398 & 399 of Companies Act. So the remedy available to plaintiff is to approach Company Law Tribunal. Counsel for plaintiff resisted above contention relying on dictum laid down in ***<u>Star Tile Works Ltd. V. Govindan (1959 KHC 426) and Marikar Motors Ltd V. Ravi Kumar (1982 KHC 355)</u>***. The specific plaint allegation is defendants intimated share holders that company is offering 60,000 equity shares of Rs.1000/- each at a premium of Rs.Nil per share ie., for Rs.1000/- itself. Further shares are offered to existing share holders proportionately on the basis of the paid up value of shares held by them in the company. Defendants did not communicate above resolution to plaintiff being joint share holder of first defendant and legal heir of late Dr.T.M.Paul and Mrs.Rubina Paul. Though they know the whereabouts of plaintiff and his agent , plaintiff came to know about resolution dated 26.3.2015 in the last week from the date of filing of lis. According to plaintiff the move to increase share capital to 99500 from 1000 is to deceive plaintiff and share holding of his parents. Plaintiff apprehends that the hike in capital of 99500 share will make total 208 shares in the name of his parents negligible. Plaintiff confined their contention that deeds of defendants is clear violation of Sec.62(1)(4) of the Companies Act. No doubt, plaintiff is claiming that affairs of company are being conducted in a manner oppressive to him. According to plaintiff affairs of company are being conducted in a manner prejudicial to him. Plaintiff combined Sec.397,398 and 399 of Companies Act in his pleading to have relieves sought. There is no express exclusion of jurisdiction of civil court to entertain lis though the matter comes within the ambit of Sec.397,398 and 399 of Companies Act. Hence I am of the firm view that suit is maintainable. Issue No.1 found in favour of plaintiff.

6. Plaintiff do not have a case that defendants registered shares in his name after the demise of his parents. Plaintiff admitted the order of Company Law Board in CP 9/2012 dated 13.4.2015. Counsel for plaintiff confined his contention to the point that though plaintiff did not get shares in the name of his mother Rubina Paul registered, he is the joint share holder to 45 number of Equity shares along with his father Dr.T.M.Paul as per Share Certificate No.101 and 104 transferred in their joint name by Dr. Puthenmadom K.Balachandran. So defendants are bound to intimate him about resolution dated 26.3.2015. Admittedly, plaintiff filed TCP No.226/2016 (CP2/2015) before National Company Law Tribunal,Division Bench, Chennai to get an order directing first

respondent company to effect the transmission of equity shares in the name of the petitioner(Plaintiff) covered under share certificate Nos. 101 and 104 by recording the same in the share register of the company in the name of petitioner and also to direct first respondent company and it's Board to rectify the share register incorporating the above transfer of shares in the name of petitioner/plaintiff. Plaintiff got favourable verdict dated 7.6.2017 to effect transmission of 45 number of equity shares in his name having share certificate No.101 & 104 by recording the same in the share register of the first defendant company and to rectify share register incorporating above transfer. It is unravalled from Ext.A9 order, that plaintiff is also directed to file the original share certificate along with the deeds of power of attorney, an indemnity bond and order of lifting of attachment of the share passed by the CBI Special Court on 9.5.2017 to effect transmission of 45 equity share in his name. So it is crystal clear that on the date of passing of resolution dated 26/3/2015, plaintiff's name was not found in share register of first defendant. In addition to that though defendants denied the status of plaintiff as share holder of first defendant, vide reply notice dated 30.4.2015,they intimated plaintiff to subscribe the share if he is eligible. But plaintiff did not respond to that demand positively. Plaintiff did not establish with cogent and convincing materials before court that he was a member of the company on 26/3/2015. It is unravalled from Ext.B2 (Order of Company Law Board,Chennai Bench) dated 13.4.2015 that rejection of transmission of share by first defendant in the name of Rubina Paul and Dr.Susheel Cleetus on the ground that Smt.Thankam Paul is not a share holder and plaintiff did not comply mandatory provision regarding transfer of shares engrafted in Companies Act, upheld. So it can be easily concluded that plaintiff failed to establish the fact that he was a member of the company on the crucial date ie., 26/3./2015. Next aspect to be analysed is whether resolution dated 26/3/2015 is to be held void. Ext.B1 reveals the decision to go for right issue of the subscribed 60,000 shares of Rs.1000/- each at a premium of Rs. Nil per share.

They decided to offer the unsubscribed 60,000 shares to existing share holders proportionately on the basis of paid up value of the shares held by them in the company. It is crystal clear in the light of discussion touching the legal status of plaintiff as share holder that resolution dated 26/3/2015 cannot be held void only due to the reason that passing of resolution did not intimate to plaintiff. Even after getting knowledge regarding Ext. B1-Resolution, plaintiff did not make any attempt to purchase offered unsubscribed 60000 shares. Reason revealed from above fact is that real reason behind non-purchase of unsubscribed share is not the lack of intimation of Ext.B1 Resolution. Plaintiff did not establish vital ingredients to get a declaration that Ext.B1 is void. They did not lead any evidence to get relieves sought in the plaint. Non- establishment of right and intrusion to that right dis-entitle plaintiff to get relieves sought in the lis. Issue No.2 to 5 found against plaintiff.

In the result, suit dismissed. Considering nature of lis, no order as to costs.

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in Open Court on this the 31st day of July 2017.

S.Sudheeshkumar
Principal Munsiff

A P P E N D I X:-

Plaintiff's Exbts:-

A1	–	Copy of Certificate of Incorporation and Memorandum and Articles of Association of the 1st defendant's Company.
A2	29.10.1976	Copy of Share Certificate
A2(a)	04.06.1976	Copy of Share Certificate
A2(b)	08.05.1989	Copy of Memorandum of Transfer
A3	12.07.2014	Death Certificate
A4	13.10.2014	Copy of Lawyer's Notice

A5	26.03.2015	Copy of Minutes
A6	25.04.2015	Copy of Lawyer's Notice
A7	–	Copy of Postal Acknowledgment card
A7(a)	–	Copy of Postal Acknowledgment card
A7(b)	–	Copy of Postal Acknowledgment card
A7(c)	–	Copy of Postal Acknowledgment card
A7(d)	–	Copy of Postal Acknowledgment card
A7(e)	–	Copy of Postal Acknowledgment card
A8	21.07.1999	Notarized copy of Power of Attorney
A9	07.06.2017	Order of National Company Law Tribunal in Petition TCP 226/16

Defendant's Exbts:-

B1	26.03.2015	Copy of Extract of Resolution
B2	13.04.2015	Copy of Order in CP 9/12 of The Company Law Board, Chennai.
B3	07.05.2015	Copy of list of ALLOTTEES as per Allotment
B4	–	Copy of Account Statement
B5	07.05.2015	Copy of Extract of Resolution
B6	30.05.2015	Copy of Lawyer's Notice

Court Exbts:- Nil

Plaintiff's witness:- Nil

Defendant's witness:- Nil

Court witnesses:- Nil

Principal Munsiff

dk/Com by:-

Judgment in
O.S. No. 580/2015
Dated: 31.07.2017